

No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME X.

(Pages 3601 to 4000, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.

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(Testimony of Junius Wright.)

Q. Did Wells tell you how the entries were made?

A. Yes.

Q. What did he tell you?

A. He told me he would approach a man that would be willing to enter in a transaction of that kind.

Q. Of what kind?

A. Of taking up timber land with the intention of selling it as soon as he could make final proof. In fact I remember in asking him if he didn't have to be very careful who made an entry in a proposition of this kind, he said, "No, not particularly."

Q. Well, do I understand you to say that Mr. Wells told you that they went to men and had them enter timber and stone claims, where the entryman expected to sell it to them after he had made final proof?

A. Oh, certainly he did.

Q. Mr. Wells told you that?

A. Yes, sir, he did, that he would approach a man and make a deal with him to take up this timber land, and after he had proved up on it to sell it to them.

Q. He told you that these entrymen who entered these timber and stone claims, made the entry with the expectation of selling it after they got final proof?

A. No other condition in the world, only after receiving the \$400, to skip the country or to sell it, so it would not be known.

Q. So what would not be known?

(Testimony of Junius Wright.)

A. That they had entered into a proposition of this kind.

Q. Proposition of what kind?

A. The proposition that they were to sell their location, the claim, immediately upon making final proof?

Q. The fact that they were to sell as soon as they made final proof? A. Yes, sir.

Q. And that is the kind of an agreement that you have referred to as being crooked?

A. Yes, sir.

Q. That is, it was your understanding then and is now, that any person who enters a timber and stone claim with the expectation of proving up and selling it is acting crooked?

A. Yes, where they accept the expense money and have an implied agreement that they are to receive a certain sum for their claim as soon as final proof can be made, I understand it is not legitimate.

Q. Well, you understand if anyone makes a filing, and after he makes a filing borrows money to prove up with, and after he proves up he sells it and gets part of the money, or he agrees to sell it before he makes final proof violates the law?

A. Yes, sir.

Q. That was your understanding at the time?

A. Yes, sir.

Q. And you thought that was fraud?

A. Yes, sir.

Q. And that any entryman who filed on a piece of land and didn't have enough money to make his

(Testimony of Junius Wright.)

final proof on it and went out and sold it before final proof, or borrowed money on it before final proof, was thereby violating the law? A. Yes, sir.

Q. Did I understand you to say Mr. Wells told you that these entrymen, or some of them, had agreed to sell after they made their filing and before they made final proof?

A. Yes, sir, that they agreed to sell even before they were located.

Q. And that is what you mean by saying it was fraudulent? A. That is what I mean.

Q. I think you said that you gave Mr. Wells a receipt for this bill when Mr. Steunenberg paid it?

A. No, sir, I did not give Mr. Wells a receipt.

Q. I thought you said you gave Mr. Wells a receipt, and also gave one to Governor Steunenberg?

A. No, I did not say I gave one to Mr. Wells.

Q. Didn't I ask you if you made two receipts?

A. I don't remember, but I know I did not give Mr. Wells a receipt.

Q. Well, did you give Governor Steunenberg two receipts? A. No, I never gave him but one.

Q. You never issued but one receipt when this account of Mr. Wells was paid by Governor Steunenberg?

A. I never issued but one receipt, no, sir.

Q. And that is the one that you told us about writing out something on the bottom of it?

A. Yes, sir.

Q. The receipt that you wrote out with a pen and ink? A. Yes, sir.

(Testimony of Junius Wright.)

Q. Did Mr. Wells ever owe you any other money than the account you have spoken of?

A. No, sir.

Q. Did Mr. Wells detail to you in that conversation the Kinkaid plan of operating and acquiring these lands?

A. Well, he detailed it to me, the plan that I have outlined.

Q. Will you kindly tell us just what Mr. Wells told you the way they did it?

A. Well, Mr. Wells said he would approach some man with whom he became well acquainted in Boise, and he would ask him if he would file on a timber claim with the intention of selling it again as soon as final proof was made; and if this party was willing to do so, they would take him to a claim and show it to him, and if he had no money, they would advance his expenses—expense money, and upon his final proof they would pay him the \$400, or at least give him a part of it at any time and the remainder when final proof was made.

Q. And that is what Wells told you?

A. That is what Mr. Wells told me, and that was the reason he was short in some of his accounts.

Q. Well, did he tell you he was in the locating business, and being paid for locating these people?

A. No, his profits arose from the selling of these claims after final proof was made, to these eastern people.

Q. Oh, he did not have anything to do with the \$25 locating fee?

(Testimony of Junius Wright.)

A. Oh, as I understood him, he received no fee whatever for locating.

Q. Well, did he say anything about Pat Downs?

A. Well, I could not say as to that—I knew he and Pat were inseparable.

Q. They were partners?

A. I don't know that I ever asked him about that.

Q. Well, did he tell you anything about Pat Downs? A. No, I don't think so.

Q. Well, didn't you know at that time that Downs and Wells were locating people up there and charging them \$25 locating fee? A. No, sir.

Q. He didn't tell you about that?

A. No, if he did I don't remember it now.

Q. Well, did he tell you anything about the Crooked River-entries? A. No.

Q. Or the six-four entries? A. No.

Q. What entries did he tell you about?

A. I don't think he specified any entries at all.

Q. What did he tell you this \$248,000 that the Barber Lumber Company had furnished to him was for?

A. That was used as payments of the \$400 for the entries, which were paid to the entrymen on final proof; and was also used for expense accounts.

Q. Well, now, what did Mr. Wells tell you about that?

A. Well, I asked him and he told me that approximately \$248,000 had passed through his hands in payment of these claims.

Q. Well, your understanding was that he was

(Testimony of Junius Wright.)

buying claims and paying \$400 for them, over and above the expense of getting them?

A. Yes, the way he was doing it.

Q. Well, did he tell you what the expense of getting them was?

A. No, sir.

Q. You don't know what that was?

A. No, sir.

Q. Did you have any idea of what it was?

A. Why, I had a general idea, so much for livery hire, hotel, etc.

Q. How much for the Government?

A. I did not ask him.

Q. Did you know?

A. No.

Q. Did he tell you how much apiece they paid for these claims?

A. Who?

Q. Anybody, how much they cost the company?

A. No.

Q. Did you know how much they cost the company?

A. No, I didn't know, don't know now because I don't know what profits he received.

Q. Then your understanding, from what Mr. Wells told you was, that the Kinkaid plan was to buy entries after final proof and pay whatever they cost them, that is whatever they cost the entrymen, and \$400 profit for each timber claim?

A. Yes, if I understand your question right.

Q. Well, I want you to understand it right. I am asking you if you understood from what Mr. Wells told you that the plan of dealing, which he outlined to you was, that they, I mean the Barber Lum-

(Testimony of Junius Wright.)

ber Company, after they got into the deal, Governor Steunenberg, after he got into it, Kinkaid and Wells, before Governor Steunenberg got into it, had gone into the plan to buy timber claims after final proof was issued, and pay for them at the rate of \$400 in excess of the cost to the entryman?

A. I don't know what the Barber Lumber Company paid for them. All I know is that Mr. Wells paid these people for their claims after final proof was made.

Q. Well, that was \$400?

A. That was \$400.

Q. In addition to what it cost them to get the claim from the Government?

A. Yes, but the entryman was at no expense but received \$400 net profit for his part of the affair.

Q. Well, if an entryman entered land, he had to pay the Government something for it?

A. I think so.

Q. But when he got final receipt, Kinkaid, and Wells, and these other fellows who bought it from *his* would give him \$400 and his money back?

A. Yes, sir.

Q. That is what Mr. Wells told you?

A. Yes, sir.

Q. He also told you that many of these entrymen made their original filing with the intention of selling?

A. Without any exceptions, yes, sir.

Q. And that they made an entry with the expectation, and for the purpose of selling at a profit.

(Testimony of Junius Wright.)

A. For the purpose and with the expectation of selling to these people for \$400?

Q. Yes, \$400 profit. A. Yes, sir.

Q. And that these people were there ready to buy all that were offered? A. Yes, sir.

Q. And that you thought was illegal and crooked? A. Yes, sir.

Q. And your idea of crookedness is based upon that understanding of the law?

A. Based upon that understanding of the law, yes, sir.

Q. And when you learned that you thought you had a hold on Governor Steunenberg, as you testified? A. Yes, sir.

Q. And you told many people in Boise, and particularly the Grand Jury that through the discovery of that fact you were able to do what you otherwise would not have been able to do, namely, to collect this bill from Mr. Wells?

A. I beg your pardon, sir, no, sir; you are mistaken about that, I did not tell anybody outside of the grand jury room, and Mr. Ruick.

Q. Didn't you tell Mr. Clark?

A. I don't know him.

Q. The special agent? A. No, sir.

Q. How many times have you been interviewed about this matter?

A. I have been before the Grand Jury twice, and have also had conversations with Mr. Ruick, because we were friends for years.

Q. I don't care about your friendship—how

(Testimony of Junius Wright.)

many times have you talked with Mr. Ruick on this matter? A. Only once.

Q. Were you in a room at that time?

A. Yes, sir.

Q. Your statement taken down in writing?

A. It was taken down in writing, I think so.

Q. That was before the first indictment?

A. I could not say.

Q. Did you tell Mr. Ruick at that time that these entries were all made fraudulently, and in violation of the law? A. No, sir.

Q. Did you think they were ?

A. I let Mr. Ruick draw his own conclusions.

Q. Well, did you tell him at that time that Mr. Wells had told you that they had entered into agreements to buy all claims after final proof was made?

A. Yes, sir.

Q. And did you tell him that Mr. Wells had told you lots of these people had made entries expecting to sell them? A. Yes, sir.

Q. Do you know Mrs. Eoss? A. I do.

Q. Well, did Mr. Wells tell you that she had gone into this scheme to violate the law?

A. He did not.

Q. You knew she had taken an entry?

A. I did not know it.

Q. Well, is she the kind of a woman you would expect to be in a deal of that kind?

A. No, I am certain she would not.

Q. Do you know Mr. Babrock?

A. I know all of them.

(Testimony of Junius Wright.)

Q. You knew they had taken timber and stone claims?
A. No, sir.

Q. Would they be the class of people you would expect to be interested in this kind of an arrangement to defraud the Government?

A. I would not be surprised.

Q. How about the Eaglesons?

A. I know them; there is not one born that would not rob their brother if they could.

Q. How about the Butlers?

A. They would do anything.

Q. How about Bilderback—are they people you would expect to be in an arrangement of this kind?

A. No, I would not.

Q. How about Mr. and Mrs. Beckley, you knew him, the commercial traveler?
A. Yes, sir.

Q. Would you think they were out to swindle the Government?

A. I haven't got any opinion on their case.

Q. Would you rather expect they would?

A. I don't know them well enough to know.

Q. Well, there were about 235 people in Boise who entered timber and stone claims?

A. Yes, sir.

Q. And it is your belief, was then and is now, that a large majority of these people were perjuring themselves and violating the law?
A. It is.

Q. And that is your opinion now?

A. Yes, sir, steadfast and fixed.

Q. Because you think when they made those entries they expected to sell them?

(Testimony of Junius Wright.)

A. They undoubtedly did.

Q. And you thought that was wrong, or in violation of the law at least?

A. According to the Kinkaid plan, it was.

Q. What was the Kinkaid plan?

A. As I have outlined here, they received their pay immediately upon final proof.

Q. So your idea is and was, a sale made after filing and before final proof was void?

A. Yes, sir.

Q. And your idea is that all of these people are crooked because they entered land in that way?

A. Yes, sir.

Q. Now, Mr. Wright, I want you, for the purpose of getting your idea on this subject, to just assume that a person has a legal right to make a filing upon a timber and stone claim to-day, and sell it tomorrow without waiting for final proof, I am asking you to assume that condition of the law—

A. Yes, sir.

Q. Then, was there anything in the plan Mr. Wells outlined to you which you think would be illegal?

A. No, I would not.

Q. But, if in that assumption you did not agree with him—I am not asking you to agree with him—but on the assumption that a person has a right to file, and having filed has a right to sell his claim, or to mortgage it, or encumber it in any way he desires—on that assumption did Mr. Wells tell you anything, or do you know of anything that would lead you to think that these 235 entrymen I called your

(Testimony of Junius Wright.)

attention to were all crooked and in a combination to defraud the Government—were all in a crooked combination to defraud the Government?

A. No, sir, because they had a right to do that.

Q. Do you know just when they first began entering timber and stone claims up in the Boise Basin?

A. No, I do not.

Q. Do you know when they finished?

A. No.

Q. Do you know what Mr. Wells was doing at the time that you have testified to, in reference to his account, that is, during the year 1905?

A. Do I know what he was doing?

Q. Yes, in what business was he?

A. Why, yes, he was the man that worked on the street, to get these fellows to file—or to pick up these people to consent to locate on these lands.

Q. Well, that was his business in 1905?

A. In the early part of 1905.

Q. Well, now, don't you know the Barber Lumber Company had established an office before that?

A. I did not know that, no.

Q. And that Mr. Chapman was there as their general manager?

A. No.

Q. And don't you know that neither Mr. Wells, Steunenberg, Kinkaid, or anybody else you have mentioned, had anything whatever to do with the Barber Lumber Company in 1905?

A. I would not believe it if anybody should tell me so.

Q. Don't you know that in 1905, all the affairs

(Testimony of Junius Wright.)

of that company, including its timber purchases, were in the hands of L. G. Chapman, its general manager?

A. No, I am sure, in my own mind, that Governor Steunenberg was connected with the Barber Lumber Company at that time.

Q. Was he connected with the purchasing of timber lands?

A. He may not have purchased in 1905—he did not to my knowledge purchase any in 1905, but he was still connected with the Barber Lumber Company.

Q. How was he connected with it?

A. As one of its managers.

Q. In what capacity?

A. I don't know in what capacity, perhaps one of its stockholders.

Q. How much stock did he have?

A. I don't know.

Q. Did he have any stock?

A. Yes, sir, he was interested in it.

Q. Who told you that?

A. Mr. Wells told me about it.

Q. Did you know anything about it other than what Wells told you?

A. Well, I did, but I could not say where I obtained the information.

Q. What else did you know about it?

A. His connection with the Barber Lumber Company?

Q. Yes.

(Testimony of Junius Wright.)

A. Well, I knew he was interested with them and in that plant above the city, but in what capacity, or to what extent I don't know.

Q. Nor in what capacity?

A. Nor in what capacity, I don't know.

Q. Is that your signature on that paper marked "Wright Exhibit 1"? (Witness shown the signature on a paper.)

A. Yes, sir, that is my signature.

Mr. GORDON.—Just make a note of the fact that counsel shows witness a paper folded in such a manner that only his signature is visible. Will you let me see that paper?

Mr. BUNDY.—I will when I offer it in evidence, I simply had it marked for identification.

Q. You saw enough of this paper, Mr. Wright, to see your signature on it?

A. Yes, sir.

Mr. GORDON.—Did you see anything else on the paper except that it was your signature?

The WITNESS.—Yes, sir.

Mr. GORDON.—What did you see?

The WITNESS.—I saw it was my signature, and also the words "American Grocery."

Q. Now, after showing you your signature on that paper, do you want to change your evidence on that point?

A. No, my memory is not infallible and so far as I know of anything now to the contrary my testimony will have to stand.

Q. Is your recollection about that receipt as good

(Testimony of Junius Wright.)

as about the other things you have testified to here?

A. No, because that is an immaterial part of the case anyway.

Q. Well, can you recollect anything about the receipt at all?

A. Well, my recollection is that that receipt was written by me in the Union Grocery Store, but I cannot say positively in regard to that now.

Q. Do you remember anything more about it?

A. Well, I used the typewriter myself, and I may have typewritten it.

Q. Is your memory now that you ever gave the receipt at all?

A. Oh, yes, I remember giving him a receipt, from the fact that he asked me to give him something showing that I would hold him harmless from any further indebtedness.

Q. And that you recall writing on this receipt?

A. Yes, sir.

Q. Then the fact of your having written that on the receipt makes your memory better?

A. Yes, sir, that is the reason I recall the receipt, because he wanted some written guarantee for any further account.

Q. Where did you write that?

A. My recollection is I was over at the Union Grocery.

Q. I mean on what part of the receipt?

A. I think it was below the figures.

Q. Showing you your signature on "Wright Exhibit No. 1"—you don't find any such writing on

(Testimony of Junius Wright.)

there below your signature? A. No, sir.

Mr. GORDON.—I will ask you, Mr. Wright, how much you can see of that paper he is showing you.

The WITNESS.—The words “The American Grocery, Junius Wright, Proprietor.”

Q. Now, I want you again, Mr. Wright to begin at the beginning and state in detail the entire conversation you had with John I. Wells when you were sitting on the sidewalk in front of your store, as you have already told us the outline.

Mr. GORDON.—I object to that for the reason the witness has already told that trice, and I cannot see any necessity for him stating it over and over again, the entire conversation. If you have any questions to ask him, I suggest that would be the proper method of cross-examination.

Q. Go on.

A. Mr. Wells and I met in front of the Union Grocery, sat down on the sidewalk, and I said to him, “By God, John, I have got to know what your relationship is with Steuney in regard to this matter, and why he went your security, and what it is you are sore about, for if it is necessary for me to collect this account by law I will have to know some of these things, and in addition to that you told me you were sore about these things, and I want to know what the trouble is, what you are sore about.” And he said, he was sore because these eastern people were holding back some money which was due him, because he had made a loss to them. And then he told me that Mr. Kinkaid had conceived the plan

(Testimony of Junius Wright.)

of getting people to enter timber claims in the land office, to pay them a certain amount of money for these claims, after final proof was made, and the deed was given to whoever Kinkaid should designate, or become the owner of the land.

Q. You are now telling what Mr. Wells said?

A. Yes, sir. Mr. Wells told me in whose name all of the deeds were recorded after final proof but I have forgotten. He told me at the time Mr. Kinkaid was a member of the legislature from Boise County, when he began this business, that in a few months, or a few weeks, or very shortly after, this plan was conceived; that he took Mr. Wells in with him, that they carried on the business as long as their capital lasted; and that Governor Steunenberg came to them about this time and asked if he could get in on the ground floor, and they told him yes and he paid them about \$11,000, and was to receive a percentage of the profits coming to him in this partnership of all the claims that had already been taken over and all that would be taken over in the future, while they were in partnership. That after Governor Steunenberg connected himself with some eastern people.

Q. Did he mention who the eastern people were?

A. During the conversation he did; I don't think he did right at this point of the conversation.

Mr. GORDON.—Who did he mention?

The WITNESS.—The Barber Lumber Company.

Q. Proceed.

A. That then they had plenty of available funds

(Testimony of Junius Wright.)

and that he handled them and I asked him how much money had passed through his hands and he told me about \$248,000. I suggested it was a pretty big sum, and he said, yes, it was lots of money, but that he had lost some of it. I asked him how he lost it. Well, he said, he had paid some of those parties before the final proofs were made and they had got cold feet and had skipped the country, that he did not know where they were, that he had lost four or five thousand dollars, he said did not know where in Hell it had gone to, that he didn't care, that he had this money coming to him and that he was going to have all of it, no matter if he had lost some. He said to me, "You know I can hardly write my name, and I don't know anything about keeping books, so I have lost it, I can't account for it." So I asked him how he got this money, if he got it by check, and he said no, he didn't, he went to the First National Bank and always found it waiting there for him; that he always found it there, but if it was not there, he would go back and find it there for him. I asked him if he ever got any money from the Colville Banking and Trust Company and he said no. I asked him if he had ever got any checks, and he said no, it was always money he received. And he said that his share of the profits was about \$13,000 up to that date, that they were holding that back because he had lost this \$9,000. Now, I don't remember what else we talked about, we talked for two hours there, I presume.

Q. Now, where was this profit—how was he mak-

(Testimony of Junius Wright.)

ing any profit?

A. Well, as I understood it, these eastern people were paying them so much for claims on their lands. I did not ask him, and he did not tell me. But that was my understanding, that they made their money through the sale of these claims to the Barber Lumber Company for a greater amount of money than they had put into them until the Barber Company became interested with them, and then they were paid just so much for their work.

Q. Did he tell you how much he was paid?

A. No, except he had \$13,000 coming.

Q. So that your understanding was that Mr. Kinkaid, Mr. Steunenberg and Mr. Wells were buying these claims for themselves and reselling them to the Barber Lumber Company?

A. Well, up to the time Governor Steunenberg made eastern connections with these people.

Q. Up to that time the Barber Lumber Company was not in it? A. No, sir.

Q. And when they got the Barber Lumber Company in they sold out to them?

A. I presume they sold out all the claims they had in their possession.

Q. Did you understand that they were selling at a profit? A. Yes, sir.

Q. And after the Barber Lumber Company got in, how was Kinkaid, Wells, and Steunenberg making a profit?

A. Well, they were paying them so much for each claim.

(Testimony of Junius Wright.)

Q. Salary?

A. No, a sort of percentage.

Q. Did he tell you what that was?

A. No, he did not.

Q. Well, after you had had this talk with him you said you had no further fear about your account against him? A. Oh, no.

Q. Well, what was there about that statement that was made by John I. Wells that was going to help you so much?

A. Oh, I never looked to Wells for the money, I never expected Wells to pay it himself.

Q. Well, what was there about the statement that he made to you that made you think he was not going to be able to pay you?

A. As I said, I never looked to Wells for the money.

Q. Well, what made you think that Governor Steunenberg would pay it?

A. Because I knew when I asked Governor Steunenberg for the money, it must come through—he would get it.

Q. Well, what was there about the talk with Mr. Wells that made you think Steunenberg would pay you?

A. Well, Mr. Wells told me during this time their manner of procedure, that he would approach people on the street and ask them if they would file on a timber claim and sell the timber claim to them when final proof was made, and I asked Wells if he was not afraid he would bark up the wrong tree

(Testimony of Junius Wright.)

some time, and he said no, there wasn't any danger of trouble of that kind. I knew also from other people that were my friends and customers in business, that they were doing this same thing.

Q. Doing what?

A. Locating timber land and selling out after the final proof was made, or at the time, and advancing money for them to do this with.

Q. Well, I don't quite see yet why you thought Governor Steunenberg would pay you this account of Mr. Wells on the strength of that statement which he made to you.

A. Simply because he would not want to be brought into court and get mixed up in the matter. Of course, if I had tried to collect this account of Wells' by suit—

Q. What did you expect to prove against him in court?

A. I did not know that I could prove anything against him—and when I had the talk with him in Mr. Steunenberg's room, he asked me what I meant by saying I would sue him. I told him, I said, "I did not mean anything against you, Frank, but I wanted to know if Wells had any equity, or anything of that sort I could get hold of." But I said, "You know if Mr. Ruick was my attorney in the matter, and got you on the witness-stand, he would ask you a whole lot of questions in this matter, first, why you became security for Wells, and it might bring you into notoriety"—

Q. As a matter of fact after you had talked with

(Testimony of Junius Wright.)

Mr. Wells you thought you had an opportunity to blackmail Mr. Steunenberg?

A. You may say that, if you like.

Q. Well, you thought so? A. No, sir.

Q. You thought you had a club with which you could force him to pay?

A. Well, he owed me the money.

Q. But you didn't have any legal claim against him?

A. You can have it that way, if you wish.

Q. Well, you went about the streets of Boise making your boast how you had collected this debt from Governor Steunenberg?

A. No, sir, I did not, nothing of the kind.

Q. And you have always made your brags about it, that you blackmailed Governor Steunenberg into paying Mr. Wells' account?

A. I did not make any boasts of it at all, no, sir.

Q. The only reason you had for thinking that you could make him pay this money was as you have already stated, you considered they were violating the law in the matter of these timber claims?

A. No, sir, that was not the only reason. That was the main reason, but there were other reasons connected with the matter.

Q. Now, you and Mr. Wells had some little trouble? A. No, sir.

Q. Do you recollect one time over the same matter—this account you threatened to sue and to make Mr. Wells trouble, and he told you he would run

(Testimony of Junius Wright.)

you out of town?

A. No, no, no man ever told me that.

Q. And he did run you out of town?

A. No, sir, he didn't; no man living could run me out of town.

Q. Well, did not John I. Wells run you out of town?

A. No, sir, John I. Wells is a friend of mine to-day, and when I left Boise I spoke to him at the time.

Q. Now, Mr. Wright, after you had gone to see A. K. Steunenberg, I think you said the Governor telephoned to you from Colville that he was coming up in a couple of weeks?

A. Yes, sir.

Q. And he did come up ultimately?

A. Yes, sir.

Q. That was sometime you think in the month of April, 1905?

A. Yes, sir, to the best of my recollection.

Q. And you met him at the hotel?

A. Yes, he sent for me. He came to the store for me and I was not there, I was at supper and he left word for me to come up to the hotel.

Q. And you went up and met him in the hotel lobby?

A. Yes, sir.

Q. And that was the time he took you to his room and asked you if you thought he was morally bound to pay this account of Mr. Wells?

A. Yes, sir.

Q. Now, as I understood you, he said he would

(Testimony of Junius Wright.)

pay you the following Monday morning?

A. Yes, sir, the following Monday morning, after this Saturday night.

Q. And on Monday morning Mr. Wells came down and told you that the Governor would not pay you on that date, because the money had not come?

A. Yes, sir.

Q. Now, did he tell you who was sending the money?

A. He did not—yes, he did.

Q. The Barber Lumber Company was sending the money?

A. Yes, sir, and in a sort of a sneering way, he said he supposed the Barber Lumber Company had not had time to connect—

Q. Had not sent the money? A. No.

Q. This was in 1905? A. Yes, sir.

Q. Now, I think you said the next day, or the Tuesday following the Monday he was to pay, the Governor came down and asked you for a receipt?

A. Yes, sir.

Q. Did he tell you that was for him to show the Barber Lumber Company, to get the money on, or something to that effect?

A. No, he just asked me for a receipt for that account.

Q. And he gave him a receipt?

A. I gave him a receipt.

Q. And really, you gave him the receipt before you got your pay?

A. Yes, sir, I hadn't got a cent of money yet—

(Testimony of Junius Wright.)

he had not shown up a cent of money.

Q. Now, then, did you fix the receipt, relieving him from paying further obligations at the time you gave it to him, or at the time he paid you?

A. No, at neither time. I gave him the receipt for Mr. Wells' account and then he walked out with it, and he came back afterwards and asked me what could be done to keep him harmless against any of Mr. Wells' bills hereafter, then I wrote this other upon the same receipt, as I have already stated.

Q. And that was still before he paid you?

A. Yes, sir.

Q. Then after you fixed the receipt he took you to Mr. Martin's office?

A. I think this was all done in the store.

Q. And then you went from your store to Mr. Martin's office? A. Yes, sir.

Q. And then he went to the safe and got a receipt or the receipt, and showed it to Mr. Martin?

A. No, he went to the safe and got something but I don't know what he took out of the safe. But after he went to the safe he came back to Mr. Martin—Mr. Martin was standing about there where you are, at the side of the desk, and about where the stenographer is here I was sitting, and he was about where you are, or about there (indicating) and then he handed this paper to Mr. Martin and Mr. Martin said "That is all right," and I don't know what became of it—I thought Mr. Martin kept it, but I am not sure whether he did or not.

Q. Then he took you into another room?

(Testimony of Junius Wright.)

A. Yes, sir, where I saw Mr. Wells.

Q. And he handed you a roll of bills?

A. Yes, sir, he did not count them or anything, but he just handed them to me and asked me to count them. I did count them, and he asked me if that was enough, if it was satisfactory, and I said yes.

Q. But you remembered very definitely that the reason he gave for not paying you on Monday was that the Barber Lumber Company was sending money and it had not got there?

A. Well, Mr. Wells did not use that name, but he said in rather a sneering way "Steuny hadn't connected in the east," or someone had not connected in the east, and I inferred it was coming from the east.

Q. You never had any talk with him after that, about this account?

A. No. I have undoubtedly seen Governor Steunenbergh since then, but we have never had any talk about the matter.

Q. Never talked with him about it?

A. No.

Q. Did you ever take a timber and stone claim?

A. Never did.

Q. Did you ever look into it with a view of taking one? A. Never did.

Q. Did any of your family ever?

A. No, I have no family.

Q. Anyone down there that you know particularly?

(Testimony of Junius Wright.)

A. Oh, yes, I was born and raised in that country and I know pretty near everybody around there.

Q. Can you tell me the name of some of these people that took timber claims?

A. Well, Mrs. Turtlelock, Mrs. C. L. Joy.

Q. Now, did you know them intimately?

A. Yes, sir.

Q. Were you with them when they made their entries? A. No.

Q. Did you go to the land office with them?

A. No.

Q. Do you know how they came to go?

A. No.

Q. Do you know anything about the arrangement under which they did go? A. No.

Q. Do you know anything about the amount they realized, the amount they were paid for their claims?

A. No, sir.

Q. You know nothing about the matter except the bare fact that they took a claim?

A. That is all.

Q. Do you know any particular entries, or entryman, about whom you do know the facts of his taking a claim? A. No, sir, I do not.

Q. Now, is there any occasion wherein you knew about the arrangements or conditions under which anyone that you know took a timber and stone claim? A. No, sir.

Q. So that your information relative to the claims was entirely obtained from outside information and from what Mr. Wells told you? A. Yes, sir.

(Testimony of Junius Wright.)

Q. Personally you did not know anything about any arrangement made with any of them?

A. No, sir, personally I could give you no knowledge in regard to any particular person.

Mr. BUNDY.—That is all.

Mr. GORDON.—That is all we have.

[Endorsed]: Filed June 18, 1909. A. L. Richardson, Clerk.

In the United States Circuit Court, District of Idaho.

No. 47—IN EQUITY.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY, JAMES T. BARBER, SUMNER G. MOON et al.,

Defendants.

Testimony on Behalf of Complainant [Taken March 26, 1909, at Reno, Nevada].

Be it remembered, that on, to wit, the 26th day of March, A. D. 1909, in pursuance of an order of Court and stipulation filed herein, the parties to the above-entitled cause appeared before me, John P. Doyle, a Special Examiner in Chancery of the Circuit Court of the United States for the District of Idaho, at No. 417 Clay Peters Building, Reno, Washoe County, State of Nevada; the complainant in said cause by Peyton Gordon and Charles A. Keigwin, Esquires, its attorneys, and the defendant Barber Lumber Company by C. T. Bundy, Esquire, its attorney.

Whereupon the following proceedings were had, to wit:

Reno, Nevada, March 26, 1909, 2 o'clock P. M.

It is stipulated and agreed by and between the attorneys for the respective parties in the above-entitled cause that the signatures to their depositions of all witnesses examined before the said Special Examiner John P. Doyle, to wit: Willard C. Austin, Martin S. Stephenson and Lettie L. Stephenson, are hereby waived, subject to the right of either party to recall the witness at the expense of the Government in the event that any mistake or error is found in the evidence when transcribed which cannot be corrected by agreement of the parties.

[Testimony of Willard C. Austin, on Behalf of the Complainant.]

WILLARD C. AUSTIN, a witness produced on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your full name?

A. Willard C. Austin.

Q. Where do you reside?

A. At present in Nevada City, California.

Q. Where did you reside in July, 1903?

A. In Boise City, Idaho.

Q. What was your occupation at that time?

A. Mining engineer.

Q. Did you know or were you acquainted with

(Testimony of Willard C. Austin.)

one John Kinkaid at that time? A. I was.

Q. How long had you resided at Boise in July, 1903?

A. I think I came to Boise in August, 1878, if I am not mistaken.

Q. And you took up a claim under the Timber and Stone Act in July, 1903, did you?

A. I think that was the date, or thereabouts. I am not positive as to dates. It was sometime ago.

Q. Were you married at that time?

A. I was.

Q. And what was your wife's name?

A. Ada V. Austin.

Q. Did she take up a timber and stone claim at the same time? A. She did.

Q. I show you timber and stone lands sworn statement of Willard C. Austin, dated July 10, 1903, and ask you if you signed that paper and filed the same in the land office at Boise, Idaho (handing paper to witness).

A. That is my signature, I think that is the paper.

Q. And you filed it in the land office at Boise?

A. Yes, sir.

Q. I show you a non-mineral affidavit attached thereto, of the same date. Did you file that paper in the land office at Boise on that date (showing same to witness)? A. I think I did.

Q. I show you the non-mineral affidavit of Willard C. Austin, dated July 10, 1903, and ask you if you signed that paper and filed it in the land office

(Testimony of Willard C. Austin.)

at Boise, Idaho (showing same to witness).

A. I did.

Q. I show you the testimony of Willard C. Austin given on final proof, October 13, 1903, and ask you if you signed that paper (showing same to witness).

A. That is my signature.

Q. And the cross-examination attached, did you sign that paper (showing same to witness)?

A. I did.

Q. I show you deed dated November 6, 1903, made by Willard C. Austin and Ada V. Austin, husband and wife, to Horace S. Rand, and ask you if you signed that deed (showing same to witness).

A. I did.

Q. Is that your wife's signature here?

A. That is her signature.

Q. And you acknowledged the same before Louis M. Pritchard? A. I did.

Q. At the time you took up a claim under the Timber and Stone Act did you know of any market for timber claims in that locality?

A. I had no personal knowledge of it, outside of rumor, and things of that kind.

Q. And you know of any persons that were purchasing timber claims at that time?

A. I did not.

Q. Did you know of any persons that were selling timber claims at that time?

A. No, I did not.

Q. Who first spoke with you about taking up a timber claim?

(Testimony of Willard C. Austin.)

A. It was talked upon the streets amongst business men and other men that timber claims were desirable property for investment, etc.

Q. Did you talk with John Kinkaid about taking up a timber claim? A. I did.

Q. Before you went to view the land?

A. I did.

Q. Did you know Patrick H. Downs at that time?

A. I did.

Q. With whom did you go to view this timber claim? A. With Mr. Horner and his wife.

Q. What is Mr. Horner's given name?

A. I have forgotten. I knew him well, too, but I have forgotten his name.

Q. Samuel S. Horner?

A. Samuel Horner, that is it. He was the County Treasurer, I think.

Q. And as I understand, you left Boise with them, in one team, and went up to view this land?

A. We did.

Q. Who arranged for that team?

A. I did, Mr. Horner and I together.

Q. Who told you Mr. Horner was going at the same time you were?

A. I don't remember. I don't know. I am under the impression that I had seen Mr. Downs and asked him to look out for some land for me if he found a good tract. He was a timber cruiser, and I think he told me he was going to take Mr. Horner out and if I wanted to go to get ready and be with them, or we would go together. Something to that

(Testimony of Willard C. Austin.)

effect. That is my impression.

Q. Did Mr. Downs fix the date for you to go?

A. That I don't remember.

Q. Did you know Mr. Horner intimately at the time you went to view this land? A. I did.

Q. Were you socially acquainted with him—did you visit with him?

A. Why, we were members of the same lodge; we met together on the street; we were good friends.

Q. You say you saw Mr. Kinkaid and talked with him about timber claims before you located one. Do you remember what he had to say about that?

A. I asked Mr. Kinkaid if he knew of any good timber and where to get it. I was desirous of making a timber location. I knew that he was interested in the timber business, and he and I were associated together in mining matters, and it was my knowledge, of being in with him in mining, and in his office, that I knew he was interested in making these filings and fixing up the papers and things of that kind. That is the reason I asked Mr. Kinkaid.

Q. And did he tell you there were good timber claims in the locality in which you were located?

A. He said that Downs was a timber cruiser, and asked me to see Downs.

Q. You knew Downs, though, before that, did you not? A. I did.

Q. Had you ever talked with him about taking up a timber claim? A. No.

Q. You say you went to see Downs?

A. Yes.

(Testimony of Willard C. Austin.)

Q. And he arranged the time you should come up to be located on this land?

A. I spoke to Downs several months before I got any land or before he found any land that he thought was good for me, several months previous to that time.

Q. Then did he notify you when he found the land? A. I suppose that he did.

Q. Did you know John I. Wells at that time?

A. I did.

Q. Did you talk with him about taking up this land? A. No, never.

Q. Did you ever talk with him about this timber claim?

A. Not about this timber claim. I have talked him in regard to timber matters, since the stir-up. I have talked with him in regard to things, how they were coming on, etc. During this time I think I was in Old Mexico. When I came back, I had known Wells as a half-way prospector, and you take a person that has lived in a community, as I have, for thirty years there, he knows pretty near everybody, more or less.

Q. And did he come to see you about these claims after the stir-up, as you call it? A. No.

Q. You just met him casually?

A. Yes, met him on the streets.

Q. And you were out to see Mr. Downs, and you took your wife along? A. I did.

Q. And he pointed out a couple of claims to you which you located?

(Testimony of Willard C. Austin.)

A. We went over several pieces of ground, and I think, if I am not mistaken, Mrs. Horner selected the first piece, and my wife the second piece; and then Mr. Horner and I, as it was some little distance over to where this other land lay, we went together over to the other land.

Q. He only showed you the four claims?

A. The four claims is all we saw. He pointed out other claims in that vicinity, but I thought the timber wasn't very heavy on them.

Q. Did he locate you on the four that he had in mind when you started out?

Mr. BUNDY.—I object to the question calling for what he had in mind.

A. I can't tell that.

Q. Well, did he show you a claim and say "This is a good claim, do you like this," or did you take the claim he showed you, that he anticipated locating you on?

A. I think Mr. Horner and I didn't like the claim that Mrs. Horner took. I think he showed that to me, and I asked him for something better, because I didn't think there was over a million and a quarter feet on it. It didn't look as though there was a great deal of timber on it. And I think that is the claim Mr. Horner took, and I went over something like a mile beyond it, I forget the exact distance, and took another claim in lieu of that one. Mr. Horner took the claim that he had first showed to me. I don't know now whether it was by choice or not. But that is the way we located the land.

(Testimony of Willard C. Austin.)

Q. There were but four claims pointed out to you?

A. There were other claims, shown us. The fact of the matter is, as I understand it, there was other vacant land in there, but that land we took was the best land to be had.

Q. How many claims did you pass over—I mean inspect? I am not speaking now of just walking along the road and seeing a claim.

A. Well, we only inspected the four claims.

Q. And you went to all corners of that claim?

A. I think we did. That is my recollection.

Q. Where are those claims? Near what city?

A. It was on the west bank of Crooked River, and I think about sixteen or seventeen miles from Idaho City, something like that.

Q. Did you go to Kempner's ranch?

A. No, sir.

Q. Did Mr. Downs give you a description of that property while you were there?

A. The numbers were on the stakes; that is, some of them were. Lots of pitch had grown over them and they were hard to decipher. Now, Mr. Downs, I think, had a small township map about that square (indicating), that is, blanks that are used for the purpose of platting, with the range and the sections, etc., the section corners, or section lines, we got them; and I think the range, and where that was, was taken from the official maps.

Q. What was on this map that Downs had?

A. There was a square, as it was sectionized, over

(Testimony of Willard C. Austin.)

the country we had gone through.

Q. They were all marked up on this plat?

A. On this plat, yes, a little square sheet about as big as that, I should judge (indicating), little blank tablets that he had.

Q. And did he tell you where to go to have your papers prepared, your filing papers?

A. I don't remember.

Q. Where did you go to have the filing papers prepared? A. I went to John Kinkaid.

Q. And Kinkaid prepared this sworn statement of yours and the notices of publication and the non-mineral affidavit, did he? A. He did.

Q. Did your wife go and have hers prepared at the same time? A. I think she did.

Q. And she filed at the same time you did?

A. I don't remember whether she went over to the land office or not.

Q. Did she file on the same day or about that time? A. I think so, yes.

Q. I understood you to say Kinkaid prepared her papers too? A. He did.

Q. And did you pay Downs anything for his services?

A. I paid him \$50, if I am not mistaken.

Q. That was for locating yourself and your wife?

A. I think that is the fee he charged.

Q. Well, you know it, don't you?

A. Well, that was six years ago, and while I am confident that that was the case, and that is what I paid, I have no book; my books and all that have

(Testimony of Willard C. Austin.)

been destroyed since I left Boise. I could at one time refer to any cash transaction of a large or small amount, but when I left Boise, I destroyed everything I had that held any connection with Boise, or with my old life.

Q. And did you state that your wife was dead?

A. She is.

Q. And did you pay Mr. Downs while you were out there seeing this property, or did you pay him after you filed?

A. I paid him, I think, that night or the next morning, after we came back from the land.

Q. Did he return with you?

A. No, he didn't return with us.

Q. Do you remember where it was you paid him?

A. I paid him in front of the Bancroft Hotel. I went up there, I think he had rooms there, at least I supposed he stopped there, and I paid him there.

Q. You went to Kinkaid's office and had these papers prepared the day after you returned from viewing this land, did you? A. Yes, sir.

Q. Now, at that time did you know of any purchasers for the land? A. No, sir.

Q. And then it came time for you to make your final proof? A. Yes, sir.

Q. Do you remember the occasion of making your final proof?

A. I remember the final proof; I don't know what date it was.

Q. Did your wife make final proof at the same time? A. She did.

(Testimony of Willard C. Austin.)

Q. Do you know how much it cost you to make final proof for the two claims?

A. It was somewhere between \$800 and \$900.

Q. You paid for your claim and your wife's claim too, did you? A. I did.

Q. And did you have that money of your own, or did you borrow it?

A. I had business with the Bank of Commerce at Boise City, Idaho, and I think that the identical money that I paid for that land, I put a note into the bank against that, and checked against it.

Q. On the day that you made the final proof, or the day before?

A. I don't remember what the date of the note was. I had made arrangements with the Bank of Commerce some time in the spring that if I should be short of money, I could have a credit there of a thousand dollars.

Q. Was that at the time you made your final entry? A. No, sir; before.

Q. Was it made in anticipation of this purchase?

A. No.

Q. Do you remember how much you borrowed from the bank that day?

A. I think I put in my note for \$830. Somewhere along there. I know it was between eight and nine hundred dollars. It might have been more, but I know it was not \$900. It was somewhere between eight and nine hundred dollars.

Q. And at the time of your final proof I understood you to say you didn't know of any person who

(Testimony of Willard C. Austin.)

was purchasing timber claims? A. No, sir.

Q. How long after you made your final proof did you start negotiations for the sale of your claim and your wife's claim?

A. I can't say exactly how long. It might have been one month and it might have been two months. I am not sure. I know it was within a few months.

Q. And who spoke with you about selling it?

A. Kinkaid, I think.

Q. And did you meet him casually, or did he come to see you?

A. I think that the first intimation was in his office.

Q. Did you go to see him or—

A. I went to see him. I was in his office, I think. I am not positive whether it was on the street or in the office. My impression is that it was in the office.

Q. With reference to the sale of this property were you there?

A. No, I didn't go to see him especially with reference to the sale of the property. He asked me if I wanted to sell my timber claim, and I told him I did.

Q. What did he offer you for it?

A. If I am not mistaken, he offered me \$1,600.

Q. Did you close the deal with him then and there?

A. I think it was a day or two afterwards. Several days.

Q. Did you accept his offer when he made the offer?

(Testimony of Willard C. Austin.)

A. No, I did not, not the first offer.

Q. What did you do?

A. Why, I thought the matter over.

Q. And then did you go to see him?

A. I think I did.

Q. And take your wife along? A. No.

Q. Well, you did take your wife to Kinkaid's office to sign this deed, did you not? A. I did.

Q. And that was a day or two after he first spoke to you about it? A. It was.

Q. Was the deed prepared when you arrived at Kinkaid's office? A. No, sir.

Q. You waited while he prepared the deed?

A. He prepared the deed in my presence; I am certain that he did.

Q. That is the deed you have here identified as having been signed by you? A. Yes.

Q. He prepared the deed, did he?

A. Yes; that was the only deed I ever saw.

Q. Did you know Horace S. Rand, the grantee in this deed?

A. I never saw him. He told that they were from Iowa—if I am not mistaken, that there was parties from Iowa. That is the way I thought it was, some Iowa people.

Q. That were buying this land?

A. Yes, sir.

Q. And he paid you how much for it?

A. \$1,600.

Q. Did he give you his own check for it, his personal check? A. I think he did.

(Testimony of Willard C. Austin.)

Q. And you and your wife signed the deed there?

A. Yes.

Q. Did you ever make any other deed for this property? A. No, sir.

Q. Did either you or your wife ever take up any other claim under the Timber and Stone Act?

A. No, sir. That is the only piece of land I ever took up in my life, of Government land, and I will never take up any more if I know it.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Willard C. Austin, dated July 10, 1903; the non-mineral affidavit of Willard C. Austin, same date; the testimony of Willard C. Austin given on final proof October 13, 1903; the cross-examination attached thereto of Willard C. Austin; all of which papers have been identified by Willard C. Austin as having been signed by him and filed in the land office at Boise, Idaho; the notice of publication, dated July 10, 1903; and receiver's receipt, and the register's certificate, dated October 13, 1903; the deed dated November 6, 1903, made by Willard C. Austin and Ada V. Austin, husband and wife, to Horace S. Rand, consideration \$1,600; which deed has been identified by Willard C. Austin as having been signed by himself and wife and acknowledged before L. M. Pritchard, notary public; all to the north half of the southwest quarter and the southwest quarter of the southwest quarter of section 22, and the northeast quarter of the southeast quarter of section 21, in township 7 north of range 7 east, of the Boise Meridian; also the north

(Testimony of Willard C. Austin.)

half of the southwest quarter and the north half of the southeast quarter of section 15, in township 7 north, of range 7 east, of the Boise Meridian. We also offer the testimony of the other witnesses on final proof in the land office; and the certified copy of the patent issued to Willard C. Austin, dated September 9, 1904, to the property involved in the claim upon which he located. The said papers being marked Complainant's Exhibit Willard C. Austin No. 1.

Mr. BUNDY.—Defendant objects to the reception of the papers made and filed on final proof, and to the evidence of the witnesses offered on final proof, as incompetent, irrelevant and immaterial.

(The said papers were, by consent, withdrawn from the files by counsel for complainant.)

Q. Did you sell your wife's claim at the same time you sold your own? A. We did.

It is stipulated by and between counsel for the respective parties hereto that Ada V. Austin, wife of Willard C. Austin, made entry of a timber and stone claim embracing the north half of the southwest quarter of section 15, township 7 north, range 7 east, Boise Meridian, and that the patent was thereafter issued to her for said tract on September 9, 1904, and that she sold the same to Horace S. Rand on November 6, 1903, and conveyed the same to said Rand by the deed which has been identified by Willard C. Austin.

(Testimony of Willard C. Austin.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Austin, you say you have known Kinkaid for a good many years? A. I have.

Q. He had been engaged in the mining business up in the Boise Basin, had he not, for a good many years? A. He had.

Q. And in 1903, was sort of practicing law and drawing papers at Boise, Idaho?

A. He had an office there; I suppose that was his business.

Q. He had been State Senator from that district some time previous to that? A. He had.

Q. Do you know when?

A. Several years previous. I know he was senator from Boise County, and a member of the legislature—a member of the Senate.

Q. Now, Mr. Austin, at the time that you filed your first papers in the land office, made your filings, as we call it, up to that time had you entered into any agreement, written or oral, express or implied, with any person, firm or corporation, by which you had obligated yourself to convey to such person, firm or corporation, or to anyone they should direct, any right, title or interest in the land you might acquire from the United States under your timber and stone entry? A. I had not.

Q. Had you entered into any such or similar agreement at the time you made your final proof?

A. I had not.

Q. Did you enter this land at the request or for

(Testimony of Willard C. Austin.)

the benefit of any person other than yourself?

A. I did not.

Q. Did you have any conversation with Mr. Kin-kaid, Mr. Wells, Mr. Downs, Mr. Barber, Mr. Moon, Mr. Rand, or any other person prior to the time you made your claim with reference to what you should do with that land when you got it?

A. I did not.

Q. Was there ever at any time before you actually sold the property, Mr. Austin, any express or implied agreement between you and any other person by which any other person had acquired or was about to acquire any interest in or title to the land you got from the Government or the timber upon that land?

A. There was not.

Q. Mr. Austin, it is charged in the complaint in this case we are trying that you made this entry and filed upon this land at the request and for the benefit of the Barber Lumber Company and the other defendants in this action. Is that true or false?

A. It is not so.

Q. And it is charged that prior to the time you filed upon this land you entered into an agreement with the defendants or some of them by which you undertook and agreed to make an entry under the Timber and Stone Act at their request and for their benefit, and to thereafter go before the land office and testify to what you knew to be false for the purpose of defrauding the United States out of this piece of land. Is that true or false?

A. It is not so.

(Testimony of Willard C. Austin.)

Q. And it is alleged in this complaint that you were urged, requested and solicited by the defendants or some of them to testify falsely before the land office at the time you made your final proof and at the time you made your original filing. Is that true or false?

A. Well, this way you are stating those questions, it seems that I—that there was a complaint that I had done these things?

Q. Yes, there is. That is just exactly what you are charged with in this action.

A. Well, I have had no notice of anything of that kind.

Q. That is what you are charged with, and that is the reason I am asking you whether it is true or false.

A. Well, it is not so.

Q. And it is charged in this complaint that, pursuant to that agreement, and at the request and solicitation of the defendants, you did go to the land office at the time you made your filing and testify to what you knew to be false, and that you again went to the land office and testified to what you knew to be false at the time you made your final proof. Is that allegation of the complaint true or false?

A. It is false.

Q. Did any person have any interest of any kind or character in the entry you made or the land you acquired from the Government until after final receipt had been issued to you?

A. They did not.

Mr. BUNDY.—That is all.

A recess was thereupon taken until 8 o'clock P. M.

EVENING SESSION.

8 o'clock P. M.

Parties met pursuant to recess taken.

[**Testimony of Lettie L. Stephenson, on Behalf of the Complainant.**]

LETTIE L. STEPHENSON, a witness produced on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Lettie L. Stephenson?

A. Yes, sir.

Q. Where do you reside?

A. Fallon, Nevada.

Q. You are the wife of Martin S. Stephenson, are you?

A. Yes, sir.

Q. Where did you reside in December, 1901?

A. In Boise, Idaho.

Q. You took up a claim under the Timber and Stone Act in that month, did you?

A. Yes, sir.

Q. I show you timber and stone lands sworn statement of Lettie L. Stephenson, dated December 24, 1901, and ask you if you signed that paper and filed the same in the land office at Boise, Idaho, on that date (showing same to witness).

A. Why, it looks like my handwriting all right. I take it to be my handwriting.

Q. I show you the non-mineral affidavit of Lettie S. Stephenson, of the same date, and ask you if

(Testimony of Lettie L. Stephenson.)

you signed that paper and filed the same in the land office (showing same to witness).

A. I think so, yes.

Q. I show you the testimony of Lettie C. Stephenson given on final proof March 13, 1902, and ask you if that is your signature? (Handing same to witness.)

A. Yes, sir, I think so.

Q. You have no doubt about it being your signature, have you?

A. Why, I don't think so, no. I take it to be my handwriting.

Mr. KEIGWIN.—You never made but the one entry of timber and stone land?

The WITNESS.—No, I did not.

Q. Who first spoke with you about taking up a claim under the Timber and Stone Act?

A. Well, I couldn't say.

Q. Did your husband or someone else?

A. I think probably he was. I wouldn't say sure.

Q. Did you know John I. Wells at that time?

A. No, sir.

Q. Did you know Mr. Patrick Downs?

A. No, I did not.

Q. At the time that you filed on one of these claims, did you know of any market for timber and stone lands?

A. I did not.

Q. Did you have any money of your own with which to buy a timber claim?

A. Well, we had money, yes.

Q. Did you have money of your own with which

(Testimony of Lettie L. Stephenson.)

to buy a timber claim?

A. Well, I would consider what was in our business my own.

Q. What was your business?

A. The livery business.

Q. And with whom did you go to view this claim?

A. With my husband.

Q. Anybody else? A. With my brother.

Q. What is your brother's name?

A. Arthur Brookhart.

Q. Anybody else?

A. Yes, there was one other lady.

Q. Was Mr. Charles Balantyne along?

A. No.

Q. What city did you go to on your way to view this claim?

A. Why, Placerville, and Centerville.

Q. Who located you on the claim?

A. Downs, I think, was the man's name that told us where we would find the place.

Q. He gave you some numbers and told you to go out and look for it, did he?

A. Yes. Of course we knew where to go on account of being acquainted with the country, that is, by the description he gave us.

Q. And you went out there and went over the claim to which he gave you the description?

A. Yes.

Q. Did you pay Mr. Downs anything for locating you?

A. No, not then. Mr. Wells, I think, was the one

(Testimony of Lettie L. Stephenson.)

that was really the—

Q. Did he tell you go to Mr. Wells' office?

A. No. No, he just gave us the numbers and told us where to go to find these pieces.

Q. And you and your husband and your brother went to this place? A. Yes.

Q. And did you go to Mr. Wells' office after you returned to Boise? A. No.

Q. Who prepared these papers for you, these filing papers? A. Well, I don't know.

Q. Where did you get them?

A. Well, I think Mr. Stephenson gave them to me. I wouldn't say for sure.

Q. And did you pay Mr. Wells anything for locating you, or did Mr. Stephenson pay for you?

A. Why, he paid. Of course he took it out of the business.

Q. Do you remember the occasion of making your final proof?

A. Yes, I remember of going to Mr. Garrett's office.

Q. To make your final proof? A. Yes.

Q. Do you remember how much you paid in the office on that day?

A. Well, I wouldn't say positively. It was four hundred and something, though.

Q. Do you remember where you got the money with which you paid for this land?

A. My father gave me the money to pay for it.

Q. Did you borrow it from him?

A. He told me I would have the money to buy it,

(Testimony of Lettie L. Stephenson.)

to pay when I filed.

Q. When did he tell you that?

A. Well, when we were talking of filing.

Q. Was that before you went up to look at the land?

A. Yes, before I went to look at the land.

Q. Did you ever repay your father that \$400?

A. Well, I couldn't say as to that.

Q. Did you ever repay him?

A. No, I don't know.

Q. And do you remember how long after you made your final proof you sold this land?

A. I do not.

Q. What is your father's name?

A. Brookhart.

Q. What is his occupation?

A. Well, he is a farmer at the present time.

Q. What is his given or Christian name?

A. Frank.

Q. What was his occupation at the time you made your final proof?

A. Well, he was working for us at the time.

Q. Is he a minister of the Gospel?

A. Yes, sir.

Q. Did he have a church at that time?

A. No, he just had come to Idaho.

Q. What work was he doing for you at that time?

A. Working at the barn at that time.

Q. Working in the livery-stable?

A. Yes.

Q. Doing laboring work? A. Yes.

(Testimony of Lettie L. Stephenson.)

Q. To whom did you sell your claim?

A. I couldn't tell you.

Q. With whom did you negotiate the same?

A. Mr. Wells made the sale, or Mr. Pritchard, I couldn't say which.

Q. Mr. John I. Wells or Mr. L. M. Pritchard, one or the other?

A. I don't know the initials, but I think it was John Wells.

Q. You think he made the sale? A. Yes.

Q. Did he talk with you about this land before you went up there to see the claim?

A. No, sir, I never saw Mr. Wells that I know of but once.

Q. When was that?

A. Well, that was after I made final proof.

Q. And where did you see him then?

A. Well, I think he was the one that was in his office.

Q. Was it the day that you made final proof that you saw him?

A. I don't remember whether it was the same day or not, I wouldn't say.

Q. Didn't you go there directly from the land office after you paid that \$400, to Mr. Garrett?

A. No, sir, I did not.

Q. Well, was it the next day you went?

A. It might have been.

Q. Well, now, how long after you made your final proof was it?

A. I couldn't tell you, because I don't remember.

(Testimony of Lettie L. Stephenson.)

Q. Was it the same day, the next day, a week, or how long?

A. Well, I am pretty sure it was not the same day. I wouldn't say sure that it was not, but I know I didn't go from the land office there.

Q. Well, was it the same day that you made your final proof?

A. Well, I wouldn't say it was or was not.

Q. What is your best recollection?

A. I don't think it was, no.

Q. Well, when do you think it was?

A. Well, it was probably soon, but I couldn't say when.

Q. Was it the next day?

A. I won't say sure, because I don't know.

Q. Did you go with your husband to Wells' office?

A. Yes.

Q. And did you make a deed that day—did you sign a deed on that day?

A. I don't think we signed any deed, no.

Q. What did you go to Wells' office for?

A. Well, to sign the paper: Just a relinquishment or something, I don't know.

Q. Did you get any money on that day?

A. I did not.

Q. Did you ever get any money from this land?

A. Yes, I got some out of it.

Q. How much did you get?

A. Well, I wouldn't say, but close to \$300.

Q. Who did you get that from?

A. Well, Wells paid us that.

(Testimony of Lettie L. Stephenson.)

Q. Did you and your husband go together on the occasion when Wells paid you the money?

A. Well, I never was at Wells' office but the once, that I know of.

Q. Well, did he give you that between two and three hundred dollars on that day?

A. Well, he handed it to Mr. Stephenson if he did.

Q. Well, where did you get the money that you got out of the claim?

A. Well, we had what I had; we had it together. It was never kept apart. It was all paid together.

Q. Did you see Wells give Mr. Stephenson the money? A. I think I did.

Q. I show you a deed, Mrs. Stephenson, dated September 15, 1903, made by Martin S. Stephenson and Lettie L. Stephenson, husband and wife, to A. E. Palmer, and ask you if you signed that deed (showing same to witness)?

A. I think I did, yes.

Q. Well, don't you know for sure whether you did or not?

A. Well, I remember signing a deed somewhere about that time.

Q. Well, don't you know your signature when you see it? A. Yes, sir, I know that.

Q. Is that your signature to the deed?

A. I should say so, yes.

Q. And you acknowledged that before L. M. Pritchard?

A. Yes. I think it was Mr. Pritchard. I

(Testimony of Lettie L. Stephenson.)

wouldn't say for sure, because I was not personally acquainted with the men to know them at all when I saw them. I know he came there to the house.

Q. Now, was there any other paper you signed with reference to this claim besides that deed?

A. Well, I was thinking we signed when we made the first agreement, but whether this was an agreement at the time I couldn't say.

Q. When was that, before you made your final proof? A. No, that was after.

Q. In whose office did you sign that deed?

A. This deed here?

Q. Yes.

A. Right in our own house. We never went to no office.

Q. Who brought it to you?

A. Why, Mr. Pritchard, I think, was the man.

Q. And that was some time after the occasion that you had gone to Wells' office and signed the paper?

A. Oh, yes, that was about a year and—well, it was over a year anyway.

Q. Well, the day that you went to Wells' office did you say you signed an agreement?

A. Why, I think so, yes.

Q. Was it an agreement or another deed?

A. I don't think it was a deed, no. One deed is the only one I ever remember of.

Q. On which occasion was it that the money was paid? A. The first one.

Q. On the first occasion was Mr. Pritchard present and took your acknowledgment?

(Testimony of Lettie L. Stephenson.)

A. No, sir.

Q. Only Mr. Wells was present?

A. Just Mr. Wells, yes, sir.

Q. And no money was paid to you when you signed this deed? A. No, sir.

Q. When your father gave you the money did he say anything to you about where it came from?

A. He said there was the money that I was to have to prove up with, and he said for me to ask no questions.

Q. And you didn't ask any questions?

A. I did not. Certainly I did not.

Q. And you never paid anybody the \$400 back that your father gave you? A. No, sir.

Q. You never were asked to pay it back by anybody, were you? A. No, sir, I was not.

Q. You never gave a note for it, did you?

A. No, sir.

Q. Or any other security? A. No, sir.

Q. Your brother's name is Arthur Brookhart?

A. Yes, sir.

Q. Where does he live?

A. In Tacoma, Washington.

Q. And did he take up an entry at the same time you did? A. At the same time?

Q. On the same occasion?

A. On the same occasion, yes, sir.

Mr. GORDON.—We offer in evidence timber and stone lands sworn statement, dated December 24, 1901, of Lettie L. Stephenson; the non-mineral affidavit of Lettie L. Stephenson of the same date;

(Testimony of Lettie L. Stephenson.)

the testimony of Lettie L. Stephenson given on final proof March 13, 1902, and the cross-examination thereto attached; all of which papers have been identified by the witness Lettie L. Stephenson as having been signed by her and filed in the land office at Boise; the notice of publication, dated December 24, 1901; the testimony of the other witnesses given on final proof at the land office at Boise; the receiver's receipt, and the register's certificate, dated July 18, 1902; the deed dated September 15, 1903, by Martin S. Stephenson and Lettie L. Stephenson, husband and wife, to A. E. Palmer, which has been identified by Lettie L. Stephenson; all to the southeast quarter of section 34, township 7 north, of range 5 east of the Boise Meridian; also the certified copy of patent dated March 17, 1904, to the same land. All of these papers are marked Complainant's Exhibit Lettie L. Stephenson No. 1.

That is all.

Cross-examination.

(By Mr. BUNDY.)

Q. You and your husband were engaged in business at Boise in 1901? A. Yes, sir.

Q. And what was that business?

A. Livery.

Q. How many horses did you have at that time and how many rigs, if you remember?

A. Let's see. No, I couldn't say positively.

Q. Where you and your husband worth some money at that time; had you some property?

A. No real estate, no.

(Testimony of Lettie L. Stephenson.)

Q. Well, personal property, horses and carriages?

A. Oh, yes. Yes, we had what we had in the business.

Q. Can you give us an idea approximately of how much it was?

A. Well, I knew at the time, but I don't remember now.

Q. Well, a thousand or two thousand dollars' worth of stuff?

A. Oh, yes.

Q. Or more than that, would you say?

A. More than that, I presume.

Q. And doing at that time a profitable business, were you?

A. Yes, sir, we were.

Q. Your credit was good in the city?

A. Yes, sir, it was.

Q. You say you think your husband was the first one that spoke to you about taking up this land?

A. I think so, yes.

Q. Was that about the time you went up or a short time before—went up to look at the land?

A. Yes, it was some time during that fall, I think, or winter.

Q. Well, now, you were familiar with that country up there, were you?

A. Yes, we knew it.

Q. And how did you come to be familiar with it?

A. Well, Mr. Stephenson had been over the road enough that he knew it all, all of the country.

Q. So that when you employed Mr. Wells to locate you he simply gave you a description of land

(Testimony of Lettie L. Stephenson.)

which he—

A. Where to find it, yes, by certain marks, these certain pieces of land.

Q. And told you that those particular pieces had timber on and to go and look at them?

A. Yes, and we went.

Q. So you looked at the lands which Mr. Downs had cruised or estimated and told you they were timber lands? A. Yes.

Q. Had you had any talk at that time with Downs about selling the land? A. No, sir.

Q. Had you had any talk with Mr. Wells at that time at all about it?

A. I never saw Mr. Downs or Mr. Wells, either one.

Q. Had you ever had any talk with Mr. Pritchard up to that time? A. No, sir.

Q. Had you ever had any talk with John Kinkaid up to that time about it?

A. No, sir, I never saw John Kinkaid that I remember of.

Q. Up to that time, now, I am speaking about, up to the time you went to see the land?

A. No, sir, nor since either.

Q. Had you ever had any talk with anybody about selling the land or who you should sell it to?

A. No, sir.

Q. At the time you went up to look at the land what was your idea with reference to getting the land—to hold it or to sell it?

A. Yes, for the benefit it would be to me individually.

(Testimony of Lettie L. Stephenson.)

Q. Had you at that time made any plans for procuring the land and proving up on it or getting the money to pay for it?

A. No, not at the time I filed.

Q. So that at the time you went up to look at the land you had had no discussion with anyone about it except with your husband as you recall?

A. No, sir, nobody else at all.

Q. Now, I notice that after you looked at the land you came back and filed this first paper in the land office, which we call the filing paper, dated December 24, 1901?

A. Yes, sir.

Q. And in that paper you swore to the following statement: "I have not, directly or indirectly, made any agreement or contract or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except myself." Was that statement absolutely true at the time you made it, Mrs. Stephenson?

A. Yes, sir.

Q. And was the same statement at the time you made your final proof?

A. Yes, sir.

Q. Now, at the time you filed on this land had you entered into any agreement, written or oral, express or implied, with any person, by which you were to turn over to them or to any person they should direct, the land which you acquired from the Government?

A. I had not.

Q. Had you entered into any such agreement or similar agreement at the time you made your final

(Testimony of Lettie L. Stephenson.)

proof? A. I had not.

Q. Were you under any obligation whatever to any person, firm or corporation to turn this land over to them or to sell it to them at the time you filed your first papers? A. I was not.

Q. Were you under any such obligation at the time you made your final proof?

A. No, sir.

Q. At the time you filed on this land did any person have any lien or mortgage upon it or in any way interested in it other than yourself?

A. No, sir.

Q. Did you make the entry for the benefit of any person except yourself?

A. No, sir, I did not.

Q. Do you recall, Mrs. Stephenson, that at the time you made your final proof, which was March 13, 1902, it was held up for some time and final receipt not issued to you until some time later?

A. The receipt?

Q. The receiver's final receipt. Do you remember about that? A. No, I do not.

Q. Well, do you remember that it was some time after you made your final proof before you got the final receipt which the land office issues in such cases?

A. Well, I couldn't say.

Q. Well, you say after you got your final receipt you sold this land to John I. Wells or somebody that he was acting for, did you not? A. Yes.

Q. Well, now, at the time you sold the land, did you have a receipt that the land office had given you?

(Testimony of Lettie L. Stephenson.)

A. I think we got the receipt when we made the final proof. We got the receipt for the payment.

Q. Yes, you got a temporary receipt?

A. Yes. Something, I don't remember now.

Q. Do you know what you did with that temporary receipt?

A. I do not. I don't know whether I have it or not. I couldn't say.

Q. Well, then, the regular final receipt was issued to you about four months later, July 18, 1902. Now, do you know whether or not that had been issued to you at the time that you sold?

A. Well, I couldn't say. I don't remember of ever having two receipts.

Q. Had you had any talk with anybody about selling the land before you had made your final proof?

A. No.

Q. Had anybody had any talk with you before that?

A. No.

Q. Had anybody offered to buy your land before that?

A. No, sir.

Q. Had you offered to sell it to anybody before that?

A. No, sir.

Q. You know L. M. Pritchard, do you?

A. No, sir, I wouldn't know the man if I seen him.

Q. Do you know Mr. Wells?

A. No, I wouldn't know him if I seen him. I never seen him but once that I know of.

Q. Are you sure it was Wells or was it Pritchard that paid you the money?

(Testimony of Lettie L. Stephenson.)

A. Well, I think it was Wells.

Q. And where was it?

A. In their office, or in Mr. Wells' office.

Q. Are you sure of that?

A. I know it was in their office. Now, which man was there—I think it was Wells that was there.

Q. You might be mistaken about that?

A. Well, possibly, but I don't think so.

Q. And you say the money was not paid to you but paid to your husband?

A. No, it was not handed to me; it was handed to him.

Q. And you say you received something between two and three hundred dollars out of it?

A. Yes.

Q. Well, do you mean by that—

A. I had that much clear out of it.

Q. Oh, yes. A. That is what I mean.

Q. Then the \$400—

A. Yes, there was something like \$700 all together. But what I meant was about \$300 clear.

Q. That was the profit that you made?

A. Yes, that is the benefit I got out of the land.

Q. So that you understood at the time that the \$400 which had been advanced was taken out of the purchase price and you paid the difference?

A. I was paid the difference, yes.

Q. Now, did you understand at the time that this \$400 which your father gave you was an advancement that had been loaned to you for the purpose of proving up?

(Testimony of Lettie L. Stephenson.)

A. Well, I understood I was to have the money just—not by anyone else only among our own family, and that is all there was to it.

Q. Yes, I understand. But you understood that when you sold, the money which had been advanced to you was taken out and paid to the persons that advanced it, did you not?

A. Well, a person would have that idea, yes. But there was nothing said.

Q. Well, I am asking for your idea.

A. Well, that would be my idea, yes.

Q. Do you think you sold your land for \$250 or \$300, or did you sell it for \$650 or \$700?

A. Well, I supposed I would get that much clear out of it, yes.

Q. Do you remember who told you that?

A. No, sir, I do not.

Q. Was the sale negotiated by your husband?

A. Yes, sir.

Q. The business part, then, he attended to?

A. He done the business part.

Q. That applies, I suppose, to paying the location fee as well as selling?

A. Yes, he paid the location fee, yes, as well as selling the land.

Q. Now, I notice that at the time you made your final proof, question No. 12 was asked you by the land office officials as follows: "What do you expect to do with this land and the lumber on it when you get title to it?" And your answer was: "Keep it." I am making the purchase simply as an investment.

(Testimony of Lettie L. Stephenson.)

I believe it will become valuable." That statement was true at the time you made it, was it not, Mrs. Stephenson? A. Yes, it was.

Q. And did you have any other idea—

A. Only for an investment is what I took it for.

Q. And that is what you intended to do with it when you took it?

A. Yes, as an investment.

Q. So that at that time you didn't have any intention of selling it unless you could sell it—

A. To benefit me.

Q. At a price satisfactory to yourself?

A. Yes, sir.

Q. This is the next question asked you: "Do you know of any capitalist or company which is offering to purchase land in the vicinity of this entry? If so, who are they and how did you know them?" And you answered: "No, sir." A. No, sir, I did not.

Q. That was correct, was it not?

A. I never heard tell of them.

Q. Question No. 14 was asked you as follows: "Has anybody offered to purchase this land after you acquired title? If so, who and for what amount?" And you answered: "No, sir." That was correct, was it now?

A. Yes, sir, it was.

Q. Question No. 16 was asked you: "Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" And your answer to that was: "Yes, sir." Was that

(Testimony of Lettie L. Stephenson.)

true at the time you made it?

A. Yes, sir.

Q. And at the time you made your filing you expected to pay for it with your own money, did you?

A. Yes, sir.

Q. That was your intention, to take the money out of the livery business and pay for the land?

A. Yes, sir.

Q. That is, at the time you made your filing?

A. Yes, sir.

Q. At the time you made the filing upon the land you had no arrangement with your father or anybody else to get money?

A. No, sir, I had not.

Q. And at the time your father offered to furnish you the money, as I understand it, was at the time you were about ready to make your final proof?

A. Yes, sir.

Q. So that at the time you first filed upon the land it was your intention and your husband's intention, so far as you know, to pay for it on your credit or borrow the money or pay it out of your business?

A. Yes, sir, it was.

Q. And you didn't at that time expect to get the money from any person in connection with any sale of the land?

A. No.

Q. And at the time you filed on the land you had made no arrangement, directly or indirectly, through your father or anyone else, had you, by which you were to have any money advanced to you for the purpose of proving up?

(Testimony of Lettie L. Stephenson.)

A. No, sir, I had not.

Q. You hadn't heard of any such thing as that at that time? A. No, sir.

Q. This statement which your father made to you, handing you some money and telling you you could use that to prove up with and not to ask any questions, was something that occurred long after you had made your first filing upon this land?

A. Yes.

Q. Question No. 17: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "From my father. He gave it to me. I have had it in my possession several months. My father's name is Frank Brookhart. He lives in Boise." Is that correct? A. Yes, sir.

Q. And was that part of it correct about having it in your possession several months?

A. Well, possession would be the same as a promise of it, I would consider.

Q. Well, had your father promised it to you before you filed on the land?

A. Yes, he said I would have the money to pay up.

Q. Did he say he would get it for you or furnish you the money?

A. Well, he didn't say he would, no.

Q. Well, now, I am talking about the time before you filed on the land at all. You said awhile ago that you had no arrangement but expected to pay for the land out of your business. That was true, was it not?

(Testimony of Lettie L. Stephenson.)

A. Yes, when I filed on the land.

Q. Now, at the time you filed on the land you hadn't had any talk with your father about it at all, had you? This I am reading, you know, is at the time of final proof two or three months afterwards.

A. No, I hadn't with him at that time, no, when I went and filed.

Q. What I am trying to get at is this: The questions and answers I am reading to you are questions you answered on your final proof along in March, the 13th, 1902. Now, your filing was made December 24, 1901. Now, at the time you filed, which was in December, 1901, you hadn't had any talk with your father or anybody else with reference to filing, had you?

A. No. Not at the time, no, when we filed.

Q. At that time you expected to pay for the land when the time came out of your business?

A. Yes.

Q. And after you filed and before final proof was the time you had this talk with your father in which he promised you the money, is that correct?

A. Yes, it was after we had filed.

Q. So, as I understand your evidence, it was some time after you had filed that your father told you he would get the money for you?

A. That I would have the money when it came time to prove up.

Q. And that was the first arrangement you had ever had with him or anybody else about money?

A. Yes, that is, as far as I knew anything about

(Testimony of Lettie L. Stephenson.)

it.

Q. But that was after you had filed upon the land? A. Yes.

Q. And your other answer here is correct, is it not, that at the time you filed you expected to pay for the land out of the money of your own and take it out of the business? A. Yes, sir.

Q. Mrs. Stephenson, in this lawsuit we are trying here, the United States of America versus the Barber Lumber Company and others, the Government in its complaint states that you entered this land at the request and for the benefit of the defendants in this action, the Barber *Lumber*, Mr. Barber, Mr. Sweet, Mr. Rand and several other defendants. Is that true or false?

A. I never heard tell of the company, or the men, either one of them.

Q. Did you enter it at the request or for the benefit of any person?

A. No, I thought it was a chance—it was something—of course we knew it was something that there wouldn't everybody be taking up land.

Q. You mean you thought you could sell the property? A. Yes.

Q. Now, the question is, did you enter it at the request of or as the servant or agent of anybody else other than yourself.

A. Well, only Mr. Stephenson, that is all.

Q. Your husband, you mean? A. Yes.

Q. And in this complaint it is also charged, Mrs. Stephenson, that you agreed with these defendants

(Testimony of Lettie L. Stephenson.)

that you would enter upon this land for them and their benefit, and at their request, and that you would then go to the land office and testify to what you knew to be false in order to defraud the United States and as soon as you got title you would turn it over to the defendants or to some one that they should direct. Is that true? A. No, sir.

So that at the time you went up to look at the land and the time you filed upon it you never had had a talk with John I. Wells on the subject or anything about it? A. I never had seen John Wells.

Q. And you never had had a talk at that time with Mr. Kinkaid?

A. Never saw Mr. Kinkaid that I know of.

Q. And up to that time you had never had any talk with L. M. Pritchard? A. No, sir.

Q. And you never had had any talk with William Sweet on the subject at all? A. No, sir.

Q. Or with A. E. Palmer? A. No, sir.

Q. Or James T. Barber? A. No, sir.

Q. Or Sumner G. Moon? A. No, sir.

Q. Or Frank Steunenberg? A. No, sir.

Q. And you never had had any talk with anybody on the subject at that time other than your husband and your own family? A. No, sir, I had not.

Q. And at the time you filed on it you did it for your own use and benefit? A. Yes.

Q. And at the time you filed you expected to pay for the land with your own money and hold it for an investment as you have stated? A. Yes, sir.

Q. And any arrangements that were made differ-

(Testimony of Lettie L. Stephenson.)

ent than that was some arrangements that was made after filing and before final proof?

A. Yes, sir.

Q. You said you didn't know who drew the papers. I suppose your husband attended to that, did he?

A. Yes, he attended to it.

Q. At the time you saw Mr. Wells up in his office or at the time you paid the money up in Mr. Wells' office did you go up there at the suggestion or request of your husband?

A. Yes, sir.

Q. Whatever arrangements had been made, then, he had made, I suppose?

A. Yes.

Q. You had nothing much to do up there except to sign something?

A. I think we signed some kind of a paper. I wouldn't say for sure.

Q. Do you know whether you turned over your final receipt at that time, signed that over?

A. No, I do not.

Q. You don't remember what it was you signed?

A. I don't ever remember of having a final receipt, or more than one receipt, that we received the day in the land office.

Q. Well, did you turn any receipt over at that time? Do you remember about that?

A. No, sir, I couldn't say.

Q. Have you any recollection of what it was that you signed?

A. No, only I think it was the receipt for the money he gave us. I think that is all.

Q. Was anything said to you about a deed at that

(Testimony of Lettie L. Stephenson.)

time, or was that with your husband too?

A. I don't think there was, no.

Q. Do you know now where the money that your father gave you came from?

A. Well, I couldn't say whether Mr. Wells gave it to him or whether Mr. Stephenson gave it to him. I couldn't say.

Q. You don't know anything about it yourself?

A. No, I don't know.

Q. And you don't know anything yourself that would make you think Mr. Wells gave it to him, do you?

A. No, I do not.

Q. Or that Mr. Pritchard gave it to him?

A. No, I do not. I know he was personally acquainted with Mr. Wells, but outside of that I don't know.

Q. Who was acquainted with him?

A. My father was personally acquainted with Mr. Wells.

Q. Quite friendly with Mr. Wells at that time?

A. Well, he visited them quite often.

Q. Now, Mr. Gordon asked you a question, whether you ever paid back that \$400 that was advanced to you.

A. Not to him, no, I did not.

Q. Well, now, what do you mean by that? I don't quite understand your evidence. It was paid back or taken out of the purchase price of that land, was it not?

A. I think it was, yes.

Q. Well, then it was your understanding at the time—

(Testimony of Lettie L. Stephenson.)

A. When we got our money, yes. The purchase price was kept out.

Q. Yes, the money that had been given to you to use at the land office? A. Yes.

Q. Was kept out of the purchase price?

A. Yes.

Q. And the balance of the purchase price was paid to you? A. Yes, sir.

Q. And that was your understanding at the time? A. Yes, sir,

Q. And you were so advised, I suppose, at the time the sale was made? A. Yes.

Mr. BUNDY.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Who advised you at the time the sale was made that the \$400 that had been advanced to you was kept out? A. Well, I don't know.

Q. Nobody did, did they?

A. I don't think they did, no.

Q. And as you got that money from your father, would you not have thought it singular that Mr. Wells and Mr. Pritchard had kept \$400 of your father's money?

A. Well, Mr. Stephenson handled the money. I didn't make no arrangements, and I didn't take it. I simply went there and signed what it was, or a receipt for it.

Q. Didn't your father give you the money with which to make final proof on the day that you did make final proof?

(Testimony of Lettie L. Stephenson.)

A. He handed me the money on that day, yes.

Q. Then as a matter of fact you hadn't had that money in your actual possession for three months?

A. Well, not that particular money, but we had that much. I could have taken it at any time.

Q. I am speaking of that particular money.

A. Well, that particular money I had that day, or I had the promise of that.

Q. And you had the promise of that before you went up there to look at this land, didn't you?

A. I did not. Now.

Q. When you took up this land didn't you have an understanding that you would take up this land and sell it for \$250 over what it cost you?

A. I did not.

Q. Not with anybody? A. No.

Q. Then why did you take \$250 over what it cost you?

A. Because I didn't know any better. I thought that that was a very good thing to get out of it. If I had knowed what others got I wouldn't have taken it, either.

Q. How long had you had the promise of this money from your father?

A. Well, from the time—after we filed, why, we were talking, of course, in our own family, and he made the remark that we would have the money to prove up on.

Q. Well, you had the money, didn't you, of your own?

A. I had it. I could have drawed that much and

(Testimony of Lettie L. Stephenson.)

proved up at any time.

Q. Then why should your father have offered you money with which to make your final proof if you had your own money?

A. Well, you will have to ask him. I don't know.

Q. And you took the money that he handed you?

A. I took the money that he handed me that morning, yes.

[Testimony of Martin S. Stephenson, on Behalf of the Complainant.]

MARTIN S. STEPHENSON, a witness produced on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Martin S. Stephenson?

A. Yes, sir.

Q. And you are the husband of Lettie L. Stephenson, the lady who has just testified?

A. Yes, sir.

Q. Where do you reside?

A. Fallon, Nevada.

Q. Where did you reside in December, 1901?

A. In Boise City, Idaho.

Q. What was your occupation at that time?

A. I was running a livery barn, and freight teams.

Q. You took up a claim under the Timber and Stone Act in December, 1901, did you?

A. Yes, sir.

(Testimony of Martin S. Stephenson.)

Q. At the same time that your wife took up a claim? A. Yes, sir.

Q. I show you timber and stone lands sworn statement, dated December 24, 1901, of Martin S. Stephenson, and ask you if you signed that paper and filed it in the land office at Boise, Idaho, on that day (showing same to witness).

A. Yes, sir.

Q. I show you the non-mineral affidavit of Martin S. Stephenson, of the same date, and ask you if you signed that paper and filed it in the land office at Boise (showing same to witness).

A. Yes, sir.

Q. I show you the testimony of Martin S. Stephenson given on final proof at the Boise Land Office, dated March 14, 1902, and ask you if you signed that paper (showing same to witness).

A. Yes, sir.

Q. I show you deed dated September 15, 1903, made by Martin S. Stephenson and Lettie L. Stephenson, husband and wife, to A. E. Palmer, and ask you if you signed that and acknowledged same before L. M. Pritchard (showing same to witness).

A. Yes, I signed it. I didn't know what deed it was, though.

Q. Mr. Stephenson, who first spoke with you about taking up a timber claim?

A. Well, the first man that ever spoke to me about it was Charlie Wilmott.

Q. Did you know Mr. John I. Wells at that time?

A. No, not when he first spoke to me.

(Testimony of Martin S. Stephenson.)

Q. What did Mr. Wilmot say to you about taking up a timber claim?

A. He told me there was a man locating people on timber claims and there was a chance to—

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, asking the witness to testify to hearsay evidence.

A. (Continuing) —sell our land. He said he would fetch him down to the barn.

Q. Did he tell you how much could be made out of it?

A. He didn't say, no.

Q. Who was this man that he was to fetch down to the barn?

A. Mr. Wells.

Q. Mr. John I. Wells of Boise?

A. Yes, sir.

Q. Did John I. Wells come to see you?

A. Yes, sir.

Q. What did Mr. Wells say to you?

A. He said if I wanted to get a piece of timber I could get it and he would locate us and after a while we could dispose of the land.

Q. Did he tell you how much you could make out of it?

A. Well, he didn't tell exactly, but he told nearabouts.

Q. What did he say? A. About \$250.

Q. Were you to furnish your own money or was he to furnish it?

Mr. BUNDY.—I object to that as leading and suggestive, and ask that the witness be required to

(Testimony of Martin S. Stephenson.)

give the conversation.

A. Why, he said it didn't make any difference about the money, that I would have the money.

Q. Well, did he say he would furnish the money?

Mr. BUNDY.—Objected to as leading and suggestive, and we ask that the witness be required to give the conversation.

A. He didn't say whether he would furnish the money or not, but that I would have the money. I needn't worry about the money.

Mr. KEIGWIN.—Was that his expression, that you need not worry about the money?

The WITNESS.—Yes, sir.

Q. And you then made arrangements to go to view this land? A. Yes, sir.

Q. Who located you on the land?

A. Mr. Downs gave us the numbers of the land.

Q. Did you go to see Mr. Downs?

A. Yes, sir.

Q. Where did you go to see him?

A. At Centerville.

Q. And he gave you the descriptions of the land and sent you out to look at it, did he?

A. Yes, sir.

Q. You knew where this land was?

A. Yes, sir.

Q. Well, now, if you knew where it was and had been over it a number of times, why was it necessary to go to Downs to locate you on the land?

A. Well, they were locating everybody that they could get out to take up land, and I didn't know

(Testimony of Martin S. Stephenson.)

what had been taken and what had not, so Wells told me I would have to see him.

Q. Could you not have gone up there and looked over this piece of land and then found out whether it had been entered at the land office?

A. Well, I suppose I could have, yes.

Q. Well, you paid Mr. Wells \$25, for that?

A. Yes, sir.

Q. And \$25 for your wife's claim, too?

A. Yes, sir.

Q. And when you came back did you go to Mr. Wells' office before you went to the land office?

A. I think I did.

Q. I will ask you if Mr. Wells prepared these original papers that you filed in the land office (showing same to witness).

A. Well, I think he did.

Q. And did he prepare your wife's at the same time? A. I think so.

Q. Did she go with you or did you go there alone?

A. Well, I couldn't say whether she went with me or whether I went alone.

Q. And then you went to the land office and you filed on this land. Did you see Mr. Wells between the time you made the filing and the time you made your final proof?

A. Well, I saw him every day, almost.

Q. Did you see him with reference to this land?

A. Well, I don't just recollect whether we did in reference to the land or not.

Q. Where did you get the money with which to

(Testimony of Martin S. Stephenson.)

make your final proof?

A. Well, sir, I couldn't say whether Mr. Wells or Mr. Pritchard handed it to me.

Q. State the circumstances of your getting the money to make your final proof.

A. I was in the office there, Mr. Wells' and Mr. Pritchard's office,—

Q. How did you happen to go to Mr. Wells' and Mr. Pritchard's office?

A. I was advised by Mr. Wells to go to their office that day.

Q. When were you advised of that?

A. Well, now, I couldn't say. I met Mr. Wells nearly every day in Boise when I was in the livery business.

Q. And he told you to come there and get the money to make your final proof?

A. He told me to come up there and the money would be there.

Q. And you went there? A. Yes, sir.

Q. And was the money there then?

A. No, sir.

Q. Well, state what happened when you got there that time.

A. He said he would have to go to the bank and get the money. There was no money. And when he came back he just handed me the envelope.

Q. How much was in the envelope?

A. I think there was something over \$400.

Q. Did you give him a note for it then?

A. No, sir.

(Testimony of Martin S. Stephenson.)

Q. Did you pay him any interest at any time?

A. No, sir.

Q. And you took that money and then went to the land office and paid it in in making your final proof and pay for this property?

A. Yes.

Q. And that was the day on which you made final proof?

A. Yes, that was the same day, I think.

Q. Now, when did you go to Wells' office again?

A. Well, I couldn't say exactly when it was.

Q. Was it the same day or the next day?

A. Well, it was in a short time, if it wasn't the same day.

Q. Well, now, how short a time?

A. Well, it would be hard for me to say, when we were together all the time. That is, we met every day. He was right there in town.

Q. Was it a week?

A. I don't think it was. Something like two or three days, if it was not the same day. I won't say positively.

Q. What is your best recollection now?

A. Well, I really think it was the next day, but I won't say.

Q. And what did you do when you went there on that day?

A. To Pritchard's and Wells' office?

Q. Yes.

A. Well, they had a paper that we signed.

Q. Was it not this deed?

A. Well, it would be pretty hard for me to say. The deed or whatever it was was folded over, that

(Testimony of Martin S. Stephenson.)

we signed. I wouldn't say whether it was a deed or whether it was a receipt or what.

Q. Why was it folded over?

A. I didn't ask any questions and didn't turn it. He folded it over something like this here (indicating by folding sheet of paper) and says "Sign your name right here," and I did so.

Mr. KEIGWIN.—Was that the same paper that Mrs. Stephenson signed too?

The WITNESS.—I think it was the same paper.

Q. You both signed the paper?

A. I think we were both right there together when we signed, is the best of my recollection.

Q. How much was given you that day in the way of money?

A. On the day we signed this paper?

Q. Yes.

A. I don't think on the day we signed the first paper there was any money given.

Q. How long after that did you get any money?

A. Well, I think we got our final receipt later on, and then we got the money. I think there was a new receipt or something made, or a new deed. I think it was a deed.

Q. Was it not another deed?

A. Well, I think it was. I think it was another deed. But I think each time they were folded.

Q. Each time they were folded? A. Yes, sir.

Q. Were they folded to keep you from seeing what was on the paper?

Mr. BUNDY.—Objected to as incompetent, irre-

(Testimony of Martin S. Stephenson.)

levant and immaterial as to what the purpose was in folding the deed.

A. I suppose it was folded to keep me from seeing whose name it was made to.

Q. How large was the paper that was folded?

A. Well, it was near about the width of this sheet (referring to shorthand note paper, about large letter size), along there.

Q. Was it the size of this deed that I show you (showing same to witness)?

A. Well, I should judge that was the paper.

Q. And was it folded so that you couldn't see any writing on it or any great amount of writing, or what could you see on the deed—on the paper?

A. It was folded, as near as I recall, about one-half.

Q. And did anyone hold the deed while you signed it?

A. No, sir. Well now, I don't know. I am not positive, but what they had their hands on it, on the deed, when I signed it, but I wouldn't say whether he did or not.

Q. What is your best recollection of that?

A. Well, I really believe that he just folded the deed over something like this and laid it down like that to hold it smooth. That is my best recollection.

Q. And who did that?

A. Mr. Pritchard I believe was the man that fetched it down to our house.

Mr. BUNDY.—That was down at your house?

The WITNESS.—Yes, sir.

(Testimony of Martin S. Stephenson.)

Mr. BUNDY.—A year after the final receipt?

The WITNESS.—Well, I don't know whether it was a year after the final receipt. I think it was about the time of the final receipt, but I wouldn't say positively.

Q. Did you see any other part of this deed that you signed? A. No, sir.

Q. Did you ever see the whole of any paper that you signed there, so that you could read all that was in the paper?

A. No, I—well, yes. When we went there to have the filing papers made out I seen them.

Q. Well, they were given to you?

A. Yes, sir.

Q. But on the other two occasions that you went there were you allowed to see the paper that you signed?

A. Well, I don't really think so. I didn't ask whether I could or not. He just folded it and said to "sign your name right here."

Q. And did he pay you the money at your house that you got out of this, or where was it paid?

A. Well, I believe it was paid at the house, but I wouldn't say whether it was at the house or office. One of the two places.

Q. Now, let me ask you: Do you remember going to the office of Wells and Pritchard there the day that you paid the \$400 into the land office or the next day? A. I really think it was the next day.

Q. And you signed some paper on that day?

A. Yes, sir.

(Testimony of Martin S. Stephenson.)

Q. And do you remember signing any other paper there or being at their office on any other occasion between that time and the time that Mr. Pritchard brought the deed to your house?

A. No, sir.

Q. And when they gave you the money do you know who gave you the money that you were paid for your land?

A. No, I don't remember which one it was.

Q. Were they both together?

A. I really think they were, but I don't know which one gave it to us.

Q. Wells and Pritchard were together?

A. Wells and Pritchard.

Q. Had you ever talked with Pritchard about selling him this land?

A. No, sir, I never talked to Pritchard at all.

Q. And had you ever had any conversation with Wells with reference to the sale of this land—

A. No, sir.

Q. (Continuing.) —between the time that he spoke to you before you made your final proof and the time—

A. Well, now, just a second.

Q. (Continuing.) —and the time that he paid you the money?

Mr. BUNDY.—What was it you were going to say?

The WITNESS.—I want to know which man I am talking about, Wells or Downs?

Q. Wells.

A. Well, that makes a little difference. I had

(Testimony of Martin S. Stephenson.)

spoken to Wells, or Wells had spoken to me, rather.

Q. Well, when?

A. Well, that was when he first came down.

Q. Came down when?

A. When he first came to the barn.

Q. Now, that was before you went to look at the land?

A. Yes. Well, you asked me if there was ever any talk.

Q. I asked you if you ever had any conversation with him in reference to selling this land between the time that he called at the barn and the time that you got the money for the land.

A. Well, it seems to me as though we had talked about it, about selling it.

Q. When was that?

A. Well, after we made the filing.

Q. Well, what did he say about it?

A. Well, he said not to be in no rush, that it took time for this to work out.

Q. Did you ask him if he was going to buy it then?

Mr. BUNDY.—We object to that as leading and suggestive, and ask that the witness be required to give the conversation.

A. Well, of course it was really understood that he was going—that there would be a man in to buy this land.

Q. That was before you went up there to look at the land?

A. Well, yes, you might say before we ever went

(Testimony of Martin S. Stephenson.)

to look at it at all.

Q. Now, when you received pay for this land how much money did you get?

A. Well, when I received pay for it I think it was about \$250.

Q. Did you get \$250 or did you get the money for your wife's claim at the same time?

A. Well, I believe it was all paid to me.

Q. And was it \$250 or twice \$250?

A. Well, it would be twice that, or a little better.

Q. Was anything said to you about repaying the money that had been advanced to you or to your wife?

A. No, sir.

Q. And you got just exactly what the understanding was when Wells first called upon you, did you not?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, assuming that there was any understanding at the time Wells first called upon him.

A. No, sir, we didn't know of any specified amount, just what it would be.

Q. When Wells first came to see you how much money did he tell you you could get out of this land?

Q. When he first came to see me he didn't say exactly how much I would get out of it.

Q. How much did he tell you exactly? What was your statement here a few minutes ago?

A. Well, as near as I recall, I didn't say what I was to get exactly.

Q. Didn't you state before here that it was almost

(Testimony of Martin S. Stephenson.)

\$300 or upwards of \$300? A. No, sir.

Mr. BUNDY.—That is what he said he did get.

Q. When did he arrange to give you the \$250?

A. He never arranged to give me exactly \$250.

Q. He did give you \$250, didn't he?

A. He gave me near about that.

Q. How much was it?

A. I couldn't say exactly.

Q. When did he arrange to give you that?

A. Well, it was after we had made this deed, I think. I think it was a deed that was made.

Q. Was that the first time he ever told you you were going to get \$250?

A. Well, I knew we were going to get something, but he didn't say exactly what.

Q. When he first came to see you at the livery barn didn't you understand that he was to furnish the money for you to pay for this land and you were to deed it to whoever he told you to for \$250?

A. He didn't say that he would furnish the money; he says, "You will get the money," he says, "You needn't worry about the money."

Q. Were you not to get something over and above that for your right?

A. Over and above \$250?

Q. Yes.

A. That I was to get some over that or near about that.

Q. Wasn't that your understanding when he first came to the livery barn?

A. It was understood, of course, that I was to get

(Testimony of Martin S. Stephenson.)

some money out of this land or I wouldn't have sold it.

Q. I am speaking about before you took it up.

A. Yes, he said there would be a company in to buy this land.

Q. That was before you took it up?

A. Yes; there would be a chance to make the sale.

Q. And you were not to furnish any other money than the \$25 for the locating fee, were you?

A. That is all I was to furnish.

Q. And you were to get money for conveying it over and above that?

A. If I hadn't I wouldn't have taken it.

Q. Now, was not that the understanding when you had your first talk with Mr. Wells?

A. Why, certainly.

Q. If it hadn't been for that you would not have taken it up, would you? A. No, sir.

Q. You never knew who the grantee in this deed was, did you? A. No, sir.

Q. And you never knew that the consideration in this deed was \$2,000 instead of \$500, did you?

A. No, sir, I did not.

Q. Is this the first time you have ever had this deed so that you could read it (handing same to witness)? A. Yes, I think it is.

Q. This is the deed I have reference to that you have identified here as having signed, yourself and wife? A. That is the last deed.

Q. Well, did you read the deed that you signed prior to making this one? A. No, sir.

(Testimony of Martin S. Stephenson.)

Mr. BUNDY.—Did you make a deed prior to that?

The WITNESS.—Well, I think it was a deed, or receipt, or something of that kind, but I couldn't say positively it was a deed.

Q. That was the paper that was folded over and you didn't know what it was?

A. I didn't know what it was, whether it was a deed or contract or what.

Q. But I understood you to say it was a paper that was about the size of this deed (exhibiting same).

A. Yes, that is what I should judge it was, a paper about that size.

Q. And were both of those papers folded over so that you could only see half of them when they were given you to sign?

A. To the best of my recollection, they were.

Q. Now, when they brought the deed to you and gave you the money, or whenever it was that they gave you the money, you took just what they gave you, did you? A. Yes, sir.

Q. And said nothing about it?

A. No, sir.

Q. And they said nothing to you about it?

A. No, sir.

Q. They just handed you the amount of money, which was about \$500, for the two claims, and there was nothing said about it?

A. That is all there was to it. He just gave me this money.

(Testimony of Martin S. Stephenson.)

Q. Was it in cash or check?

A. Yes, it was in cash.

Mr. GORDON.—We offer in evidence timber and stone lands sworn statement dated December 24, 1905, of Martin S. Stephenson; non-mineral affidavit of the same date of Martin S. Stephenson; testimony of Martin S. Stephenson given on final proof in the land office, dated March 14, 1902, and the cross-examination thereto attached; all of which papers have been identified by the witness Martin S. Stephenson as having been signed by himself; the notice of publication dated December 24, 1901; testimony of the other witnesses given on final proof in the land office; receiver's receipt and register's certificate dated July 18, 1902; the deed made by Martin S. Stephenson and wife, Lettie L., dated September 15, 1903, to A. E. Palmer, consideration \$3,000, which deed has been identified by Martin S. Stephenson as having been signed by himself and wife and acknowledged before L. M. Pritchard; the certified copy of patent dated March 17, 1904; all to the east half of the northeast quarter of section 33, and the west half of the northwest quarter of section 34, in township 7 north, of range 5 east of the Boise Meridian; all of said papers being marked Complainant's Exhibit Martin S. Stephenson No. 1. (Withdrawn by counsel for complainant.)

That is all.

Cross-examination.

(By Mr. BUNDY.)

Q. How many times have you been before a

(Testimony of Martin S. Stephenson.)

Grand Jury in this matter at Boise?

A. Once.

Q. When was that?

A. That was two years ago.

Q. In March or April, 1907?

A. March, I believe.

Q. Before going into the grand jury room were you interviewed by Mr. Ruick or his assistant Mr. Johnson?

A. I couldn't say who it was, but there was some man, some attorney.

Q. They took your statement down, did they, in typewriting?

A. No, sir, I don't think they did. I wouldn't say for sure, though, whether they did or didn't.

Q. Well, have you seen a typewritten statement since which purports to have been made by you?

A. Yes, sir.

Q. When did you see that?

A. I seen it this evening.

Q. Did Mr. Gordon show it to you?

A. Yes, sir.

Q. And tell you that he wanted you to testify just the same as that? A. No, sir.

Q. What did he say with reference to that?

A. He asked me if I remembered testifying to anything of that kind.

Q. And showed that to you? A. Yes, sir.

Q. And you read it over, did you?

A. Why, I handed it to him. I can't see very good after night, and am a poor reader anyhow, so I

(Testimony of Martin S. Stephenson.)

just had him read it.

Q. And he read it over to you?

A. Yes, sir.

Q. That was this evening? A. Yes, sir

Q. Now, at the time you had this interview before the Grand Jury did they tell you that if you testified as they understood the facts to be that you would not be prosecuted?

A. Well, I believe that is the way I understood it.

Q. They told you at that time that you had committed a crime and that they would not prosecute you if you testified as desired.

A. Well, I don't think they said I had committed a crime.

Q. They led you to understand you had?

A. They said all it was, they just wanted to know about this timber.

Q. Well, didn't they at that time give you to understand or inform you that if you testified as they understood the facts were, you would not be prosecuted? A. They did not.

Q. What did you mean a moment ago by saying they did?

A. Well, I didn't understand the way you put it to me.

Q. Well, they did let you know and did tell you that they would not prosecute you if you testified before the Grand Jury?

A. I didn't understand anything about any prosecuting.

Q. Didn't they say anything about prosecuting

(Testimony of Martin S. Stephenson.)

you? A. No, sir.

Q. Nothing at all? A. They did not.

Q. Didn't they tell you how the facts were as they understood them—this attorney?

A. He just told me he wanted to know about this timber, and that is all there was to it. There was no prosecuting about it.

Q. Nothing was said about prosecuting?

A. No, sir.

Q. Did they tell you the statute of limitations had run and that they couldn't prosecute you and you need not hesitate to tell the truth?

A. They didn't say anything about prosecuting at all.

Q. Didn't mention that to you at all?

A. They didn't mention that to me at all.

Q. They took down a statement, as you understand it now, in typewriting, didn't they?

A. Yes, they took it down in typewriting, I believe.

Q. And you never had seen that until to-night?

A. No, I don't believe that I did.

Q. And it was not shown to you nor signed by you, I suppose?

A. Well, if my signature was on it I signed it, but I don't—

Q. Well, was it on it?

A. I can tell you by seeing it if you will let me look at it. Anybody seeing me write my name once would know it again.

Q. Is this paper I show you the one Mr. Gordon

(Testimony of Martin S. Stephenson.)

showed you (showing paper to witness)?

A. I don't see my name signed on there.

Q. Well, is this the paper he showed you?

A. Yes, I think this is the same paper. This is the only one that I saw.

Q. Well, you made another statement besides this, did you not, in the grand jury room?

A. Well, I don't know whether that is the same one or not.

Mr. KEIGWIN.—Did you see this paper this evening (showing paper to witness).

The WITNESS.—No, sir.

Mr. KEIGWIN.—Was it read to you?

The WITNESS.—I don't think so.

Mr. KEIGWIN.—You didn't read it?

The WITNESS.—No, sir. That is the paper over there, that other one, that he (Mr. Gordon) handed me.

Q. That small paper? A. Yes, sir.

Q. And your name is not signed to that?

A. No, I don't see it signed any place.

Q. You understood in 1901 that Pat Downs and Wells were engaged in the business of making timber locations, did you not?

A. I understood that Wells was.

Q. Didn't you understand that Downs was locating at all?

A. Not until I got ready to go up to locate?

Q. Well, at that time you understood it?

A. Yes.

Q. As you understood that, they were in partner-

(Testimony of Martin S. Stephenson.)

ship in the business of locating people on timber claims? A. Yes, they were in partners.

Q. And you understood that at the time you went up there? A. Yes.

Q. So that when Downs told you there was a certain tract of land that had not been filed upon and gave you the numbers you went and looked at it yourself? A. Yes, sir.

Q. Now, did Downs give you those numbers?

A. No, he didn't give me the numbers; he told me right where the land was.

Q. And you took the numbers yourself?

A. Yes, sir.

Q. And then you went up to Wells to have the papers made out? A. Yes, sir.

Q. That was a part of the \$25 locating fee, I suppose, to make out the papers?

A. Yes, sir.

Q. And that is the reason you went to him?

A. Yes, sir.

Q. And you paid him the \$25 for yourself and a like amount for your wife, I understand?

A. Yes, sir.

Q. At the time you paid this \$25 did you incur any other expense in making the trip up there, hotel or livery or anything like that?

A. Well, I paid that myself.

Q. And you paid the \$25 yourself?

A. Yes, sir.

Q. When you came to the land office and filed your first papers you had to pay a certain land of-

(Testimony of Martin S. Stephenson.)

office fee, did you not, a publication fee or something?

A. Yes, sir.

Q. Amounting to about \$7.50 for each claim?

A. I think that is right, about \$14, something like that.

Q. And you paid that yourself?

A. Yes, sir.

Q. So that up to the time you filed your first papers you had invested \$25 for locating fee and the land office fee and whatever expense you were to in making the trip to view the land?

A. Yes, sir.

Q. Now, I notice that when you filed your first papers in the land office you swore to this statement: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except myself." That statement was true at the time you made it, was it not?

A. Yes, sir, I made it for myself. I wouldn't make it for anybody else.

Q. At the time you filed this paper you had no agreement of the kind I have read to you?

A. No, sir, I made no agreement.

Q. Directly or indirectly, with any person, firm or corporation by which they acquired any interest in this land?

A. Well, I was told not to worry, that I would get the money. That is all there was to it.

(Testimony of Martin S. Stephenson.)

Q. You didn't understand that was a contract by which you were to sell the land?

A. There was no contract, no.

Q. There was no agreement by which you would sell your land?

A. No, they simply said there would be a man in or a company in after a while to buy this land.

Q. Yes, after a while. A. Yes, sir.

Q. And all Wells told you at this time he came to see you before you filed, he made a statement to you that there would be people in there buying timber?

A. Yes, sir.

Q. And you made the entry, did you not, with a view of getting title and afterwards selling it to any purchaser that came along and paid you the most for it? A. Yes, sir.

Q. Now, at this first talk Wells had with you at your barn before you had gone up to file did you understand that he had employed you to go up and make an entry for somebody else?

A. Well, I couldn't—no, I couldn't say that he did. He just told me there would be a party in to buy this land.

Q. And he didn't tell you anything more than that except that there would be a purchaser in the market for the land, isn't that it?

A. Yes, sir.

Q. And relying on what you believed to be an opportunity to sell it you made the entry, with the expectation of making a profit on it?

A. Yes, sir.

(Testimony of Martin S. Stephenson.)

Q. And that profit you expected to make by selling it to some purchaser that you thought would come along for more than it cost you?

A. Yes, sir.

Q. You didn't understand you were working for wages for Wells or anybody else in going up there and entering that land, did you? A. No, sir.

Q. And as a matter of fact you were not?

A. No, I was going up to take it for my own benefit.

Q. And no one in God's world had any interest in that land you were acquiring from the Government at that time except yourself, had they?

A. No, sir.

Q. And the whole substance of what Mr. Wells told you was simply a representation that there would be some unknown purchaser in the market he believed who would buy that timber from you?

A. Yes. That is the way I understood it. There would be a chance to sell this land.

Q. And he didn't say who was going to buy it?

A. No, sir.

Q. And he didn't say he was acting for anybody that was going to buy it? A. No, sir.

Q. And there was nothing stated except that he believed there would be a purchaser in the market for the land in a short time? A. That is all.

Q. And that is all the inducements, if any, that Wells offered to you to induce you to make the entry?

A. Yes, that is all, that I would have an oppor-

(Testimony of Martin S. Stephenson.)

tunity to sell it.

Q. Now, at that time you were a man of some means and credit there in Boise, were you not?

A. Yes, sir.

Q. You could easily enough raise \$400 to pay for a timber claim if you wanted to, could you not?

A. I believe I could.

Q. There is no question about that, is there?

A. No question at all.

Q. You could easily enough have raised at any bank in the city all the money you wanted or your wife wanted to buy a couple of timber claims, could you not? A. Yes, sir.

Q. And I suppose you would not have cared to take money out of your business for any great length of time unless you thought there would be a market in the near future?

A. We could have done it as well as not, but he just told us we needn't worry about the money.

Q. By that you understood him to mean that there would be someone there to buy it?

A. Yes, sir.

Q. And you made your entry without any further or other arrangement than what you have testified to? A. Yes, sir.

Q. And this statement that you had made no agreement, directly or indirectly, express or implied by which anybody was to acquire any title or interest in the land was absolutely true at the time you made it? A. Yes, sir.

Q. Now, after you had filed upon your land and

(Testimony of Martin S. Stephenson.)

up to about the time of making final proof you had another talk with Wells, did you?

A. Yes, we met very nearly every day, or every few days, at any rate.

Q. Well, did you have a talk with him about this particular land a short time before you made your final proof? A. Well, yes, I think we did.

Q. And at that time you in effect sold out your land to Wells and was paid \$400 or something of that kind on the purchase price? A. Well, yes, sir.

Q. And the understanding was that the balance would be paid to you when final receipt was issued?

A. Yes. They said they didn't know when I would get the money, but I would get it later on.

Q. But your understanding and talk with Wells when he paid you the \$412, or whatever the amount was, was that that was a part payment upon the land which you were then selling to him?

A. No. Now, this \$400 and some odd dollars was not mentioned.

Q. No, I am speaking now about the time that you got the money from him—that you got the \$412 from him.

A. Well, at that time I got the four hundred and some odd dollars from him there was nothing said of what we would get for this land.

Q. Oh, there was nothing said at that time?

A. No.

Q. So you just considered it a loan, then, for the purpose of making proof?

A. There was no loan to it; he just gave it to me.

(Testimony of Martin S. Stephenson.)

Q. Well, you understood, did you not, Mr. Stephenson, that that money was taken out when you sold the land?

A. Well, I understood that I was to get in the neighborhood of \$250.

Q. Over and above what it cost?

A. Well, I had nothing to pay for the costs. I didn't have to. It was just the money that was given to me to put up.

Q. Well, at the time you sold out the land and was paid the balance of the money, after final receipt was issued, you understood then, did you not, that the \$412 which had been advanced to you was taken out, that you didn't owe that to anybody?

A. Well, there was nothing said about it, but of course it was taken out, because I got the two hundred and fifty odd dollars.

Q. Well, the price of the claims at that time was \$650, was it not?

A. Well, yes, I understood. I don't know what the price was; I understood I could get \$250.

Q. Well, your understanding was that that would be the profit you would make? A. Yes, sir.

Q. In other words, your understanding was that you could sell the land to this purchaser Wells said he thought would be there for \$250 more than it cost you?

A. Well, yes, that was the understanding.

Q. And the regular price for timber claims in that vicinity at that time was \$650, was it not, Mr. Stephenson?

(Testimony of Martin S. Stephenson.)

A. Well, I don't know whether it was or not.

Q. Well, didn't you so understand it at that time?

A. Well, there was—a good many was filing for that money, but I didn't know what the land was worth or anything about it. I didn't know whether it was worth \$650 or \$2,000.

Q. Well, I mean at the time you sold. You understood at that time that \$650 was what everybody was selling their timber claims for, did you not?

A. Well, that is what most of them was.

Q. So taking out what it cost you it left a profit of about \$250? A. Yes, sir.

Q. Now, at the time you had this talk with Wells that you have told about, before you went up to file, when he told you he thought there would be a purchaser, or that there would be a purchaser, there was nothing said about how much the timber lands would sell for, as I understand.

A. No, there was nothing said. He just says "You needn't worry about the money," That is about all there was said. He said: "You can sell your land before long."

Q. And when you could sell the land of course you would get the money? A. Yes; I suppose.

Q. Now, you testified in answer to a question Mr. Gordon put to you as follows: "Wells said if I wanted to get a piece of land he would locate us and afterwards we could sell the land."

A. Yes, sir.

Q. And Mr. Wells at that time offered to locate you upon the piece? A. Yes, sir.

(Testimony of Martin S. Stephenson.)

Q. And did he tell you at that time what he would charge you for locating? A. Yes, sir, \$25.

Q. He told you he would locate you for \$25 apiece? A. Yes, sir.

Q. And that you could afterwards sell the land?

A. Yes, sir.

Q. And you went into this timber and stone business with that in view? A. Yes, sir.

Q. Of making an entry and afterwards selling it? A. Yes, sir.

Q. And you swore when you filed your papers that you had not sold it at the time you made your filing, and that was true? A. Yes, sir.

Q. Then the sale you made of the land was some time after you had filed upon it?

A. Yes, the sale we made of the land was after we filed upon it.

Q. Now, can you tell us when it was you sold the land?

A. Well, I suppose it was when we made the deed.

Q. That would be right away after the final receipt? A. Yes.

Q. You think the next day after final receipt?

A. I think it was the next day afterwards that we signed it. I won't say positive, but that is my best recollection.

Q. A day or two afterwards anyway?

A. Yes, sir.

Q. Now, up to that time, a day or two after your final receipt, you hadn't sold this land at all?

(Testimony of Martin S. Stephenson.)

A. No, sir.

Q. Hadn't made any arrangements to sell it?

A. Well—

Q. Anything more than Wells told you there would be a purchaser?

A. Well, he just said there would be a purchaser in and I would get in the neighborhood of \$250.

Q. But you hadn't sold it up to that time?

A. No, sir.

Q. Hadn't agreed to accept that?

A. No, sir.

Q. And were under no obligations to accept it if there had been anybody there to pay you any more?

A. No, sir.

Q. So that up to the time you paid in the money into the land office and got your final receipt there was no reason or contract of any kind or agreement outstanding, was there, Mr. Stephenson, which would have prevented you from selling to anybody else if anybody else had been willing to give more?

A. No, I could have kept it just as well as not, and I ought to have done it.

Q. You could have kept it without violating any agreement you had made? A. Yes, sir.

Q. At the time Mr. Wells told you there in the barn before you had made your filing that there would be a purchaser at a price which would net you \$250 or more you didn't agree to accept that amount, did you, at that time? A. No, sir.

Q. You simply knew there was one place you could sell if you didn't get any more?

(Testimony of Martin S. Stephenson.)

A. Yes, sir.

Q. Now, isn't that the sum and substance of the whole matter, Mr. Stephenson, that you had an assurance from John I. Wells that there would be some unknown person there whom he thought would be a purchaser if you wanted to sell for \$650 or an amount which would net you \$250?

A. Yes, sir; that was it.

Q. And you didn't accept that nor agree to it?

A. No, sir.

Q. And you never did accept it or agree to accept that amount of money until after your final proof was made? A. No, sir.

Q. And after your final proof was made and a final receipt had been issued to you by the land office you then for the first time entered into an agreement on your part to sell the land for that amount of money, isn't that right?

A. Well, I suppose we entered into an agreement. I suppose we signed that deed or whatever it was. I couldn't say.

Q. But I say, never before that had you entered into any agreement? A. No, sir.

Q. Whatever Wells had expected, so far as you were concerned, you hadn't made any promises or any agreement of any kind or character relative to the disposal of this land until after you had your final receipt? A. No, sir.

Q. Now, you say this first paper was folded over in a certain way. Did you ask the gentleman preparing the paper to unfold it so that you could see what

(Testimony of Martin S. Stephenson.)

it was?

A. No, sir; I didn't ask any questions.

Q. Had you any reasons to suppose that if you had asked him to see it it would not have been unfolded for you?

A. I couldn't say whether they would or not.

Q. You didn't express any surprise or indignation?

A. No, sir; he just folded the paper, and he says, "Sign it here," and I signed it.

Q. And you said you supposed it was folded so that you could not see what was on it.

A. Well, I suppose it was. I didn't know who it was made for.

Q. Did you care who it was made for as long as you got your money?

A. The money was what I was after.

Q. And you didn't care what it said in the deed as long as you got your money?

A. No, sir.

Q. Then when you say you suppose it was covered up so that you couldn't see it, that is mere inference on your part, is it not?

A. Well, it wouldn't have made any difference.

Q. Was it folded in the middle?

A. I think it was, but turned the other way (from manner in which counsel folds paper to illustrate).

Q. Turned backwards this way (illustrating)?

A. Yes, sir; I think so.

Q. So that you could see the lower half of it?

A. Yes, sir.

Q. Now, from seeing the lower half you could

(Testimony of Martin S. Stephenson.)

tell whether it was a deed or not, could you not?

A. Well, he just says, "You sign your name right there," and I took the pen and signed it.

Q. So that you were not very much interested in what the paper was? A. No.

Q. You didn't pay much attention to it?

A. At that time they said I was to get this \$250 and some odd dollars out of the land.

Q. Well, you didn't pay very much attention to the instrument apparently? A. No, sir.

Q. Didn't care very much what was in it?

A. No, it didn't make a great deal of difference.

Q. And you testified in answer to a question from Mr. Gordon that you were not allowed to see that deed. Did you mean by that that you asked to see it?

A. Well, I don't recall answering that I was not allowed to see it.

Q. Well, I didn't think you intended to, but he asked you the question if you were allowed to see it and you said no. Now, do you mean by that that you asked to see it and they wouldn't let you?

A. No, I didn't ask to see it.

Q. All you are testifying is that when they presented the paper to you to sign your recollection is that it was folded and you didn't ask to see it and signed it as they had it?

A. Yes. It might be if I had asked to see it they would not have allowed it, but whether they would or not I didn't ask.

Q. And you don't know whether they would or

(Testimony of Martin S. Stephenson.)

not? A. No, sir.

Q. Did you ever have any talk with John I. Wells between the time he talked with you in the barn when he was offering to locate you for \$25 and the time he gave you the \$412.50 with which to make final proof—I mean about this land, of course?

A. Well, I was—I don't recollect we had any special talk about the land after that day until we made the final proof or not. I don't think we did.

Q. And between those times you are confident you never had any talk with Wells about selling it?

A. No, sir; I did not.

Q. Or with Pritchard?

A. I didn't know Pritchard at that time at all.

Q. Or with Kinkaid? A. No, sir.

Q. Or with Mr. Palmer? A. No, sir.

Q. Or Mr. Sweet? A. No, sir.

Q. Or Mr. Steunenberg? A. No, sir.

Q. Did you have a talk with anybody. Mr. Stephenson, relative to selling this land—

A. No, sir.

Q. —prior to the time that you had your final receipt and went up for the express purpose of selling it?

A. No, not after talking with Wells the first time.

Q. And the time you talked with Wells, the first time, is the one you have told us about when nothing was said about your selling or anybody buying except that he told you that there would be someone there to buy the land in the near future?

A. Yes; he said there would be someone there to

(Testimony of Martin S. Stephenson.)

buy the land in the future and we would get near about \$250.

Q. If you wanted to sell to that purchaser?

A. Yes, sir.

Q. Now, what did he say with reference to that—that there would be someone there to buy at that price if you wanted to sell at that price or—

A. No, he said there would be somebody in that would buy it and I would get about \$250.

Q. And that you didn't agree to?

A. No, sir.

Q. And you had no other talk with Wells at all in reference to selling the land to him or to anybody else until after final proof? A. No, sir.

Q. And you never had any talk with anybody else other than Wells until after final proof?

A. No, sir.

Q. So that as a matter of fact at the time you filed on this land you had not sold it at all, had you?

A. No, sir.

Q. You hadn't entered into any agreement to sell it? A. No, sir.

Q. And you were not acting for Wells nor for some company that he was telling you was going to come in making that entry? A. No, sir.

Q. And you were making the entry for your sole benefit, yourself, were you not?

A. Yes, sir, I was making it for what money we could get out of it.

Q. And there was nobody interested in it but you?

A. That is all.

Q. And that is true up to and after the time you made your final proof? A. Yes, sir.

(Testimony of Martin S. Stephenson.)

Q. Do you remember that your claim was held up and final receipt was not issued to you at the time you made final proof?

A. Yes, sir. Well, I don't recollect of it being held up. I don't know about that. But Wells told me it might be some time before we would get a final receipt.

Q. Now, you made your final proof, or offered it in the land office, on March 14, 1902, and the final receipt was not issued to you until July 18, 1902, about four months afterwards?

A. Yes, sir, I know it was some time before we got it.

Q. Now, was it after you got your final receipt that you went to Pritchard and was paid the money by him?

A. Yes, sir.

Q. You didn't go to Pritchard's office or sign anything or do anything at the time you made your final proof then?

A. No, at the time we made the final proof, I don't think we signed anything over.

Q. When you say it was a day or two afterwards, that you went to Pritchard's and received the money—

A. Well, that was after we got the final receipt.

Q. After you got the final receipt?

A. Yes, sir.

Q. So that it would have been about four months after you made your final proof?

A. Well, of course I figure the final receipt the final proof. We didn't have it until we got the final receipt.

Testimony of **Martin S. Stephenson.**)

Q. So when you said you went there the day after you made the final proof you meant the day after receiving final receipt?

A. Yes, the day after receiving final receipt.

Q. Now, do you remember whether they gave you, when you paid in the money, a temporary receipt?

A. Yes, sir.

Q. You didn't go up there with that?

A. No, sir.

Q. Did you keep that?

A. Yes, sir, I believe we have it now.

Q. So that when you offered your final proof and paid in the \$412 they gave you this temporary receipt? A. Yes, sir.

Q. Then nothing further was done until after the final receipt was issued to you?

A. Yes, after we got the final receipt.

Q. And then it was a day or two or a short time after that?

A. I believe it was the next day afterwards.

Q. That you went to Pritchard's office?

A. Yes, sir.

Q. And executed a paper of some kind and was paid the money you have testified to?

A. Yes, sir.

Q. Now, taking up the question again about when you offered to sell: You have testified, Mr. Stephenson, that you had never agreed to sell or entered into a contract to sell until after final proof.

A. Yes, sir.

Q. You mean by that after final receipt?

A. After we got the final receipt.

Q. So that from the time you paid in the money,

(Testimony of Martin S. Stephenson.)

between that time and the time final receipt was issued to you you had not entered into any agreement to sell?

A. No, sir. I could have sold it to anybody just as well as to them. There was no paper signed or nothing.

Q. Well, now, was there any agreement that was not in writing? An agreement could be just as well orally as in writing, you know. Was there any oral agreement by which you had agreed to sell it to anybody? A. No.

Q. And there was no reason why you could not have sold it to anybody else without violating any agreement, either oral or written, was there?

A. Why, it wouldn't have—they couldn't have done anything. Of course, a man really knew where the money was coming from, because he had told me it didn't make any difference, I needn't worry about it, the money would be there.

Q. No, but I am talking about your selling the land. A. Oh, selling.

Q. Suppose you had sold your land.

A. Well, I could have sold it to anybody else, yes.

Q. After you had made your final proof and paid in the money?

A. I could have sold it to anybody.

Q. Without violating any written or oral agreement?

A. Yes, sir; I don't believe there had been anything signed to the contrary.

Q. No. You know what I mean by the word "oral"—a verbal agreement.

A. Well, verbal agreement. No, there was no

(Testimony of Martin S. Stephenson.)

verbal agreement or anything of that kind but what I could have sold it to anybody.

Q. If you had sold to someone else other than the people Mr. Wells was working with you would have felt under obligations, I suppose, to pay him back the \$412.50 that he advanced? A. Yes, sir.

Q. But you had the absolute right to sell to whom you pleased and repay him or sell to his company and get the balance that was coming to you?

A. Yes, sir.

Q. Did you know at the time that you filed upon this land who you were going to sell to?

A. No, sir.

Q. Did you know at the time you filed on the land that you would sell it to anybody?

A. No, sir, I didn't know it.

Q. Did you know at the time you filed upon this land that you were going to convey it or sell it to John I. Wells or anybody that he represented?

A. No, I didn't know that I would.

Q. Had you any thought on that subject except that if you couldn't sell it for more you would let it go for the \$650?

A. I didn't try to sell it for more.

Q. I say, had you any thought at the time you filed on the land other than that if you couldn't get any more for it you would sell it to the customer that Wells had assured you would be there?

A. Yes, of course I really expected to sell it to whoever Wells would bring around.

Q. Because you didn't know of anybody else?

A. I didn't know of anybody else, and he said there would be a company in later on.

Q. So that, as I understand your testimony, it

(Testimony of Martin S. Stephenson.)

amounts to this, that you entered this timber and stone claim with the expectation that there would be market for it and that you could sell it at a profit?

A. Yes, sir.

Q. And you filed upon the land with no agreement of any kind other than that expectation based upon what Mr. Wells had told you?

A. That is all, that there would be a man in later to buy it.

Q. At the time you made your filing and at the time you made your final proof and up to the time your final receipt was obtained you never obligated yourself in any manner to convey this land to John I. Wells or to any person that he should direct or to any other person whatsoever? A. No, sir.

Q. Now, it is charged in the complaint in this action we are trying, Mr. Stephenson, which is entitled the United States of America against the Barber Lumber Company, James T. Barber, Sumner G. Moon, A. E. Palmer, William Sweet, Horace Rand and others, that you made this timber and stone entry at the request and for the benefit of these defendants and at the request and for the benefit of Frank Steunenber*g* of John I. Wells. Is that true or false?

A. I had never heard anything of this Barber Lumber Company at all. I didn't know there was such a company.

Q. And there didn't anybody else, because there wasn't such a company until thereafter; but the question I am asking you is this: It is charged that you made this entry at the request and for the benefit of the Barber Lumber Company and other defendants or some of them. Now, was that true as to any of the defendants?

(Testimony of Martin S. Stephenson.)

A. I made it for my own benefit.

Q. Did you make it at the request of anybody else?

A. No, I can't say that I did.

Q. Or for the benefit of anybody else?

A. No, sir.

Q. And it is also charged in this complaint in this action we are trying that you entered this land at the request and for the benefit of the defendants under an agreement which you made with the defendants that you would make the entry for them and that you would then go to the land office and swear to what you knew to be absolutely false, and that you would do that at their request and at their solicitation and for their benefit. Is that allegation true or false?

A. It is false.

Q. And it is charged in this complaint that, pursuant to that agreement and conspiracy to defraud the United States which it is alleged you were a party to, you did go to the land office and at the land office you testified to what you knew to be false. Is that allegation true or not?

A. No, sir, it is not true.

Q. Did you, when you testified before the land office, testify honestly and fairly?

A. Yes, sir.

Q. Were the statements you made at the land office true and correct?

A. Yes, sir.

Q. Were you at any time requested or solicited by any of the defendants that I have named, or by Governor Steunenberg or John I. Wells, or any person to go to the land office and testify falsely?

A. No, sir.

Q. Did you go to the land office and testify falsely?

A. No, sir.

Q. Did you enter into any agreement or con-

(Testimony of Martin S. Stephenson.)

spiracy with the defendants or with Wells or Steunenberg or any of them for the purpose of defrauding the United States? A. No, sir.

Q. Did you know of any agreement between the defendants for the purpose of defrauding the United States? A. No, sir, I didn't know of any.

Q. At the time you made your final proof you were asked this question: "What do you expect to do with this land and the lumber on it when you get title to it?" And you answered: "I am making the entry as an investment. I expect to sell to best advantage when I can. I have no present plans of disposal." A. Yes, sir.

Q. That was absolutely true, was it not?

A. Yes, sir.

Q. And was true at that time and is true now?

A. Yes, sir.

Q. Question No. 13: "Do you know of any capitalist or company which is offering to purchase timber land in the vicinity of this entry? If so, who are they and how did you know of them?" Answer: "No, sir." That was true at that time, was it not?

A. Yes, sir.

Q. Question No. 14: "Has any person offered to purchase this land after you acquired title? If so, who and for what amount?" And you answered: "No, sir." That was correct, was it not?

A. Yes, sir.

Q. Question No. 16: "Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" Answer: Yes, sir." That was true at the time, was it not?

A. Yes, sir.

(Testimony of Martin S. Stephenson.)

Q. Question No. 17: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer: "I got it differently, part out of the livery business and part from freighting. I borrowed none. Some since first of year and some longer." Was that statement true at the time you made it, Mr. Stephenson?

A. Yes, I earned some from the barn and some from freighting, and might have borrowed some from the Capital State Bank, and then there was money gave to me.

Q. Well, what money was given to you was given to you on the strength of your credit and was yours as though you had earned it?

A. Yes, sir, it was mine the same as the balance.

Q. That is the way you understood it at the time?

A. Yes, sir, there couldn't anybody have come to me and taken it or done nothing.

Q. When a person has credit and borrows money it is their money, is it not? A. Yes, sir.

Q. The same as if a person goes to the bank and borrows money on a note: It is not the bank's money after it is borrowed once. And that statement is as you understood it at the time?

A. Yes, sir.

Q. So you considered at that time in answering the question the way you did that the money which you received from Wells was an advancement to you or a loan to you or money given to you on the strength of your credit and was your money when handed to you?

A. Well, there was nothing said about it when he

(Testimony of Martin S. Stephenson.)

handed it to me. He just handed me the envelope with the money in it and I put it in my pocket, and what could I do? That was my money. If I hand you an envelope with a lot of bills in it and say, "This is yours," why, it would be yours.

Q. Well, that would surely be true if it was part payment on property you had?

A. Yes.

Q. And that is what it was considered here, was it not? A. Well, there was nothing said.

Q. No, but that is the way you considered it and the way they considered it and the way it was finally settled?

A. The way it was finally settled, and of course that is the way I was to believe.

Q. That they were buying your claim and paying you part and they would pay you the balance when you got final receipt. That is the way you understood it at the time, is it not?

A. Well, that is the way they all understood it, I suppose.

Q. Well, that is the way you settled?

A. Yes, that is the way we finally settled on it.

Q. So that money paid you that way was of course your own money? A. Yes, sir.

Q. And you so considered it in answering that question? A. Yes, sir.

Q. That was long after you had made your original filing, of course? A. Yes.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Stephenson, you have answered a lot of questions in which Mr. Bundy has prefaced his re-

(Testimony of Martin S. Stephenson.)

marks by referring to \$650. Did Mr. John I. Wells ever mention the sum of \$650 to you at any time?

A. Well, no, not exactly \$650.

Q. Now, I think you testified in your examination in chief that the day you made your final proof you went to John I. Wells' office to get the money with which to make final proof. Is that correct?

A. I don't think I testified that I went there to get the money. I went to his office.

Q. What did you go there for?

A. He told me to come there.

Q. Well, what did you go there for?

A. He told me to come up there.

Q. Well, was that the only reason you went there?

A. I went there to see what there was to do or anything about it.

Q. When you went there, what did he say to you?

A. He told me to wait a while, that he would have to go to the bank.

Q. Didn't you tell him you wanted the money?

A. I did not.

Q. Did you know you were going to prove up?

A. Yes, sir.

Q. Did you have your own money to prove up with?

A. Yes, sir, I had more than enough to prove up.

Q. Where did you have it?

A. I had it in the bank.

Q. Didn't you take the money John I. Wells gave you and go directly to the land office and pay that money in there, sir?

A. I went to the land office and used the money

(Testimony of Martin S. Stephenson.)

yes.

Q. That he gave you?

A. I don't know as I used it all, no.

Q. He gave you four hundred and some odd dollars, didn't he?

A. Yes, something over \$400.

Q. And you took that four hundred and some odd dollars to the land office and paid for this land, didn't you?

A. Before I went in I put it in my pocketbook, with other money.

Q. And is that the way you explain you had that money for a year?

A. Well, I don't know as I explained I had it for a year.

Q. Didn't you know you were not telling the truth when you went to the land office and swore that you had had that money that you paid in to the land office for a year?

A. I don't consider that a man in business would have any certain piece of money a year.

Q. You were asked where you got that money with which you paid for the land. "Where did you get the money with which you pay for this land and how long have had the same in your actual possession?" How long had you had the same in your actual possession?

A. Well, I couldn't say how long.

Q. Had you had it an hour?

A. I suppose I had had some of it probably thirty days.

(Testimony of Martin S. Stephenson.)

Q. Had you had the money from Wells an hour?

A. Well, I am not speaking from Wells altogether exactly.

Q. I am speaking from Wells, though.

A. Well, I don't consider I used all the money from Wells. I had other money in my pocket that I could use if I saw fit.

Q. Didn't Wells give you the money to make final proof with?

A. He gave me something over \$400.

Q. What did he give it to you for? To make final proof, was it not? A. He didn't say.

Q. Didn't he tell you he would give you that money before you went up there to look at this land?

A. No, sir.

Q. Didn't you testify to that here a few minutes ago? A. No, sir.

Q. Didn't you testify here a few minutes ago, that he told you he would give you the money, and that if he had not told you that you would not have located on this land?

A. No, sir. He told me not to worry, I would get the money all right.

Q. Well, what difference is that from what I have stated to you?

A. Well, there is quite a big difference.

Q. And then you didn't worry and he sent for you and he gave you the money to make your final proof?

A. He gave me something over \$400, and I put it in my pocketbook and went and made final proof.

(Testimony of Martin S. Stephenson.)

Q. And went right from his office to make final proof? A. Yes, I think so.

Q. And still you had had that money over a year and had earned part of from running a truck wagon and in the livery business, and you hadn't borrowed any of it?

A. I don't think I had borrowed a cent of it. I might have borrowed some money from the Capital State Bank if I needed any.

Q. Did you consider that Wells gave you that money? A. He did give it to me, yes, sir.

Q. As a present?

A. Well, it makes no difference, as a present or not. There was nothing said to the contrary. He could have whistled for the money, he couldn't have got it.

Q. Did you ever intend to pay him the money?

A. No, sir, I didn't intend to pay him the money.

Q. You never intended to pay him?

A. I intended whenever he brought the man around to sell the land to him.

Q. As a matter of fact, you intended to give him the land from the time he first spoke to you about it, didn't you?

A. He told me there would be a man around to buy the land, or a company.

Q. And you intended to convey it to the man he would bring there?

A. Well, if I didn't do no better, of course.

Q. Was there anything said about whether they would do better or not at that time?

(Testimony of Martin S. Stephenson.)

A. Well, there was some people buying land and putting in little sawmills at that time.

Q. Why did you suppose John I. Wells was going to hand you \$400 for you to take up a piece of land if there wasn't anything in it for him?

A. Well, I wasn't supposing anything about it.

Q. Were you supposed to be a lunatic?

A. I didn't ask no questions at all.

Q. You didn't? A. No, sir.

Q. Wells came to you and hunted you up in the first instance, didn't he?

A. When we first spoke about the land?

Q. Yes. A. Yes.

Q. You didn't send for him; he came to see you, is that right?

A. Charles Wilmott fetched him down and introduced him.

Q. And it was from that introduction that you were taken up and shown this land? A. Yes.

Q. And the proffer made that you needn't worry about it, I will get the money for you if you need it, is that it?

Mr. BUNDY.—I object to that as a misstatement of the evidence of the witness. I object to the words "I will get the money for you," for he didn't say that.

Q. What did you understand him to mean, that you needn't worry about the money?

A. I understood that to mean that I would get the money, that I needn't worry about the money.

Q. And you would get it through Wells?

(Testimony of Martin S. Stephenson.)

A. He didn't say who would give me the money.

Q. How did you suppose anybody else was going to bring it to you, if you had no conversation with anybody else but Wells about this?

A. I supposed he was a man that handled money and would know that I would get this money.

Q. And you expected him to bring it to you?

A. No, I didn't know whether Wells or somebody else would bring it.

Q. Well, you expected him to bring it or send it to you? A. I expected I would get the money.

Q. Well, did you expect it to fall from Heaven or how did you expect it to come?

A. Well, I have had some pretty near from Heaven, but not exactly that way.

Q. How did you expect to get the money from Wells' conversation with you concerning getting this money?

A. Well, I really expected that I would dig the money up out of my own pocket, and if a company come in I would get more out of it than what I had any talk about it what I would get from Wells.

Q. Didn't you say here in your examination a few minutes ago that if it hadn't been that he had given you to understand you need not worry about the money you would not have entered this land?

A. Well, that is the way he told me—

Q. Answer the question. (Last question read.)

A. Yes, because I wouldn't have known anybody else to have sold to.

Q. That is not a direct answer. I will ask the

(Testimony of Martin S. Stephenson.)

stenographer to read the question again. (Last question read.)

A. Well, certainly.

Q. Certainly what?

A. That I wouldn't have entered the land.

Q. You would have entered it?

A. I would not.

Q. You would not? A. No, sir.

Q. Then you expected Wells to furnish you the money with which to make your final proof before you went up there to look at this land, did you not?

A. Well, no, I don't know whether—I didn't really think it would be Wells, I supposed it would be some man, but I didn't know who.

Q. Well, somebody through Wells, then?

A. Well, of course, I supposed it would be somebody that would see that the money come.

Q. What somebody did you expect was going to attend to this for you?

A. I didn't know. Wells was a new man in the country and I didn't know whether it would be him or somebody else. I didn't know who it was, and I didn't worry.

Q. Were you not looking for it to come through Wells?

A. I couldn't say that I was.

Q. Who else did you expect to send it to you—somebody Wells represented?

A. I supposed it would be somebody he represented, yes.

Q. And the only man you had any talk with about

(Testimony of Martin S. Stephenson.)

being furnished this money with which to make final proof was Wells, was it not?

Mr. BUNDY.—I object to that as a misstatement of the witness' evidence, as he has not said that anyone was going to furnish any money.

(Last question read.)

Q. Was it?

A. He was the only man that I had ever talked to, but he didn't say he would furnish the money or who would.

Q. What did he say?

A. He said I needn't worry about the money.

Q. What did you understand by that?

A. Well, I understood I needn't worry about the money, that I would get it, and I knowed if he didn't furnish no money or anyone else I had it.

Q. Is that what you understood Wells to mean, that he knew you had it?

A. Well, I think he did know that I had it.

Q. Do you think that is what he meant?

A. Well, I don't know as it was, no. I supposed I would get this money.

Q. Where from?

A. Well, I didn't know who from. He said not to worry about the money.

Q. Who did you expect to attend to getting it for you?

A. Well, now, I don't—it never entered my mind, because I supposed it would come through somebody.

Q. Who did you get the money from?

A. I can't say who I got it from.

(Testimony of Martin S. Stephenson.)

Q. Who handed you the envelope with the money in it?

A. Mr. Wells handed me in an envelope something over \$400, and I put it in my pocketbook with the balance of my money.

Q. And you went there and you didn't tell him you wanted any money with which to make final proof, did you?

A. No, sir, I didn't tell him I wanted it.

Q. But he said on that occasion, "I haven't got the money here, I will have to go out and get it," and he went to the bank and did get it, did he?

A. After I got in there he says, "Wait a minute, I will have to go to the bank and get some money."

Q. What did you suppose he wanted to do that for?

A. Well, he made me a present, the way he did do. It was very nice of him.

Q. Then he just gave you \$412?

A. Yes, sir.

Q. And you considered that a present?

A. I didn't give him a note for it or nothing.

Q. You thought he had given you that as a present, is that correct?

A. Well, there was nothing else said about it.

Q. And you were not under any obligations to pay it back to him? A. No, sir, I was not.

Q. You were not under any obligations to deed him your land?

A. No, sir, I had signed nothing at all.

Q. But I am not speaking about signing, but about any moral obligation to deed him the land.

(Testimony of Martin S. Stephenson.)

A. I hadn't signed nothing.

Q. If you hadn't made any contract with him whatever to sell him those lands, you didn't intend to convey him the land, then, did you?

A. Well, if he would bring a man to me that I could sell the land to I intended to sell it. That is what I took it up for.

Q. Did you think that was what that \$400 was for? A. For this land?

Q. Yes, and the payment for the land.

A. Well, I expected if I sold this land to the company that would come out of the land.

Q. I thought you said a moment ago you thought it was a present to you from Mr. Wells?

A. Well, I had given him no note.

Q. Didn't you say you thought that was a present from John I. Wells?

A. I told you I had given him no note and made no contract to give him anything back.

Q. I will ask you again, didn't you tell me a few minutes ago that you took that as a present from Wells?

A. Yes, I took it as a present from him.

Q. And you didn't expect to repay it?

A. If I made a sale to the company I expected it to be counted out.

Q. If you sold it to somebody else you didn't expect to repay it?

A. I wouldn't have had to, no.

Q. You didn't intend to, did you?

A. Well, it would just have been up to me whether

(Testimony of Martin S. Stephenson.)

I would or not.

Q. You didn't feel under any moral obligation to do it?

A. I was not under any obligations to him, no.

Q. And you say you put this money in your pocketbook with other money you had?

A. Yes, sir.

Q. Do you know how much money you had in your pocketbook at that time?

A. No, sir, I couldn't tell exactly.

Q. Did you have \$25?

A. Twenty-five dollars?

Q. Yes.

A. Well, I had all the way from \$100 to \$800 in my pocketbook, as high as a thousand.

Q. I mean on this occasion?

A. I couldn't tell you at this time whether I had \$2,500 or a thousand dollars. I have had over a thousand dollars in my pocketbook during different times. You can go to the Capitol State Bank and see where I have drawn out money.

Q. There was nothing said by John I. Wells about this money being for you to make your final proof with, was there? A. There was not.

Q. And you didn't tell him you wanted any money to make your final proof, did you?

A. I did not.

Q. And he had just written you a note to come up to see him—notified you to come to see him, is that right?

A. He told me—I got a letter from the land office

(Testimony of Martin S. Stephenson.)

that the filing had come back with the receipt and filing, and I see Wells and he says "Come up to the office."

Q. You told him that you had gotten a notice that you were to make your final proof?

A. Yes.

Q. And he told you to come to the office?

A. He told me to come to the office.

Q. Did he write you a letter to that effect?

A. No, sir.

Q. You met him on the street?

A. I think I did.

Q. And he didn't tell you what you were to come to the office for?

A. No, just told me to come to the office.

Q. And you didn't know what you were going there for? A. No, I didn't know.

Q. And you went in to see Mr. Wells, and when you went in there you didn't say anything about money, did you? A. I did not.

Q. But the conversation was opened by Wells saying, "I haven't got the money, I will have to go out and get it at the bank," is that correct?

A. Yes, sir.

Q. And then he came back and handed you an envelope that contained four hundred and some odd dollars, is that correct? A. Yes, sir.

Q. And didn't tell you what you were to do with it? A. No, sir.

Q. And you didn't know what you were to do with it?

(Testimony of Martin S. Stephenson.)

A. Well, I know what I did do with it.

Q. You put it in your pocket?

A. I put it in my pocket.

Q. And that is all that you did with it?

A. Well, I haven't got it there now, I have used it.

Q. And then that day that you went to the land office and paid this four hundred and some odd dollars in, was it that day or the next day that you went back and saw Pritchard and Wells and signed some paper?

A. Well, now, I think it was when we got the final receipt.

Q. Well, when did you begin to think that?

A. That it was when I got the final receipt?

Q. Yes.

A. Well, I will tell you. This is something that is new to me. Asking me these questions is something I haven't been into. And when I said about—I suppose it was a final receipt when we made the final filing or finished filing on the land at the land office.

Q. I don't think my question had anything to do with the final receipt. I asked you about the time that you made your final proof and paid the money, four hundred and some odd dollars, into the land office. Could there be anything about that that you don't understand?

A. Well, the final receipt is the one I supposed you meant. When we got the final receipt.

(Testimony of Martin S. Stephenson.)

Q. Did you get the final receipt the day you paid the \$412 in the land office?

A. No, we just got a copy, just a receipt for the money, just a temporary receipt.

Q. And you mean to say now that you didn't go to Wells' and Pritchard's office the time you paid the \$400 into the land office?

A. I was there before.

Q. You were there that day before you went to the land office? A. Yes, sir.

Q. Didn't you go back there that day or the next day? A. No, sir.

Q. Then you change your testimony from what you testified to here in your examination in chief, do you?

A. Well, as I tell you, I understood when we got the final receipt. That is the way I understood you a while ago.

Q. I didn't say anything about final receipt, but the time you paid the \$412 into the Land Office. I never mentioned a receipt.

A. Well, I understood it was for the final receipt, and I think it was the next day we went to their office.

Q. Now, when was it that you went to Wells' office and made the deed that you have referred to here as the first deed?

A. I don't know whether I made the first deed—or the second deed. I don't know whether those *deed* were made. I think the last one was a deed, but the first one I don't know whether it was a

(Testimony of Martin S. Stephenson.)

deed or contract or what it was.

Q. Well, the first paper, then, that you signed. When was that that you went to Wells' office?

A. Well, that was about the time we filed, or afterwards, between filing and proving up.

Q. Think again. Are you certain about that?

A. No, I am not certain about any of these—about the most of these things, because I never stopped to keep it in my mind, not thinking I would have to come up before anybody like this.

Q. Didn't you go back to the office of Wells after you had paid that \$400 into the Land Office and took your receipt and then signed an agreement or a deed?

A. No, it was after we got the final receipt that we went back—

Q. I am not talking about final receipt; I am asking you about the day in March that you made your final proof.

A. I don't think we went back to his office, no.

Q. Are you sure of that?

A. I can't say that, I am sure; I say I don't think, because I don't recollect.

An adjournment was thereupon taken until March 27, 1909, at 10:00 o'clock A. M.

Reno, Nevada, March 27, 1909,

at 10:00 o'clock A. M.

MARTIN S. STEPHENSON on the stand.

Parties met pursuant to adjournment. Present, as noted on March 26, 1909.

(Testimony of Martin S. Stephenson.)

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Stephenson, you said last night in answer to a question that you expected to dig up the money to pay for this land if you didn't make other arrangements? A. Yes, sir.

Q. Now, you hadn't had any talk with Mr. Wells, as I understand it, from the time he first spoke to you before filing and up to the time that he actually gave you this money? I mean you had had no talk with him about this land or the money?

A. No, we had no talk about the money.

Q. And that was the day you were to prove up that he gave you the money, was it?

A. Yes, sir.

Q. And you didn't go to him?

A. I went to the office.

Q. Well, that was after he had told you?

A. Yes.

Q. You didn't go there except at his suggestion?

A. No.

Q. You expected to make final proof on that day, of course? A. Yes, sir.

Q. And if Mr. Wells had not sent for you to come up you expected to use your own money and prove up yourself and expected to take it out of your business? A. Yes, sir.

Q. You said, too, that you would not have entered it except for what Wells told you before filing, to the effect that there was going to be a purchaser. Do you mean by that that you would not have entered it

(Testimony of Martin S. Stephenson.)

unless you had reason to expect a chance to sell it?

A. Well, yes, that there was a chance.

Q. That is what you were entering it for?

A. That is what I was entering it for.

Q. And if you hadn't been told there would be an opportunity to sell it you would not have made the entry? A. No, sir.

Q. Do you remember at the time Mr. Wells talked with you before filing with reference to there being a probable purchaser for this land of his telling you it was proposed to build a railroad up through there, and that there was a good deal of talk about that at the time?

A. Well, I believe there was talk of a railroad.

Q. The papers were full of it?

A. Yes, there was talk of a railroad going up Grimes Creek.

Q. There was a good deal of talk there at that time that as soon as there was a railroad up there there would be purchasers for the land?

A. Yes, I think there was quite a bit of talk, and in the newspapers, about the railroad.

Q. Now, don't you recall that Wells, at the time he first spoke to you, mentioned the fact of there being a proposed railroad built up there, and when that railroad was built that land would all be in the market?

A. Well, I wouldn't say for sure that he did, but it runs in my mind that he did say there was going to be a railroad put up through there.

Q. Do you remember who it was that was pro-

(Testimony of Martin S. Stephenson.)

moting that railroad or talking about it—the papers talking about it? A. No, I do not.

Mr. BUNDY.—That is all.

Mr. GORDON.—That is all.

The hearing at Reno, Nevada, was thereupon finally adjourned.

United States of America,

District of Idaho,—ss.

I, John P. Doyle, duly appointed Special Examiner in Chancery by the Circuit Court of the United States for the District of Idaho, do hereby certify that on the days mentioned in the foregoing proceedings and depositions in this cause, I was attended by the counsel and witnesses aforesaid, at No. 417 Clay Peters building, Reno, Washoe County, State of Nevada; that said witnesses, to wit, Willard C. Austin, Lettie L. Stephenson and Martin S. Stephenson, were each duly sworn by me according to law, as witnesses in the suit or cause in the caption hereto mentioned, and there examined orally before me by counsel; that the examination and depositions of said witnesses were severally stenographically written down by me and afterwards typewritten; that such examinations were had in the presence of the solicitors of the several parties hereto; and that the signatures of the witnesses hereto were waived by stipulation of counsel.

I further certify that the foregoing is a true statement of all the proceedings had before me on the days mentioned, in the matter of taking testimony herein,

and that complainant's exhibits as identified herein, were duly introduced in evidence, and withdrawn from the files by counsel for complainant with the consent of opposing counsel.

JOHN P. DOYLE,
Special Examiner in Chancery.

[Endorsed]: Filed June 18, 1909. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, for the
District of Idaho.*

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BARBER LUMBER COMPANY,

Defendant.

[Proceeding Had April 1, 1909.]

Los Angeles, April 1, 1909.

Met pursuant to the stipulation of counsel of record in the above-entitled case, the delay being due to the non-appearance of witnesses on March 31; there being present for the complainant Messrs. Peyton Gordon and Charles A. Keigwin, special assistants to the Attorney General, and for the defendants, Mr. C. T. Bundy.

[**Testimony of A. G. Foster, on Behalf of the Complainant.**]

Whereupon, A. G. FOSTER, a witness produced on behalf of the United States, having been first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is A. G. Foster?

A. A. G. Foster.

Q. Where do you reside?

A. Tacoma, State of Washington.

Q. And how long have you resided there?

A. I have lived there about twenty years.

Q. What is your occupation?

A. Well, my occupation is in the manufacturing of lumber.

Q. And what was your occupation in 1902?

A. Well, I was manufacturing lumber. I was incidentally in the United States Senate.

Q. Senator from the State of Washington?

A. Yes, senator from the State of Washington.

Q. For how long were you senator?

A. Six years.

Q. When did your term begin?

A. Began in 1899 and ended in 1905.

Q. Did you know ex-Governor Frank Steunenberg during that time?

A. Well, so far as knowing him intimately, no;

(Testimony of A. G. Foster.)

I never did know him intimately. The first time I ever saw him, I saw him in Tacoma, Washington. He came up and introduced himself to me. And I suppose you would like to know—

Q. Give all that occurred there. When was that, Senator?

A. Well, I should think it was in about 1902.

Q. What month? Do you remember?

A. I could not tell you.

Q. Do you remember whether it was in the summer or not?

A. Well, it was during the vacation of the United States Senate, so that it must have been, probably, in the summer of the short session.

Q. Proceed.

A. And he brought up, before he got through, his business in Idaho, entering lands; and he heard, he said, that Mr. Sharp—

Q. Mr. Lewis Sharp?

A. Lewis Sharp, who was an appointee of mine.

Q. Appointee as a special agent for the Interior department?

A. I was going to say, as inspector or special agent of the land department. And I told him that I probably was responsible for his appointment; while I didn't have the appointing power, I was probably responsible.

Q. You had recommended him, had you?

A. I had recommended him, he being a son of an old friend of mine who was in the legislature, State senator, when I was elected, and I thought I would

(Testimony of A. G. Foster.)

favor him.

Q. Well, now, what was the governor's business with you at that time?

A. Well, he didn't seem to have much business with me. He said, talking about his entries, that he was having some trouble about his entries.

Q. Did he tell you what the entries were?

A. I don't think he did. I don't remember that he did.

Q. Were the entries in the Boise basin, Idaho?

A. Well, they were over near Boise. That is as near as I can tell you. I don't know anything about Boise basin, and if he told me Boise basin I could not remember it because I never heard of that before.

Q. Do you remember how many entries he had reference to?

A. Well, I should judge he had fifteen or twenty entries.

Q. And were the names written on the list?

A. Yes; he had the names.

Q. Did he give you a copy of the names?

A. Well, I presume he did, but I don't know what I did with it.

Q. Do you remember any of the names that were on the list?

A. Well, after going over to the Grand Jury in Boise or over to the trial of Borah, it seems to me there was a man named Anderson on it.

Q. Arthur Anderson?

A. Arthur Anderson.

Q. Was that the first name on the list?

(Testimony of A. G. Foster.)

A. Well, it seems to me it was.

Q. If they were alphabetically arranged, it must have been? A. Yes; yes.

Q. Well, now, what did he want you to do, if anything, with reference to these claims?

A. Well, he wanted to have a fair show at his entries.

Q. Did he say anything about Sharp?

A. Nothing, only that it was to be placed before Sharp in a way that he would get a fair show. He was not after—he never made any intimations that he wanted Sharp to do the wrong thing, or anything of the kind, but he simply wanted Sharp to recognize him as a fair man. I should not have had all this talk with him, but he was governor of the State over there and a representative man, and that is how I came to listen to him at that time.

Q. And you say that was the first occasion of your meeting Governor Steunenberg?

A. Yes, that was, I think, the first.

Q. Did he ever come to see you again with reference to the matter? A. Yes; he came again.

Q. How long after the first time?

A. Well, not very long; some little intervening time.

Q. Well, tell us what took place on that occasion?

A. And he wanted me, then, to see Mr. Sharp. He wanted to have me see him; and, as I was going east within a day or two, I thought it would be nothing out of the way for him to see me, me to see him, so I telegraphed to him to meet me.

(Testimony of A. G. Foster.)

Q. Where did you telegraph him? Where did you address your telegram to?

A. I telegraphed him to Boise.

Q. Where did you tell him to meet you?

A. I told him to meet me in Spokane.

Q. Did you set a date for him to meet you?

A. Yes; yes. I wired him to meet me during the stoppage of the train, while the train was delayed. Going along, I would see him.

Q. And in response to that telegram did Mr. Sharp meet you?

A. Mr. Sharp came on. And he came on further; he came on to Sprague.

Q. Now, where did he meet you?

A. At Sprague. I telegraphed him to meet me in Spokane.

Q. Did he meet you on the train?

A. He met me on the train.

Q. And how far did he go with you?

A. He went to Spokane. That is about forty miles.

Q. Now, what did you say to Mr. Sharp?

A. Well, I asked Mr. Sharp then to get after the history of these matters, what was going on over there; that I had had my talk with the governor. And Mr. Sharp said that he had made some complaints and was going to make some others, and that there were bad entries and there were good entries in there. Well, I told him, "Anything that was bad, of course, that was enough; report bad; he could not report a bad entry good; he was government in-

(Testimony of A. G. Foster.)

spector. But," I says, "be sure they are bad; that is all. You want to make investigations in such a way that you know what you are about, for these things will all be brought up before courts and commissions and you want to know you are right."

Q. And then Mr. Sharp left you, I assume?

A. Yes; he left me there, and I think that is the last time I ever saw Mr. Sharp in connection with this thing.

Q. Did you give Mr. Sharp a letter to Mr. A. B. Campbell, of Spokane?

A. Very likely, for there is where the nut of the thing or the whole gist of it was. I was a candidate for re-election. Mr. Campbell was a pretty strong man over there, over in that part of the State, and I wanted Mr. Campbell's help. And the result was that I told—I presume I did. I don't remember what I did say in that letter, but I was after my politics; that was the main thing I was after. And I gave him a letter to Mr. Campbell, I presume. I don't know to-day as I did, but I presume I did.

Q. You sent him to Mr. Campbell, anyhow?

A. I did; yes.

Q. Told him to go down and see Mr. Campbell?

A. I told him to go and see Mr. Campbell.

Q. Well, did Governor Steunenberg tell you that Mr. Campbell was in any way interested, or how did you know that Sharp would see Mr. Campbell?

A. Yes; Steunenberg told me. That was his excuse for seeing me. Steunenberg told me that Campbell was— "One of your strong friends over there is interested in this matter." And hence the

(Testimony of A. G. Foster.)

action I took.

Q. And then did you receive a letter from Mr. Sharp concerning these matters, after that?

A. I might have received a letter from him. I don't recollect.

Q. Do you remember receiving a letter from Mr. Sharp asking you how he was to be paid his expenses on that trip to see you?

A. Well, there might have been something of that kind. I don't know.

Q. What is your best recollection of it?

A. Well, my best recollection is that probably I did.

Q. And did you send him to Campbell in response to that?

A. Well, I did; I probably did. I don't know where else he would get it, and I didn't know whether he would get it there or not. I told Sharp, though, to report on no cases that were questionable. So I supposed that was ended.

Q. Now, Senator, did you write any letters to the department with reference to this matter? I mean to the Secretary of the Interior or the Commissioner of the General Land Office?

A. I wrote the Commissioner of the General Land Office and probably gave him a list—sent him that list, or gave him a list, or something, and wished he would hold up those cases until I came on so I could investigate them.

Q. And was this letter written about the time that you had the conversation with Governor Steunenberg?

A. Well, some little time before that I talked with Steunenberg.

(Testimony of A. G. Foster.)

Q. Well, how long before?

A. Well, it must have been a month or two.

Q. And you received a reply from the acting commissioner, did you?

A. Yes, that he would accede to my wish.

Q. I wish you to identify this letter from W. A. Richards, acting commissioner, addressed to A. G. Foster, September 2d, 1902.

A. In which he says he will hold up those, or my wish will be complied with, or something of that kind?

Q. Yes, sir. A. Yes, sir, I identify it.

Q. Can you see your signature to the name of the letter, "A. B. Campbell," dated "October 27, 1902"?

A. Yes, sir.

Q. That is your signature?

A. I presume so. Yes.

Q. You sent that to Mr. A. B. Campbell, at Spokane, on or about the date it bears?

A. Yes, probably.

Mr. GORDON.—We offer in evidence the letter identified by the witness, A. G. Foster, on the official paper of the Department of the Interior, General Land Office, dated Washington, D. C., September 2, 1902, addressed "Hon. A. G. Foster, U. S. S., Tacoma, Washington, Sir: Referring to your letter of August 16th, 1902, asking that certain timber and stone entries therein mentioned, made at the Boise land office, be held in abeyance and no action taken thereon until you reach Washington in November, you are advised that your request will be complied with. Very respectfully, W. A. Richards, acting commissioner."

(Testimony of A. G. Foster.)

We also offer in evidence letter identified by the witness, A. G. Foster, written on the stationery of the United States Senate, dated, "Tacoma, Washington, October 27th, 1902. Mr. A. B. Campbell, 507 Empire State Building, Spokane, Washington. My dear Mr. Campbell: I have your favor of October, 21st, and hand you herewith a letter from the Acting Commissioner of the General Land Office Richards. This refers to the subject taken up by you in your letter, and is therefore self-explanatory. I wish to ask in this connection if it will be possible or convenient for you to call upon me here some time during the next week or ten days when we can go over this letter in detail and in a satisfactory way. Kindly return the department letter to me for my files. Yours very truly, A. G. Foster."

These letters are marked Complainant's Exhibit A. G. Foster, Number 1 and Number 2, respectively.

Q. Senator, in response to this letter from Mr. A. B. Campbell, did you go to Spokane?

A. I don't think so. I don't think I saw him after that on the subject. I don't think I did. If you could remind me of anything that would refresh my memory I might think of it. But I certainly don't recollect of seeing A. B. Campbell on that subject after that. And the next matter was, I must have seen him somewheres. At that time he gave to—I wanted to talk a little politics with him. And he gave me to understand that he was not interested in these kind of cases; he had nothing to do with these cases; he had been a friend of the governor's and tried to help him in some matters, but he had no interest whatever in it.

(Testimony of A. G. Foster.)

Q. You mean personal interest?

A. No personal interest.

Q. And by "the governor" you mean Governor Steunenberg?

A. Yes. Well, when I found that out I had no further interest in the case.

Q. Well, did you meet Mr. Campbell in New York shortly after that, just before he sailed for Europe?

A. I don't remember whether I did or not.

Q. With Governor Steunenberg and some other people?

A. I don't remember meeting them there. I don't remember meeting Governor Steunenberg in New York.

Q. Do you remember whether or not you met Mr. Barber and Mr. Moon with reference to this matter?

A. I never saw Mr. Barber or Mr. Moon in my life knowingly.

Q. Well, do you remember telling either Mr. Campbell or Governor Steunenberg that, as the people most interested in this matter were people from Wisconsin, why didn't they get their Wisconsin senators to take the matter up?

A. Well, very likely. I might have said so, but I don't remember it.

Q. Did you go to the department with reference to this matter?

A. As I was about to say, when I discovered that Campbell had no interest in there, I could pull no political strings on him, I dropped the case. When I went to Washington, I didn't go to the department, and I never did go there to ask them—or to speak to them upon the subject of these cases. So I never knew whatever became of them.

(Testimony of A. G. Foster.)

Q. Did Governor Steunenberg ever write to you about these matters?

A. I don't know whether he did or not. I don't remember. I looked all over my letters there at one time to try to find any letters, but I didn't find them.

Mr. GORDON.—That is all.

Cross-examination.

(By Mr. BUNDY.)

Q. Senator Foster, at the time you had this first talk with Governor Steunenberg at Tacoma, I think you said, you didn't understand that the governor had come there on purpose to see you on this matter?

A. Oh, I don't know anything about that. I had no idea of it at all.

Q. Well, from his conversation at the time, it was your understanding, at the time, that he was taking this up casually because he was there?

A. That was the idea. After talking with him he mentioned the fact that he was interested in some cases over in Idaho, and I didn't suppose that was what he came there to see about.

Q. So that the matter, as you understood it, came up the first time in an incidental or casual way?

A. Yes.

Q. Now, do you recall that the substance of that conversation with Governor Steunenberg was to the effect that a large number of timber and stone entries, which he desired to buy, were being held up for some reason, and the final receipts not issued, and the inquiry on the part of the governor was to find out, if possible, why they were being held up and as to whether or not any adverse reports had been made on them?

A. Well, he undoubtedly did say that there was

(Testimony of A. G. Foster.)

a large number, that is, there were a number of entries held up over there in the Boise country and he was interested in some of them. He didn't say all of them. And he wanted to loosen them up so that he could get his patents.

Q. Yes. That was the substance of it, was it not?

A. That was the substance of it.

Q. To find out—

A. To see if there was anything wrong with them.

Q. And don't you recall, or do you recall, that at that time he stated to you that he was unable to find that any adverse report had been made on them, but wanted to find out what the reason was that reports were not made on them?

A. Well, he didn't seem to know much about it. He seemed to fear that the reports might be against him, but he didn't seem to know.

Q. Do you recall, or did you ever know, that at that time, or at least up until some time in June, 1902, there was in force a general order suspending all timber and stone entries throughout Idaho and several other States?

A. Well, I don't remember the details of that. I know there was a general suspension of entries.

Q. What I am trying to direct my inquiry to, Senator, is this, as to whether or not Governor Steunenberg's request of you was to find out, if he could, through Mr. Sharp, what, if any, charges were being made against these timber and stone claims?

A. Well, I don't know as he requested me to find out. He requested me to see Sharp and have a talk with him, which probably would have led up to it, to find out if there was trouble there, and what it was about.

(Testimony of A. G. Foster.)

Q. Well, from what Governor Steunenberg said to you, did you think that he was requesting you, as senator, to do anything that was improper in the matter?

A. Why, no; no.

Q. From what he said to you, did it occur to you that Governor Steunenberg was making any improper entry?

A. No; no. I don't think that Steunenberg was. I thought, perhaps he was an attorney for some of those people over there some of those settlers.

Q. There was nothing said that would indicate any desire on the part of Governor Steunenberg to get improper claims allowed?

A. Oh, no. No; no. For, in fact, I asked him—I says, “Are these all good claims? Are they legitimate and clean claims?” And he said they were.

Q. During the next talk, or any talk with Governor Steunenberg, did he ever indicate any desire or make any request of you to assist him in covering up any improper claims or doing anything improper at all?

A. Nothing whatever. He never asked me to do anything in an improper manner.

Q. And from the talk you had with him there was nothing to indicate that he desired to do anything improper?

A. I should judge not. He certainly didn't make any intimation to me to that effect.

Q. You remember the name, I believe you said, of Arthur Anderson?

A. Yes, I remember it, because I saw the list over at Boise and that refreshed my memory on it.

Q. Well, do you remember how many of those claims there were on that list?

(Testimony of A. G. Foster.)

A. Well, there must have been, I should judge, fifteen or twenty of them.

Q. And was that at the first talk that he had with you that he showed you this list?

A. Well, I am not sure whether it was the first or second. It might have been the second.

Q. And the second one would have been somewhere in the summer of 1902?

A. Well, some time; yes.

Q. At the time you had the talk with Mr. Sharp, he told you, I understand, that he had made some adverse reports? A. Yes.

Q. And had made adverse reports on all those that he then knew were entitled to it?

A. Yes.

Q. And stated to you, I believe you said, that he was going to report on any others he found to be wrong?

A. He was going to report on them as he found them, as I told him that he must do.

Q. So that when you left Mr. Sharp, and so far as your influence was exerted, it was that he should report on all that were bad and refrain from reporting adversely on those that were good?

A. It was to report. As I understood it, it was to get the thing moving.

Q. And your purpose was to expedite some report on these claims, one way or the other?

A. Yes, yes.

Q. And when you left Mr. Sharp, it was with the understanding that he would report on them quickly?

A. Yes, sir.

Q. And report adversely on all that he thought were bad? A. Yes; as fast as he could.

(Testimony of A. G. Foster.)

Mr. BUNDY.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Senator, Governor Steunenberg didn't tell you that the titles that he had reference to, the validity of them was questioned?

A. Well, he said there were some contests, some contests.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BUNDY.)

Q. Do you remember now whether he said "contests" or "investigations"?

A. Well, I presume he said "contests." I have got it that way. Anyway, that there was trouble, might have been trouble in some of them.

Q. The reason I speak of this is that there was no contest at that time, but there had been adverse reports made on certain claims by Mr. Sharp. The contest came afterwards.

A. Well, I can't tell you.

Q. It might have been adverse reports that he mentioned? A. It might have been.

It is stipulated by and between counsel for the respective parties that the signature of this witness shall be dispensed with, subject to the right of either party to recall the witness at the expense of the United States for the correction of any errors in the transcription of his testimony concerning the correction of which counsel shall not be able to agree.

[**Testimony of Frank Lane, on Behalf of the Complainant.**]

And also FRANK LANE, a witness produced on behalf of the United States, who, having been first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Frank Lane?

A. Yes, sir.

Q. Where do you reside?

A. Well, I get my mail at Gardena. Gardena, California.

Q. What is your occupation?

A. Rancher.

Q. Do you own a ranch? A. Yes.

Q. How large a ranch? A. Ten acres.

Q. What was your occupation in April, 1902?

A. I think in 1902, I had just served my time in the guardship at the penitentiary. I don't think I was doing anything at that time, until I went to the mines. Part of the time I was in the mines in 1902.

Q. Where did you reside at that time?

A. Boise, Idaho.

Q. How long had you resided at Boise?

A. I think fifteen or sixteen years. Something like that.

Q. Were you a married man at that time?

A. Yes, sir.

Q. How long had you been married?

A. Oh, probably five or six years.

Q. Any children? A. One boy.

(Testimony of Frank Lane.)

Q. You took up a claim under the Timber and Stone Act in 1902, did you not?

A. Yes, sir.

Q. I show you timber and stone land sworn statement of Frank Lane, dated April, the 4th, 1902, and ask you if you signed that paper and filed it in the land office at Boise, Idaho, on or about that date?

A. I think I did, yes, sir.

Q. That is your signature, is it?

A. Yes, sir.

Q. I show you the non-mineral affidavit of Frank Lane, of the same date, and ask you if you signed that paper and filed it in the Boise, Idaho, land office?

A. Yes, sir.

Q. I show you the testimony of Frank Lane, given on final proof, dated July the 7th, 1902, and ask if you signed that paper?

A. I think so, yes, sir.

Q. And the cross-examination attached thereto. Did you sign that?

A. Yes; I think I did. It looks it.

Q. I show you deed, dated March 14th, 1903, made by Frank Lane and Frankie Lane, running to A. E. Palmer, consideration \$1,000, and ask you if you signed that deed?

A. I guess I did. It looks like my writing all right.

Q. Is that the signature of your wife, Frankie Lane? A. Yes, sir.

Q. And acknowledged the same before L. M. Pritchard? A. Yes.

Q. Who first spoke to you about taking up a claim under the Timber and Stone Act?

(Testimony of Frank Lane.)

A. I am not sure; but I think it was my brother.

Q. And what is your brother's name?

A. Will Lane, W. C.

Q. He ran a livery business at that time?

A. Yes, sir.

Q. And was afterwards sheriff, wasn't he?

A. Yes.

Q. And how long before you went to view the land, did your brother speak with you about it?

A. Well, he spoke to me the morning that I went, that I started on the trip. He telephoned me.

Q. Well, what did he say to you?

A. That there was a party going up there, and, as I was out of work, it would be a pretty good proposition for me and perhaps I would make something out of it sooner or later.

Q. And how long after he telephoned you did you start? A. Probably an hour or so.

Q. And the team came up and took you up?

A. Yes.

Q. And do you remember who was with that party?

A. No, I do not. I could if I would hear the names. I think Robinson was one.

Q. William Roberts?

A. Yes. Jim something.

Q. James Baker?

A. I remember him, because I put up for him.

Q. What do you mean by "put up for him"?

A. Well, fed him; let him have money to eat on part of the way.

(Testimony of Frank Lane.)

Q. Didn't he have money of his own?

A. Well, if he did I never saw any of it.

Q. And where did you go to view this land?
What place?

A. Placerville, north of Placerville. Just how far I don't know.

Q. Did you know Mr. John I. Wells, of Boise, at that time, a gentleman sitting here? A. Yes.

Q. Had you talked with him about the timber claims at that time? A. No; I hadn't.

Q. Did you know Mr. Patrick H. Downs at that time? A. No; I did not.

Q. Did you know Mr. John Kinkaid, the gentleman present here?

A. Not at that time; no, sir.

Q. And who located you on this land?

A. Downs.

Q. And did you pay him for locating you?

A. Well, I paid it to Mr. Wells and he paid it to him.

Q. Mr. John I. Wells?

A. Yes, and he paid it to him.

Q. Now, state what you did when you went to Placerville in relation to getting this property.

A. Well, I waded in snow up just a little bit under my coat-tail, up into the hills there, and we looked around over the timber claim, and showed the corners, and so on.

Q. Did you go over all the corners?

A. No; not all of them.

Q. Were you all located the same day, the four

(Testimony of Frank Lane.)

of you or the three of you?

A. Well, now, I am not sure about that.

Q. Did you go alone with Mr. Downs to be located?
A. No; no. There was four of us.

Q. And did Mr. Downs take you out and show you a claim and say, "This is your claim, Mr. Lane"?

A. Yes, sir.

Q. And you took that one?
A. Yes.

Q. Did he give you the numbers or description of it there at that time?

A. I think he did; I think he did.

Q. And did he tell you what to do with those numbers?

A. Well, I am not sure now; but it seems to me like he did tell me what to do.

Q. What did he tell you to do with them?

A. Well, I could not tell you.

Q. Tell you where to take them and have your papers made out?

A. I am not sure whether he did or not.

Q. Where did you take the numbers to have your papers made out?

A. I think to the land office. I am not certain now. This has been so long ago that I could not state just how it was.

Q. Now, didn't you go to Mr. Wells' office before you went to the land office to file them?

A. No. No, I did not. No.

Q. Who prepared this sworn statement for you that you have identified?

A. Well, I guess it must have been Mr. Wells.

(Testimony of Frank Lane.)

Q. John I. Wells?

A. It must have been. Well, now, if I went there I don't remember it. If I remembered, I would tell you so.

Q. Oh, sure.

A. Because I don't remember.

Q. And this notice of publication. That was also prepared by Mr. Wells, wasn't it?

A. Let me see. I don't know.

Q. (By Mr. BUNDY.) Do you know Mr. Wells' writing, Mr. Lane?

A. I am not sure that I would. I suppose it was. I would not say positively.

Q. (By Mr. GORDON.) And the non-mineral affidavit. Didn't Mr. Wells prepare that at the same time? A. I guess he did.

Q. Now, do you know how you happened to get into Mr. Wells' office to have those papers prepared?

A. I do not.

Q. Who told you to go there?

A. I do not. I don't remember.

Q. Don't you recollect now, when you came back, going into Mr. Wells' office and paying him the locating fee and then having these papers prepared?

A. I don't remember going in there. I guess, perhaps, I did go in there. I will say that I did.

Q. I don't want you to say anything that you don't remember.

A. Really, I don't remember. I don't remember going in there. You see this has been pretty nearly

(Testimony of Frank Lane.)

two years ago, and I don't remember a thing about it.

Q. Did Mr. John I. Wells introduce you at the land office?

A. I don't know, I am sure. I don't remember.

Q. Do you remember of him going with you to the land office when you made this filing?

A. No; I don't. I don't remember.

Q. I notice here the certificate of the register of the land office certifies that you were either personally known or had been satisfactorily identified by John I. Wells. Does that refresh your recollection to any extent as to whether or not Mr. Wells went to the land office with you?

A. No; it does not. I don't remember.

Q. Now, at the time you filed on this land, did you know of any market for timber claims?

A. No, sir; I did not.

Q. Did you know of any person who was buying timber claims? A. No, sir; I did not.

Q. Did you know of any persons who had sold timber claims to anyone? A. I did not.

Q. And in the course of several months you made your final proof? A. Yes, sir.

Q. Do you remember the occasion of making the final proof?

A. Yes; I remember that I made the proof.

Q. Now, do you remember when it was that you paid Mr. Wells the \$25 for Mr. Downs?

A. No; I don't remember the date or anything near it.

(Testimony of Frank Lane.)

Q. Well, was it after you sold your claim?

A. Well, I don't know. I could not say.

Q. What is your best recollection?

A. I think it was before, if I remember right. I wouldn't say certain, but I think it was before.

Q. Do you remember where you paid him that fee?

A. No, I do not.

Q. Do you remember distinctly paying Wells the \$25?

A. No; I do not. I don't remember. I know that I paid Wells, but just where it was or how it was I don't remember. I know I was to pay Downs his part of it, but just how it was and when it was I don't remember.

Q. Was Mr. Wells up to Placerville when you went over this timber?

A. I don't think so, no. I don't remember if he was.

Q. He did not go over it with you?

A. No; he didn't see it or see me. If he was there I didn't know it.

Q. Now, the occasion of your making your final proof, did you at that time know of anybody that was buying timber claims?

A. No, sir; I did not.

Q. Did you know of any person that had sold a timber claim?

A. No; I did not.

Q. And you knew of no market for it?

A. No, sir.

Q. Do you remember how much you paid in the land office when you made your final proof?

A. I think it was four hundred and something,

(Testimony of Frank Lane.)

but just what it was I don't remember.

Q. And do you remember where you got the money with which you made this proof?

A. Yes. I had part of it myself and some of it I borrowed from my brother.

Q. Do you know how much you borrowed from your brother?

A. No, sir; I don't just remember now just what it was.

Q. Was it fifty dollars or four hundred?

A. No, it was more than that; but just what it was I don't remember.

Q. What is your best recollection?

A. It was in the neighborhood of one hundred and fifty; something like that. Now, just what it was I don't remember.

Q. And the other you had of your own?

A. Yes, sir.

Q. Had you borrowed any of that?

A. No, I had that of my own, saved up.

Q. How long after you made your final proof did you start negotiations for the sale of this property?

A. Well, now, I am not sure. I don't know. It seems to me like it was something like three or four months.

Q. Perhaps six?

A. I don't know. I don't remember.

Q. And with whom did you negotiate for the sale of it?

A. I think it was Pritchard.

Q. Mr. Lewis M. Pritchard?

A. I believe that was his name. I am not sure.

(Testimony of Frank Lane.)

Q. And did he come to see you or did you go to see him?

A. Well, I don't know. I am not sure. I don't remember just how it was.

Q. And how much money did he give you when you sold?

A. Well, now, that I don't remember exactly. It was in the neighborhood of six hundred dollars. Something like that. Just what it was I would not swear to. I don't know. I don't remember.

Q. And how many times did you see Mr. Pritchard with reference to selling this property?

A. That I don't remember.

Q. Once or twice, or how often?

A. Well, sir, I don't know. I could not tell you.

Q. Do you know whether you saw him on more than one occasion with reference to the sale of this property?

A. No, I don't. I couldn't say. I don't remember whether it was more than once or not.

Q. Well, do you remember where it was that you saw him?

A. No; I could not tell you that.

Q. Do you remember where you signed this deed that you have identified here?

A. I am not sure, but I think it was in the land office. Now, I would not say. I don't know whether it was the land office or whether it was in Pritchard's office.

Q. Well, do you know whether you went there by appointment or was it a casual meeting, whichever place it was?

(Testimony of Frank Lane.)

A. I think it was appointment. I would not say for certain.

Q. Now, what is your best recollection as to whether it was at the land office or Pritchard's office?

A. I rather think it was Pritchard's office. Now, I think that is what it was. Now, I would not say.

Q. And did he prepare this deed while you were there?

A. That I would not say. I don't know.

Q. Was your wife with you?

A. No; she was not.

Q. Do you know where your wife signed the deed?

A. No; I do not.

Q. Were you paid in cash or by check for this land?

A. I was paid in cash.

Q. Did your wife take up her timber claim?

A. No.

Q. Did you read this deed that you have identified before you signed it?

A. The chances are I did not.

Q. Do you remember whether the deed was made out with the date and the names blank or not?

A. No, I don't know. I am not sure.

Q. Do you remember whether or not you noticed in the deed that the consideration was a thousand dollars?

A. No; I didn't notice it.

Q. Did you know Mr. A. E. Palmer, the grantee in this deed?

A. No, sir; I did not.

Q. Had you ever heard of Mr. Palmer?

A. No, sir.

Q. Now, what is your best recollection as to

(Testimony of Frank Lane.)

whether or not you ever read any part of this deed before signing?

A. Well, I don't think I read it.

Q. Now, can you remember any conversation you had with Mr. Pritchard with reference to the sale of this property?

A. Can I remember? No; I don't. I don't know Mr. Pritchard very well. I would not know him if I would meet him or see him.

Q. Now, you say you think you signed the deed in Mr. Pritchard's office?

A. Well, I am not certain, but it seems to me like I did.

Q. Now, do you know how you happened to go to Mr. Pritchard's office?

A. It seems to me now as if Mr. Wells told me to go to Mr. Pritchard. I am not sure.

Q. And can you remember whether or not you had any conversation with Mr. Wells about this property or the sale of it?

A. No.

Q. That would refresh your recollection?

A. I don't. I don't remember.

Q. Do you remember whether you said anything to Mr. Wells about the selling price of this property?

A. No.

Q. Do you remember whether you had any conversation with Mr. Pritchard about the selling price of this property?

A. No, sir; I never did.

Q. And you just went to the office and Mr. Pritchard gave you about six hundred dollars?

A. Yes.

(Testimony of Frank Lane.)

Q. And you signed the deed?

A. Six something. I think it was six hundred.

Q. You didn't have any conversation with him about the price; took what he gave you?

A. No. No; we had a conversation about that.

Q. Now, what was that conversation?

A. I remember that there was a little "diffug" over that, but just what it was I don't remember.

Q. A little bit of what did you have over that?

A. Well, I could not say it again. I know he wanted to get onto something, and I didn't want to give it away.

Q. Well, did he offer you less than that for it?

A. No; I think he offered me six, and I wanted seven for it, if I remember right. Since you spoke I remember of a little talk on that proposition.

Q. Was that the time that you signed the deed?

A. I don't remember about that. I don't remember.

Q. Was that in Mr. Pritchard's office?

A. I don't remember whether that was or not. I could not say.

Q. Do you ever remember of being in Mr. Pritchard's office other than the one occasion on which you signed the deed?

A. I do not. No. I don't remember.

Q. Do you remember talking with Mr. Pritchard on any occasion other than the one that you signed the deed? A. No, I don't.

Q. Were you present when your wife signed this deed?

(Testimony of Frank Lane.)

A. Well, I guess I must have been, but I don't remember of it. I don't remember now of her ever signing it; don't remember of being there; don't remember a thing about it, if she ever signed it.

Q. Do you know her handwriting?

A. Yes; I know her handwriting, and I didn't remember of her ever signing that until I saw her handwriting right there.

Q. And you didn't sign her name to it?

A. No, I didn't—I don't think I did. They don't look alike, do they?

Q. I am not an expert. I don't know. There is not much difference.

A. No; if her name is there she signed it.

Q. Did you ever sign other than the one deed to this property? A. *Then* the one date?

Q. Deed; one deed. A. No.

Q. Were you ever asked to make another deed?

A. No, sir.

Q. What is your best recollection now as to the length of time after you made your final proof and the time you sold this property?

A. Well, I don't know. I could not tell you. I have no idea.

Q. You made your proof in July?

A. July about the 6th or 7th, wasn't it?

Q. Yes. Now, did you sell it before the following Christmas?

A. It seems to me like I did, but just what it was I don't know, nor when it was. It seems like I did.

Q. Do you remember what you did with the money

(Testimony of Frank Lane.)

that you got from this property?

A. No, I don't. I think I paid some debts out of it. I am not sure about it.

Q. Well, what I was inquiring for was to see if you could not fix the date, maybe, at which you sold it.

A. No, I could not. I don't remember a thing about the date of it, because it slipped my mind, and I had forgotten all about it. And the fellow came out there last night and I like to fell over. I simply forgot all about it. I never knew anything about it. The Barber Lumber Company. I thought he was throwing something into me here at Long Beach, the Long Beach Hardwood Lumber Company.

Q. Did you ever have any transaction with Mr. John Kinkaid concerning this property?

A. No, sir; I never did.

Q. Never spoke to him about it?

A. No, sir; I never did.

Mr. GORDON.—We offer in evidence the Timber and Stone Land sworn statement of Frank Lane, dated April 4, 1902; the non-mineral affidavit of Frank Lane, of the same date; the testimony of Frank Lane, given on final proof, dated July, the 7th, 1902; and the cross-examination attached; all of which papers have been identified by the witness, Frank Lane, as having been signed by him, and filed in the land office at Boise, Idaho; the notice of publication, dated April, the 4th, 1902; the receiver's receipt, and the register's certificate, dated July 7th, 1902; the deed heretofore identified by Frank Lane as having been signed by himself and wife, dated

(Testimony of Frank Lane.)

March 14, 1903, running from Frank Lane and Frankie Lane to A. E. Palmer, consideration one thousand dollars; the papers of the other witnesses given on final proof; the certified copy of the patent, dated January, the 28th, 1904; all to the east half of the northwest quarter and the east half of the southwest quarter of section 35 in township 8, north of range 5 east, Boise Meridian. These exhibits are marked Complainant's Exhibit Frank Lane Number 1. Take the witness.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Lane, you said the first person that had ever spoken to you relative to taking a timber and stone claim was your brother? A. Yes, sir.

Q. On the morning that you went to look at it?

A. Yes, sir.

Q. And you went up that day and while up there Pat Downs located you? A. Yes, sir.

Q. Had you had any talk with Pat Downs about timber claims prior to that time?

A. No, sir.

Q. Or Wells? A. No, sir.

Q. Or Kinkaid? A. No, sir.

Q. Or any other person? A. No, sir.

Q. Now, you said that Mr. Downs simply showed you a claim and told you that was your claim. Did you understand you were under any obligations to take any claims that Mr. Downs told you to take, or were you exercising your own selection?

A. How is that?

(Testimony of Frank Lane.)

Q. I say, did you understand you were under obligation to take any claim that Downs told you to?

A. Well, no; I supposed that he was showing me the corner stake, and so on; told me which way it ran, and so on.

Q. Yes. A. And that was the land.

Q. Well, you employed Mr. Downs, did you not?

A. Yes, sir.

Q. He didn't employ you? A. No, sir.

Q. And if the claim Mr. Downs had pointed out to you was not satisfactory, you would not have taken it, would you? A. No, sir.

Q. You employed Mr. Downs because he was supposed to know the corners and how much timber there was on it. Is not that so? A. Yes.

Q. What I am trying to get at is that you didn't understand Mr. Downs was locating you on any particular claim or that you had to take that particular claim whether you wanted to or not, did you?

A. No. But when we got to Placerville he was pointed out as the man to locate us—Mr. Downs was the man to locate us and he would show you the corners and so on of each and every claim.

Q. Well, you understood Mr. Downs was in the business of locating people on timber land?

A. Yes, sir.

Q. And you employed him for that purpose?

A. Yes, sir.

Q. And paid him for it? A. Yes.

Q. And the one he pointed out to you was satisfactory to you, was it? A. Yes, sir.

(Testimony of Frank Lane.)

Q. And you took it? A. Yes, sir.

Q. Now, if it hadn't been satisfactory to you, you would not have taken it? A. No.

Q. Now, you say you don't remember about Mr. Wells making out your papers. Don't you recall that Mr. Downs gave you the numbers, told you to take them to Mr. Wells, who would make out your papers, and you was to pay him after you made your filing and saw that the land was vacant?

A. No, I don't. I don't remember of it.

Q. Well, you remember of Mr. Downs giving you some descriptions, some numbers?

A. I can't say that I do. I don't remember of Wells or Downs giving me any.

Q. Well, you didn't pay the twenty-five dollar locating fee until after you had found you could file on the land, did you? You waited until you found it was vacant land, didn't you?

A. Well, now, that I could not tell you. I am not sure. I don't remember just how that was.

Q. Well, did you understand that Mr. Wells and Mr. Downs were partners in the locating business?

A. No, I didn't.

Q. Well, how did you come to pay Mr. Wells?

A. Now, there you have got me again. I don't remember how that was.

Q. But do you remember paying Mr. Wells?

A. I remember paying Mr. Wells twenty-five dollars.

Q. But you don't now remember who told you to pay him?

(Testimony of Frank Lane.)

A. No, I don't. I don't remember how that was.

Q. Now, at the time that you went to the land office and made the filing, that is, filed your first paper, which was on April 4th, 1902, you swore, among other things, as follows: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself?"

A. Yes, sir.

Q. That statement was absolutely true, was it, Mr. Lane?

A. Yes, sir; yes.

Q. And at the time you filed that first paper you had had no arrangement of any kind with any person, had you?

A. No, sir; I did not.

Q. At that time, state whether or not there was in existence any contract, express or implied, in writing or oral, between you and any person, firm or corporation, by which you had obligated yourself to sell or transfer the property you might acquire from the United States to any such person, firm or corporation, or to any person they should direct?

A. No, sir; there was not.

Q. Was there any such or similar agreement in force between you and any person at the time you made your final proof?

A. No, sir; there was not.

Q. Was there ever at any time, until you sold this property, any agreement by which any person, firm or corporation, had acquired any interest in or

(Testimony of Frank Lane.)

lien upon the lands you acquired from the United States under your timber and stone entry?

A. No, sir; there was not. No, sir.

Q. Did you enter this land for the benefit of any person other than yourself?

A. I did not, no, sir.

Q. Did you enter it at the request of any person other than yourself?

A. I did not, no, sir.

Q. The complaint in this action we are trying charges that you made this timber and stone entry at the request of and for the benefit of the Barber Lumber Company, James T. Barber, Sumner G. Moon, John Kinkaid, A. E. Palmer, William Sweet and the other defendants named. Is that true or false?

A. It is false. No, sir.

Q. And it is further alleged in this complaint that prior to and at the time of making your original entry, you had entered into an agreement with these defendants by which you were to enter this land at their request, and for their benefit, and then to go to the land office and testify to what you knew to be false, at their request, and at their solicitation?

A. No, sir, I did not.

Q. Is that true or is it false?

A. I didn't know them. I didn't know anything about the men.

Q. Is it true or is it false?

A. It is false.

Q. Did you testify falsely before the land office for the purpose of acquiring this land?

(Testimony of Frank Lane.)

A. I did not.

Q. Were your statements made before the land office correct at the time they were made?

A. Yes, sir, they were.

Q. Now, you say that Mr. Wells told you to go to Pritchard. I will ask you as to whether or not Mr. Wells told you anything more than that Mr. Pritchard was buying timber claims, and if you went to him you would find a market?

A. Well, now, I am not sure. I don't remember just how that was.

Q. Well, did you think or understand that you were selling to Wells? Was he buying it?

A. No, no.

Q. Well, did he tell you that Mr. Pritchard was buying timber claims?

A. It seems to me like he did. Now, just how it was I don't remember. It has been a long time. A man has had lots of sleeps over these things.

Q. What I am trying to get at is, did you sell your timber claim to Wells, or did Wells tell you where you could sell it, and you went there and sold it yourself?

A. No, I went and sold it myself. Wells didn't sell it.

Q. And that was some time after you had made final proof? A. Yes.

Q. Now, the deed that you made here, Mr. Lane, is dated about eight months after final proof, or in March, 1903, and you made your final proof in July, 1902. Have you any reason to doubt the accuracy of

(Testimony of Frank Lane.)

the date of that deed? A. How is that?

Q. This deed is dated, your deed to Palmer—

A. I see.

Q. —is dated in March, 1903, and your final proof was made in July, 1902, being about eight months between. I say, have you any reason to doubt the accuracy of the date in this deed? It purports to have been acknowledged by you on the 14th of March, 1903, before L. M. Pritchard, Notary Public, duly sealed. Do you have knowledge of any fact which makes you think the date of that deed is wrong?

A. No; I guess it is all right.

Q. You would not want to swear it is wrong?

A. No. It was about that time; somewheres near that.

It is stipulated by and between counsel for the respective parties that the signature of this witness shall be dispensed with, subject to the right of either party to recall the witness at the expense of the United States for the correction of any errors in the transcription of his testimony concerning the correction of which counsel shall not be able to agree.

[**Testimony of Dora C. Burns, on Behalf of the Complainant.**]

And also DORA C. BURNS, a witness produced on behalf of the United States, who, having been first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Dora C. Burns?

A. Yes, sir.

Q. And you are the wife of Lewis K. Burns?

A. I am not now.

Q. You were married to Lewis K. Burns?

A. Yes, sir.

Q. Did you know John I. Wells, the gentleman that was just here? A. Yes, sir.

Q. Did you know him at Boise?

A. Yes, sir.

Q. Do you know Mr. John Kinkaid, the gentleman present?

A. I think I was introduced to him once, if I am not mistaken.

Q. And did you know a Mr. Dean West, of Boise? A. Yes, sir.

Q. Where do you reside at present, Mrs. Burns?

A. Coronado, California.

Q. How long have you resided at Coronado?

A. It will be three months the 10th of this month.

Q. Did you reside in Boise, Idaho, in 1901 and 1902?

(Testimony of Dora C. Burns.)

A. I guess I did. About that time. I left there about three years ago.

Q. And how long had you resided at Boise?

A. Well, in Boise and near Boise, something like seventeen or eighteen years. I could not say exactly. 1891, I think, I came there.

Q. Did you take up a claim under the Timber and Stone Act, in 1902?

A. I took up one, but I could not say positively as to the date. I have papers that if I had them I could tell by them; but I could not say positively as to the date.

Mr. BUNDY.—Defendants object to the introduction of any evidence relative to any timber and stone claim made by this witness, for the reason that the complaint does not allege that the defendants, or any of them, acquired any title to any lands by or through this witness, or acquired any lands which came to this witness through any timber and stone entry.

Q. (By Mr. GORDON.) Who spoke with you first about taking up a claim under the Timber and Stone Act?

A. Mr. West spoke to me the first time I was talked to about it.

Q. Mr. Dean West? A. Yes, sir.

Q. State what he said.

Mr. BUNDY.—Object to that as incompetent, irrelevant and immaterial, hearsay, stating a conversation between parties not parties to this action.

A. He said they were taking up land and if we wanted to get some money out of it he could help us

(Testimony of Dora C. Burns.)

to do so, and I listened to what was being said. I didn't go at the present time, but I went later on.

Q. (By Mr. GORDON.) With whom was Mr. West talking at that time?

A. He was talking with me and Mr. Burns.

Q. That was Mr. Lewis K. Burns?

A. Yes, sir.

Q. You were at that time the wife of Mr. Burns?

A. Yes, sir. We were standing at the gate talking.

Q. You say yes, that you were standing at the gate talking?

A. Yes, sir; we were standing at our gate on Fourteenth street talking to Mr. West.

Q. Now, did he tell you how much you could make out of one of these claims?

Mr. BUNDY.—Same objection as before made, and leading and suggestive.

A. Yes, sir.

Q. (By Mr. GORDON.) How much was it?

A. \$240.

Q. Now, how long was that before you went up to look at this claim that you afterwards located on?

A. Well, I could not say positively. It was something like two months, but I could not say.

Q. And do you know whether Mr. Burns took up a claim? A. Yes, sir.

Q. And do you know how long after Mr. Burns took up his claim that you located on one?

A. Well, it must have been something like a month or six weeks; something in there. I would

(Testimony of Dora C. Burns.)

not be positive with reference to that, because I don't know exactly. I know it was along in the winter that I went, and it had got quite cold. It was not so cold when he went.

Q. And was anything said by Mr. West relative to where you would get the money to make your final proof?

Mr. BUNDY.—Same objection as before, and leading and suggestive.

A. Yes, sir; he said we would be furnished with the money if we didn't have it.

Q. (By Mr. GORDON.) Did he say who would furnish it?

Mr. BUNDY.—Same objection.

A. Yes, he did.

Q. (By Mr. GORDON.) Who did he say?

A. He said we can get it from John I. Wells.

Q. From John I. Wells? A. Yes, sir.

Q. And that was before you went to locate?

A. Yes, sir; a while before. I don't know just how long, but it was before.

Q. Now, what were you to do with this land that you located on to make your \$240?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and not calling for the conversation, and for the witness' conclusion.

A. He said I could sign it over to a company and get \$240 clear of all it would cost me.

Q. (By Mr. GORDON.) And did he say what company?

A. Not at that time; if I remember right he

(Testimony of Dora C. Burns.)

didn't. He just said "a company."

Q. And did you know through whom you were to convey it to this company?

Mr. BUNDY.—Objected to for the same reasons.

A. Well, I understood it was through this John Wells. I never conveyed any, so I don't know.

Q. (By Mr. GORDON.) Well, who gave you to understand that you were to convey it through John Wells to a company?

A. Mr. West. I got the most of my information through Mr. West.

Q. Mr. Dean West? A. Yes, sir.

Q. And you then went and located on this timber claim? A. Yes, sir.

Q. I don't know whether I asked you whether or not you ever located on but the one claim.

A. I never did, and I withdrew from that.

Q. And do you remember with whom you went to view this land?

A. Well, I remember part of them. The man that drove the team, his name was Hamilton. And I think the other man's name was Cassell. I am not sure that is exactly the way it was spoken. I never was with him except on that trip. There was Mrs. Lee.

Q. Mrs. Lelia Lee? A. Yes, sir.

Q. Did Mrs. Briggs go?

A. Yes, sir, Mrs. Ida Briggs and John Garey.

Q. Who arranged for that party?

A. Well, it was through John—or through Mr. West, most of it, if I remember rightly.

(Testimony of Dora C. Burns.)

Q. And who told you when the party was going to start?

Mr. BUNDY.—Object to that as hearsay.

A. Well, I think it was Mr. West, but I would not say positively to that, for I don't really remember.

Q. (By Mr. GORDON.) And where did you go to view this land?

A. We went in up above Placerville, up above—Let's see; there was another name of a place I don't remember.

Q. Pioneerville? A. Yes; in above that.

Q. And do you remember who paid for the team that you rode in?

A. Well, I don't remember how that was settled up, but I know we talked of its having to be settled, you know, ourselves. But I don't really remember who paid for it.

Q. Do you remember who located you on the land? A. Mr. Hamilton and Mr. Downs.

Q. Mr. Patrick Downs? A. Yes, sir.

Q. And this land was in Idaho, was it?

A. Yes, sir.

Q. And did you pay Mr. Downs a locating fee?

A. Well, I can't exactly remember whether it was John Wells got the twenty-five dollars or whether it was paid to Downs.

Q. Did Mr. Downs take you out and show you a timber claim and say that was the one he would locate you on?

Mr. BUNDY.—Objected to as leading.

A. Yes, sir; he met us, and had the figures of the

(Testimony of Dora C. Burns.)

numbers of the land, and he took us over and told us, "This is number so and so," and that was the one for me to take, and he said that I would be required to get off and get onto the land, and I got out of the sleigh in the snow.

Q. (By Mr. GORDON.) And did you walk over the land or did you just stand at one of the corners?

A. Well, I didn't go very far. It was not very easy to get around in the snow up to your eyes.

Q. How far on the claim did you go?

A. Well, I didn't go very far.

Q. Did you go twenty feet?

A. I hardly think so.

Q. And you said that Mr. Downs had the numbers, or did you have the numbers, when you started up there?

A. No; they was given to me, and we all held our own numbers, if I remember right, and when we got up there I don't remember who gave them to him, now, but anyhow, he had our numbers, and we came back. I know I had the numbers when I came back and for a long time afterwards.

Q. Well, did you have your numbers before you started up there?

A. No, sir; we got them some place on the road, I think.

Q. Who gave them to you?

A. Well, I believe that Mr. Hamilton did, but I would not swear to that for I don't really remember.

Q. But you knew you had the numbers?

(Testimony of Dora C. Burns.)

A. I knew I had them at some time on part of the journey.

Q. Was that before you met Mr. Downs?

A. Yes, sir; it was some time before we met Mr. Downs, but I could not say positively where we got them.

Q. And each one of you held your numbers, and Mr. Downs took you to the claim indicated by those numbers? Is that the way you did?

A. I held mine and I think the rest of them had theirs, and if I remember right I think part of them was together and part of them was not. I know the men didn't go where we did, for we three women went up there, and I think, if I remember rightly, we were to go close together so that we could go conveniently to those claims.

Q. And do you remember who made out your filing papers, the first papers you filed in the land office?

A. Some way I can't remember anything about the papers until I was up there in the land office. I don't really know.

Q. Do you remember who brought them to you?

A. Yes; Mr. West brought them to me.

Q. Mr. Dean West, sitting here?

A. Yes, sir; Mr. Dean West.

Q. You didn't know who prepared those papers, did you?

A. Well, I think I did at the time, but I have forgotten. Really, I wanted to forget it all.

Q. Now, when did you meet Mr. John I. Wells

(Testimony of Dora C. Burns.)

in this transaction? Did you meet him before you went to the land office the first time?

A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Where did you meet him?

A. I met him in his office once or twice.

Q. Didn't you go there to get your papers, to take your numbers to Mr. Wells, after you returned from viewing the land?

A. Well, I could not say as to that, for I have forgotten.

Q. And you remember the occasion, I assume, of making your final proof?

A. That is, when I had to give the \$400, you mean?

Q. Yes? A. Yes, I remember that.

Q. Now, do you remember where you got the \$400 to take to the land office?

A. Why, I got \$400 from Mr. Wells.

Q. From John I. Wells? A. Yes, sir.

Q. And where did you get it from him?

A. In his office. I went there.

Q. How did you happen to go to his office?

A. Because I was told to.

Q. Who told you to? A. Mr. West.

Q. And was that the day you made your final proof? A. I think it was.

Q. And what did you say to Mr. Wells when you went to the office, to his office?

A. I asked him where my money was, and he said he thought I had plenty. I said, "What made you

(Testimony of Dora C. Burns.)

think that?" And he kind of smiled and went off and got the money and gave it to me, and that was all there was to it.

Q. Did he go out of the office?

A. Yes, sir; he went out of the office.

Q. And how long was he gone?

A. He was not gone but a few minutes. I don't know where he went.

Q. And he returned and gave you how much money?

A. I think, if I remember right, it was \$410. Something like that. I don't remember just exactly.

Q. And then you paid \$410 in the land office that day. Is that right?

A. Yes, sir.

Q. And they gave you a receipt for it?

A. Yes, sir.

Q. And was anything said to you by Mr. Wells when he gave you that money as to what you were to say about it when you got to the land office?

A. There was nothing said that day.

Q. Was anything said at any other time about it?

Mr. BUNDY.—By whom?

Mr. GORDON.—By Mr. Wells?

A. I didn't think there was anything said by Mr. Wells, himself.

Q. Who was it said by?

A. Well, Mr. West was where I got my information and all that was said to me, mostly.

Q. Well, what did he say about it?

Mr. BUNDY.—Object to what Mr. West said, as

(Testimony of Dora C. Burns.)

incompetent, irrelevant and immaterial; hearsay.

A. Well, he said I need not tell where I got it.

Q. (By Mr. GORDON.) He said you need not tell where you got it? A. Yes, sir.

Q. Was your claim held up at the land office?

A. Yes, sir; I was told it would be through in a short time, and I heard talk around and I concluded that it was not going to be what I thought it was, and I phoned up there and asked Mr. Garey if I could withdraw my files, and he said I could, and I went up and withdrew them.

Q. And did he pay you the money back you had put in?

A. He paid me four hundred dollars, I think it was. I know I had to be out the \$25 for the locating, and I think the advertising I didn't get back.

Q. And were you ever asked to return this money that you got from Mr. Wells?

A. Why, not by Mr. Wells.

Q. Well, by anyone? A. Yes, sir; I was.

Q. By whom?

A. Well, I forget his name.

Q. Would you know it if you would hear it?

A. Yes, sir, I would.

Q. Mr. Lewis M. Pritchard?

A. Yes, sir; that was the man. Come down there and he told me he was not going to be swindled like that, that I had to dig it up.

Q. Now, did this man Pritchard say that to you?

A. I heard him say it.

Q. Now, tell exactly what he said.

(Testimony of Dora C. Burns.)

Q. (By Mr. BUNDY.) To whom was this? Who was he talking to?

A. He was talking to Mr. Burns and me in my own house.

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

Q. (By Mr. GORDON.) Answer the question. Tell the conversation or the statement he made.

A. Well, he said he was not going to be swindled like that. He asked if I had withdrawn my filings and I said I had. And he said he was not going to be swindled like that; I had to dig that money up, and he would give me until Friday to do so. And I told him he could have as long as he wanted to get it.

Q. You never did give the \$400 back?

A. No, sir, I did not.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. BUNDY.)

Q. What is your business?

A. I am company for an old gentleman and old lady in Coronado at the present time.

Q. Company for an old gentleman?

A. Yes, sir.

Q. How long have you been company for the old gentleman?

A. I said an old gentleman and a lady, his wife.

Q. What is the matter with the wife? Is she sick?

A. Yes, sir; she is. Never been a very stout

(Testimony of Dora C. Burns.)

woman, and she is sixty years old, and he is eighty-three.

Q. What was your business before you got in company with this old gentleman?

A. It has been various things. I have generally kept house for people when I had to.

Q. What kind of houses have you kept, Mrs. Burns?

A. I have kept families' houses.

Q. What other kind?

A. I have not kept any other kind.

Q. Haven't you kept rooming houses?

A. Well, I have for a little while at a time, but it is so short a time.

Q. Haven't you kept assignation houses?

A. No, sir; I have not.

Q. Aren't you keeping an assignation house now?

A. You go and ask these people.

Q. Well, I am asking you.

A. Well, I am not, and never did. And you are no gentleman to ask me such a thing as that.

Q. What did you keep at Boise?

A. I kept my own house, sir.

Q. Didn't you have any other kind of a house there? A. No, sir; I did not.

Q. Do you know L. L. Sharp?

A. L. L. Sharp?

Q. Yes; L. L. Sharp?

A. No, sir; I do not.

Q. Ever see him?

A. Not that I know of.

(Testimony of Dora C. Burns.)

Q. Special agent of the United States Government?

A. No, sir; I don't know as I know L. L. Sharp.

Q. Didn't he come to see you about your timber claim?

A. Well, if he did I don't know it, nor I don't know L. L. Sharp.

Q. Do you remember of any man coming to see you about your timber claim, representing the Government?

A. Oh, now I know who you are talking about. Yes, I did see him. He came there and asked me about what my property was worth, and where it was, and all that; and after he got through he said he was trying to find out if we were able to take up those claims.

Q. That was Mr. Sharp, now, you remember?

A. Yes, sir, I suppose it was.

Q. A smooth-faced young fellow?

A. Yes, sir.

Q. Did he afterwards tell you he would assist you in getting your money back?

A. No, sir; he did not.

Q. And did he assist you in getting your money back?

A. No, sir; he did not. Nobody did. I went and got my money back of my own free good will.

Q. That was not your money, was it?

A. That I got back?

Q. Yes, sir.

A. It was my money that I got back.

(Testimony of Dora C. Burns.)

Q. Was it your money when you borrowed it from John R. Wells or Dean West?

A. I didn't borrow any money from them.

Q. How did you get it?

A. I went and told them that I was ready for the money and they gave it to me.

Q. Was it your money?

A. It certainly was my money when I got it.

Q. Was it your money?

A. Yes; it was my money when I got it in my hands.

Q. Anything you get in your hands is yours?

A. Well, if I can use it, it is certainly mine.

Q. And you have got it yet?

A. Well, I got the benefit of it.

Q. And you never did pay it back?

A. No, indeed.

Q. And you knew when you kept it you were stealing it, didn't you?

A. I didn't consider that I was doing any worse than they did to me when they told me to swear to a lie.

Q. Did you swear to a lie?

A. I did, if I didn't have my own money; but I was secured by this money, and I used my own money.

Q. Did you swear to a falsehood in the land office?

A. I didn't according to that, because I had my own money, and I swore I had. But if I hadn't had my own money—

(Testimony of Dora C. Burns.)

Q. Just answer the question. Did you testify truthfully in the land office when you made your filing?

A. To the best of my ability I did.

Q. At the time you made your first filing you swore in the land office that at the time you filed that paper you had not entered into any kind of an agreement—

A. I hadn't.

Q. Now, listen: either in writing or oral, with any person whatever, by which any person, firm or corporation had acquired any interest in or lien upon the land you might acquire from the United States of America.

A. I had not.

Q. Was that statement you made at the land office true?

A. It was true. I hadn't made anything of the kind; I hadn't done anything of the kind.

Q. At the time you filed this first paper in the land office, had you any agreement with any person as to what you were to do with that land?

A. I never agreed to anything with anybody at any time.

Q. Kindly answer the question. At the time you filed this first paper in the land office, had you entered into any kind of an agreement, express or implied, written or oral, with reference to what you should do with that land when you acquired title?

A. I had not.

Q. And when you went to the land office and swore that you had not, you testified truthfully, did you not?

A. Yes, sir, I did.

(Testimony of Dora C. Burns.)

Q. Now, at the time you made your final proof and paid the money into the land office—up to that time, had you entered into any kind of an agreement, written or oral, express or implied, with any person, firm or corporation, relative to what you should do with the title when you acquired it?

A. I received fifty dollars on it.

Q. When was that?

A. That was after I filed.

Q. And before final proof, or after?

A. Well, I could not say as to that.

Q. Now, I am talking about the time you made your final proof.

A. Well, I can't say, because I don't know, and I won't tell you a thing that I don't know.

Q. Had you sold your property at the time you made your final proof? A. I never did sell it.

Q. Had you sold your property at the time you made final proof? A. I never did sell it.

Q. Had you agreed to sell it?

A. No; I hadn't.

Q. Had anybody asked you to sell it to them?

A. No.

Q. Had you offered to sell it to any person?

A. No.

Q. Had you had any talk with any person at all with reference to selling the land, except Dean West had told you that you could sell it, that there would be a market for it?

A. Oh, the neighbors all talked it around there, is all I know about it.

(Testimony of Dora C. Burns.)

Q. That does not answer my question. The question is, had you had any talk with any person with reference to selling that land, except what Dean West told you, that there would be a market for it?

A. Taken from a business standpoint, I hadn't.

Q. Take it from any other standpoint.

A. Why, we all talked; those that went up to the mountains and all talked about it.

Q. Talked about selling it?

A. Yes, or if we would or if we would not.

Q. Some wanted to sell and some didn't, didn't they? A. Yes, sir.

Q. Some thought it would be more valuable, and some thought it wouldn't?

A. Yes; and some said it would be stolen from them if they didn't. They said the company would be all around us, and steal our claim. That would be the conversation like neighbors talk.

Q. And some thought because their timber would be stolen it was better to sell, and some thought it was not? A. Yes.

Q. Now, what did you think about it?

A. I thought that four hundred dollars, the way they had lied to me, was better than two hundred and forty. Now, that is the plain straight of the thing.

Q. Who had lied to you?

A. Dean West; certain and sure he did.

Q. Who else?

A. Oh, I don't remember anybody else. So much talk I can't remember all this.

Q. You think that Dean West had told you some-

(Testimony of Dora C. Burns.)

thing that was not true?

A. Well, he certainly didn't advise me as they advised me at the land office.

Q. About the law?

A. Yes, sir; and about what I would have to swear to.

Q. What did Dean West tell you at the time he had the first talk with you?

A. Well, he talked like I would not have to make myself liable.

Q. What did he say?

A. He said I would not have to swear to any lies if I was not to have money of my own; and I consider according to what was read to me there if I hadn't had money of my own I would have sworn to a lie.

Q. Did you swear to a lie? A. No, I didn't.

Q. You told the truth? A. Yes, sir.

Q. What did West say to you at the time he had this first talk with you?

A. Oh, I told you awhile ago. He said he could tell us how to make some money, if we wanted to make a little money he could tell us how to make it; and I listened to it all.

Q. What did you say?

A. I don't remember as I said very much. I was listening. I was not a talker then.

Q. What else did he say?

A. He said he would let us know when he found out more about it; told us there was some parties up there locating them; and he told us we would have to

(Testimony of Dora C. Burns.)

give twenty-five dollars.

Q. To be located? A. Yes, sir.

Q. Afterwards did he come back to you and tell you he had found out more about it?

A. Yes, sir. He talked to me several times.

Q. What did he say the next time he talked to you? A. He told Mr. Burns when he could go.

Q. And Mr. Burns went, did he?

A. Yes, sir; he did.

Q. You didn't go at that time?

A. No, sir; I did not.

Q. Did you have another talk with Dean West?

A. Oh, I had several.

Q. Well, tell us what he said.

A. Well, that was the principal part of the talk. That is all I can remember.

Q. What was the principal part of the talk?

A. That we could take up these claims and get something out of them.

Q. How could you get something out of them? By selling them? A. By selling them.

Q. And you would have to pay twenty-five dollars to be located?

A. And seven dollars for advertising and four hundred and some dollars for proving up.

Q. And then Mr. West told you that you could sell them at a profit over and above that?

A. Well, that we would be just clear \$240.

Q. Did he tell you how you would clear it?

A. Yes, he did. He told us the money would be furnished us, and then we could sell back to some

(Testimony of Dora C. Burns.)

company, and clear \$240.

Q. So that what Mr. West told you was that there was an opportunity to enter timber and stone land, which would cost you \$25 locating fee, seven dollars and a half advertising fee, and two dollars and fifty cents an acre for the land, and that there would be a market for it at a price which would net you \$240?

A. Yes, if we wanted to do so.

Q. If you wanted to sell? A. Yes.

Q. And if you didn't want to sell you could keep it?

A. Providing we furnished our own money.

Q. Yes, providing you furnished your own money. Now, that is all that West told you?

A. I don't say that is all, but it is all I remember at the present time. It has been a long time.

Q. Well, I say that is the only way he told you you could make any money? A. Yes.

Q. Was by buying and selling? A. Yes.

Q. You didn't understand from anything Mr. West told you that you were being hired for wages to locate land for somebody else, did you?

A. No, sir; no, sir.

Q. And when you went to the land office and testified, when you made your filing, that you filed that for your own benefit, you were testifying the truth, weren't you?

A. Why, certainly. If I sold it, wouldn't it be a benefit to me?

Q. Certainly. You weren't working for anybody for wages when you made that entry, were you?

(Testimony of Dora C. Burns.)

A. I was working to make some money out of that land, which I didn't see how else to get it.

Q. And you was going to make the money by buying it and selling it?

A. I was going to make the money by buying it and selling it.

Q. At the time you located on the land in the first instance, you paid the \$25, yourself, didn't you, or Mrs. Lelia Lee paid it for you and you paid it back? A. No.

Q. She advanced it that day, didn't she?

A. Yes, sir.

Q. She paid the \$25 to Downs for locating it?

A. Yes, sir.

Q. And also advanced the seven and a half at the land office, the first time, for publication fees—just for a few days until you paid her back?

A. Well, I won't be positive about that seven and a half, but you are right about the twenty-five. I remember now.

Q. So that at the time that you went to the land office to file upon this land you had invested in it \$25 locating fee, and seven dollars and a half publication fee. Now, that was your own money, was it?

A. Well, it was my own money, according to what was said awhile ago, and I paid it back, I guess. When I got it, it was mine.

Q. I mean to say you didn't get that from Wells, West, or anybody else? A. No, sir; I did not.

Q. You got that out of your business or your husband's business, or some way, did you?

(Testimony of Dora C. Burns.)

A. I got it, as you said, this \$25 from her.

Q. You paid that back afterwards, didn't you?

A. Yes; I paid her back.

Q. You paid her back within a few days after filing, did you not?

A. I am not sure how long it was.

Q. Well, you paid her back before you withdrew your money, didn't you?

A. I think I paid her back before I withdrew the filing; but I don't know how soon.

Q. Now, up to that time, the time you filed and paid in this money and filed your first paper, had you decided how or where you would get the money to prove up on?

A. I knew two different ways to get it.

Q. Well, I say, had you decided how or where you would get the money at the time you made your filing?

A. I intended, from the time I started up there, to go and get this money that West told me to get.

Q. That was your intention? A. Yes, sir.

Q. All the time?

A. I was going to get it and keep myself safe and secure with that, because I could take my own money and then I would not be any loser, if there was any loss in the game.

Q. Then, at the time you went to the land office and testified you were doing that for yourself, you testified to what you knew to be false?

A. I what?

Q. You testified to what you knew to be false, did

(Testimony of Dora C. Burns.)

you? A. No; I didn't. How did I?

Q. When you testified at the land office that it was your own money, did you testify to what you knew to be false?

A. I used my own money; but didn't I make myself safe when I had somebody else's in my pocket?

Q. Well, I should rather think you did.

A. Well, I think so myself.

Q. Then you did use your own money to pay the Government of the United States, Mrs. Burns?

A. Didn't I swear that?

Q. Well, I don't know whether you did or not. I am asking you, did you?

A. Well, I think I did.

Q. The actual money, then, that you paid to the United States was not the money you got from West or Wells, at all?

A. I made myself safe, anyway.

Q. Well, that is true, isn't it? According to your statement a moment ago you used your own money to buy the land and then just took their money to make yourself safe with?

A. I used the money the same day I got it.

Q. Well, did you use their money or your own money? A. It was mine when I got it.

Q. Well, it was the money they gave you, or was it other money?

A. I had the whole of it there together.

Q. Had it all there together? A. Yes.

Q. Now, which money did you use to pay the United States?

(Testimony of Dora C. Burns.)

A. I could not tell. I had it all mixed up. How could I tell.

Q. Well, did you have it all mixed up?

A. I had it all together.

Q. Did you use the money you got from Wells or did you use your own money?

A. It was all mine.

Q. The money you got from Wells was yours?

A. Well, when I got it it was. I used it, anyway.

Q. Well, was it your own money?

A. After I got it it was.

Q. Now, Mrs. Burns, do you remember they asked you at the land office how long you had had that money in your possession?

A. I don't remember as they asked me that.

Q. And do you remember that you testified that you had had it for some months?

A. I had some of it for some months.

Q. Some of the money that you used?

A. Some of the money I had in my possession I had had for months.

Q. Some of the money that you used to pay the land office?

A. Well, I didn't mark the bills at all which I used.

Q. But you testified in the land office that you had had that in your possession for some months.

A. Well, I had had that much.

Q. Well, had you had that money?

A. I had it all in my possession.

Q. For some months?

(Testimony of Dora C. Burns.)

A. No, not all of it for some months. I had had \$410 for some months.

Q. When you went to the land office to prove up, did you intend to tell the truth or did you intend to falsify?

A. I intended to tell the truth, if it was possible.

Q. Was it possible?

A. If I hadn't had my own money—

Q. Was it possible for you to tell the truth?

A. It would have been if I hadn't had my own money.

Q. Did you tell the truth when you went to the land office? A. I did.

Q. Did you testify falsely before the land office on any subject? You can answer that, can't you?

A. Well, I don't feel disposed to after the question you asked me awhile ago. You have no right to insult anybody. You are no gentleman to do it.

Q. Well, you are a lady. We won't discuss that. Will you answer the question or will you not?

A. I answered it to the best of my ability long ago.

Q. Did you testify falsely before the land office?

A. I testified truthfully, to the best of my ability.

Q. Were any of the answers you made at the land office at the time you filed your claim, or at the time you made your final proof, false? Were any of them false?

A. I think I would have to read them over to know what I testified to now.

Q. Did you intend to testify falsely?

(Testimony of Dora C. Burns.)

A. I did not. I never intend to testify falsely, and I don't intend to to-day, either, or any other time.

Q. But you don't know without reading them whether you did this or not? Is that your answer?

A. Yes.

Q. That you don't know whether you did or not?

A. No; I know I didn't tell a lie.

Q. Now, you remember one time that your barn burned down? A. Yes, sir; I do.

Q. Was that before or after you had made final proof?

A. I could not say that, either. I don't remember dates when it ain't necessary.

Q. Do you remember that you had to go to somebody to borrow fifty dollars? A. I did.

Q. Who did you borrow that from?

A. I didn't go and borrow it.

Q. Who did you get it from?

A. I went to Mr. Wells and asked him if he could let me have fifty dollars on that timber—or “on that business.” That is what I said. That was all I said.

Q. Had you had any talk with Mr. Wells before that? A. No, sir.

Q. That was the first talk you ever had with Mr. Wells about selling that land?

A. That was about all there was said about it then, too.

Q. He gave you the fifty dollars, did he?

A. I received the fifty dollars.

Q. Did he give you the fifty dollars?

A. Yes, sir.

(Testimony of Dora C. Burns.)

Q. Was that the first time that you had received any money from Mr. Wells personally?

A. Well, I can't positively and truthfully say whether that fifty dollars I received was before I received the four hundred or after; no, I won't tell you either because I don't know.

Q. Did you receive \$400 from Mr. Wells personally?

A. I did. I told you that a while ago.

Q. Did you receive that from Mr. Wells or Mr. West?

A. I received it from Mr. Wells' own hand.

Q. Where? A. In his office.

Q. Where?

A. In the Sonna Block, Boise City, Idaho.

Q. You are certain it was in the Sonna Block, are you?

A. No; I will take that back. It was around on Idaho street, I think it was.

Q. What building was it, now?

A. I don't remember.

Q. Was it in his office at all?

A. He called it his office. I could not swear that it was his office. I found him there in a room, and I was told it was Mr. Wells' office. And Dean West told me where to go to find him, and I found him there.

Q. Now, what did you say when you got there?

A. Well, I told him I was promised that the thing would be settled up so I could have gotten something out of that long ago, and I hadn't. Well, I guess I had proved up then. I can't give you the dates, and I won't try to do it, for I won't lie to you or anybody else.

(Testimony of Dora C. Burns.)

Q. Did you give a note for that \$400?

A. No, sir; I didn't.

Q. Did you give a note to Dean West?

A. No, sir; I didn't. I didn't give a note to anybody.

Q. Did you ever give a note to Dean West?

A. No, sir; I didn't.

Q. At any time? A. No, sir.

Q. For any amount?

A. No, sir, not for fifteen cents.

Q. Now, the first time you ever saw John Wells in this matter was after you had been up and looked at the land and had filed upon it, I understand?

A. No, sir; I saw Mr. Wells on my way up there, for one time. I can't remember where all I seen him.

Q. On the way up. Did you have a talk with him about this land at that time?

A. No, sir. He had lost his child, and there was quite a little bit of talk about that. And he came out and talked to the men, but I don't think he said anything to us women at all.

Q. I don't care about your seeing him unless you had a talk with him. Where was that—in Centerville—that he came out and talked to you?

A. It was where he left before he come to Boise, and I think it was Centerville. I am not acquainted in that part of the country.

Q. When was the first time you ever had a talk with John I. Wells about this land? Was it before you filed or afterwards?

A. Well, I had a talk with him before I made my final proof, but I don't remember whether I talked with him before I filed or not.

Q. Well, what is your best recollection.

(Testimony of Dora C. Burns.)

A. I remember very well of going up there and getting the money before I made my proof, and I remember going up there and getting the fifty dollars; but when it was I can't remember, nor I won't say.

Q. I am not talking about that. I am talking now about before you located on the land, filed upon it in the first instance. Did you ever have a talk with Mr. Wells before that?

A. I won't say whether I did or not, for I don't remember.

Q. Did you ever have any talk with anybody about the land except Dean West before you filed?

A. Oh, us neighbors talked it over; Mr. Pierson's people talked it over with me, and Mr. Lee's, and different ones.

Q. I mean with Mr. Wells or West or Kinkaid.

A. I told you I don't remember of talking with Mr. Wells.

Q. And the only talk that you remember about how you could get this land before you filed was the one you have told us about with Mr. West, one or two talks you had with Mr. West. Is that right?

A. Yes, sir. Mr. West was my main information.

Q. And all the information you had as to any company came from Mr. West, did it?

A. I think it was.

Q. And all the information you had before you filed, as to how much you could make upon it, came from Mr. West?

A. Yes, and Mr. Peirson and different neighbors around there. Some of them had already got their money and some hadn't.

(Testimony of Dora C. Burns.)

Q. Well, I mean to say you don't claim to have had any talk with Mr. Wells about the \$240?

A. I told you I had not.

Q. Nor Mr. Kinkaid?

A. No, sir; I never talked with Kinkaid about anything at all. I met Mr. Kinkaid on the street one time, if I remember rightly, and I think Mr. Cassell introduced me.

Q. Mr. Pritchard. Had you any talk with him before you filed? A. No, sir.

Q. Or Mr. Sweet?

A. I had no talk with those other gentlemen until he come to the house to see me and had me sign that deed that Mr. Burns got for his claim.

Q. Or Mr. Sweet? Did you have any talk with him before filing?

A. Well, I don't know. He came down there to see about his claim, when he come there, and I refused to answer his questions.

Q. That is Mr. Sweet you are talking about now, or Mr. Sharp?

A. Mr. Sweet? I don't know who Sweet is.

Q. Well, I don't think you do either. Just say so. Did you have any talk with James T. Barber before you filed?

A. No. I don't know Mr. Barber.

Q. Or Sumner G. Moon? A. No, sir.

Q. Or A. E. Palmer? A. No, sir.

Q. Or Harris S. Rand? A. No, sir.

Q. Or Frank Steunenberg?

A. Not on that subject.

Q. Or George S. Long? Did you have any talk with him? A. No, sir.

Q. Then the only talk you are able to testify any-

(Testimony of Dora C. Burns.)

thing about that you had with any of the parties named with reference to what you could get out of this land was with Dean West before the filing?

A. Yes, sir. He told me—I said I wanted to know more about it, and he said it was not best for me to go to the office to find out any more about it, and he said he would do that and let me know.

Q. So he did afterwards let you know, did he?

A. Different times I questioned him and asked him.

Q. And he told you you could get this land and if the money was furnished to you, you could sell at a profit of \$240?

A. Yes, sir.

Q. And so you went into it with a view of getting the land and selling it for that profit?

A. Oh, I don't know about that.

Q. Well, did you or did you not?

A. I meant to get all out of it I could.

Q. Well, did you go in to make the filing with a view of accepting his proposition or not?

A. No, I can't say that I did, exactly. That is—well, when—you mean when I first filed?

Q. Yes.

A. Well, I can't say but what I did intend to at the first of it there.

Q. And afterwards you came pretty near changing your mind; you had two ways of getting the money?

A. It looks like I did.

Q. Well, before you made your final proof you said you had two ways of raising the money. What was the other way?

A. I had it of my own.

Q. So that after you had filed on it, you thought some of using your own money, did you, and holding

(Testimony of Dora C. Burns.)

the timber for a higher price?

A. No, I can't say that I thought that, but I thought I could use my own money and make something out of it, and I didn't want my money laying there idle, and the little I had I didn't like to risk it and lose it entirely, and I thought if I got somebody else's there, it was not my loss.

Q. Now, I want to ask you this question, Mrs. Burns: At all of these talks with Wells or West with reference to getting \$400 to prove up with, did they ask you or anybody ask you to make any contract, written or oral, with reference to selling the land after you made final proof?

A. Mr. West is the only one that ever said anything about it, and he said it wouldn't do.

Q. Mr. Wells never mentioned it?

A. No, sir; he didn't.

Q. Selling the land to him or anybody else?

A. No, sir.

Q. Now, it is charged in the complaint in this action—the government of the United States has charged, that many of the entrymen who entered timber and stone claims made such entries at the request of and for the benefit of the Barber Lumber Company and the other defendants in this action. Now, you are not mentioned in the complaint; but I will ask you as to whether or not you made your entry at the request of or for the benefit of the Barber Lumber Company, or any of the defendants?

A. No, sir; I did not. I made it for my own benefit to get all out of it I could.

Q. Did you make it at the request of any of the defendants, or anybody in the employ of any of the

(Testimony of Dora C. Burns.)

defendants?

A. Well, if they were an employee of them, I don't know it. I tell you Dean West was the one that come to me.

Q. Did you at any time enter into any agreement with the Barber Lumber Company or any of the defendants in this action by which you agreed that you would enter the land for their benefit, and that you would go to the land office and testify falsely for the purpose of acquiring title to the land to turn it over to them?

A. No, sir; I never done anything of the kind.

Q. Did Mr. Barber or Mr. Moon or Mr. Kinkaid or Mr. Rand, or any of the defendants I have named, ever asked or solicit you, or request you to go to the land office and testify falsely?

A. They never talked to me at all. The only time I ever talked with Mr. Moon in my life was on the street.

Q. Did Mr. Wells ever request you to go to the land office and testify falsely?

A. I don't think Mr. Wells talked about it at all to me—what I would testify to or anything about it.

Q. Did Mr. Wells request you to make a timber and stone claim?

A. I asked Mr. West to go and see if there was any danger of laying myself liable by doing such a thing; and that was the time I told him I wanted to see them myself, and he said he would, and when he did he said I would not have to swear to a lie, and if I hadn't had my own money I would have told a lie.

Q. Was that the only lie you thought you were called upon to swear to, with reference to your own

(Testimony of Dora C. Burns.)

money, at the time you made your final proof, Mrs. Burns?

A. Well, I could not say about that. I don't like any of it.

Q. Well, do you remember that at the time you made your first filing, you were not asked anything about where you got the money?

A. Well, I could not swear that I remember that.

Q. Well, you did at that time testify in the land office that you made the entry for your own benefit?

A. Well, I do yet.

Q. And that you had not entered into any agreement of any kind with any person with reference to what you should do with it. Now, you swore to that at the time you filed your first paper?

A. Well, I hadn't. If I had—

Q. That was true, was it? A. Yes, sir.

Q. You hadn't entered into any agreement express or implied?

A. I knew what I could do and I was told what I could do.

Q. Certainly; but you hadn't agreed to do that at that time, had you?

A. Not exactly by words.

Q. Well, had you agreed in any way? Had you told anybody?

A. They seemingly understood it that way, that I would.

Q. I don't care what they understood.

A. Well, that is all I have to say, what they understood.

Q. Had you agreed with anybody?

A. I allowed them to think it when I acknowledged that they thought it.

(Testimony of Dora C. Burns.)

Q. This was at the time you made your filing. Well, then, did you mean to go to the land office and testify falsely at that time?

A. I would not be positively false. I knew that they thought I had promised to do it; I hadn't promised to.

Q. You could not have made that filing before the land office, they would not have taken your filing, unless you testified and swore that you had entered into no agreement of any kind?

A. I hadn't entered into it; I told you that many times.

Q. And then the next moment you changed it.

A. No, I didn't.

Q. Now, had you entered into any agreement at the time you filed that first paper?

A. Will this be the limit of that question?

Q. It depends on your answer.

A. Well, I told you I hadn't.

Q. Had you entered into any implied agreement at that time?

A. I don't know what you mean.

Q. Did you know what you was going to do with the land at the time you filed on it?

A. No, I didn't. I didn't know whether I was going to do what I might do, or whether I was going to hold it, or how I was going to come out.

Q. I think you are now testifying truthfully.

A. I have tried to all the time.

Q. Now, the fact is, your whole evidence amounts to this, doesn't it, that before you filed on this land a man by the name of Dean West told you what you could do with this if you wanted to, that you could

(Testimony of Dora C. Burns.)

make a certain amount of money if you saw fit to sell it before final proof, and he could advance the money?

A. Yes; and I told them I didn't have the money at that time.

Q. Then he told you you could sell it before final proof and they advance you \$400 to make final proof with?

A. No, he didn't say that.

Q. Well, in substance that?

A. He said they would furnish it.

Q. And then you could sell at a profit of \$240?

A. Yes, sir.

Q. And if they didn't furnish the money to you to make final proof, then you could sell for as much as you could get?

A. I don't think they mentioned about what I could do then, at all.

Q. Well, all Mr. West told you was what you could do if you wanted to before you filed, and that is all you knew about it, was what you could do if you saw fit to do it? Isn't that true?

A. Yes.

Q. And then you made your filing and paid your own money for locating fees and so forth, with a view of selling in that manner, if you didn't get a chance to sell for any more? Was that the situation?

A. Well, that is about it; yes.

Q. And if you had found any opportunity to sell that land for any higher or larger price, there was no reason why you should not have done it, was there?

A. Why, I never kept it long enough.

Q. No; but I say, if you had kept it and paid it up with your own money—

A. Yes, sir.

(Testimony of Dora C. Burns.)

Q. —then you would have been under no obligations to sell to any one for any particular price?

A. Well, I would have sold to anybody for all I could.

Q. Did you ever see John I. Wells again after you went to get the fifty dollars from him?

A. Oh, I have seen him a number of times on the streets.

Q. I mean about this land? A. No, sir.

Q. So the only two talks you can remember of having with Mr. Wells was the time you got \$400 from him and the time you got \$50?

A. Well, to the best of my recollection it is. I would not say positively whether it was or was not.

Q. I say those are the only two times you can recall now? A. Yes, sir.

Q. And all the other information you had on this subject you got from Dean West and your neighbors?

A. Yes, sir. And he never came to see me about getting it back, but the other man did.

Q. What did you do with the receipt that they gave you at the land office when you paid in your money?

A. I turned it over to some of them, but I can't swear which one I turned it over to now.

Q. And what did you afterwards do with it?

A. I don't know what became of it.

Q. Did you turn it back to the government when you got the money, when you withdrew your money?

A. I didn't have it then. It was turned over to some of these people, but I don't remember who.

Q. Well, didn't you go back and get it and take it to the land office at the time you drew your money

(Testimony of Dora C. Burns.)

down? A. Why, no. How could I get it?

Q. I am asking you.

A. Well, I didn't.

Q. You are sure of that?

A. I am pretty sure I didn't have anything that day.

Q. Don't you remember that you went to Mr. Wells and got that receipt from him and took it to the land office and withdrew your money?

A. Why, no; I didn't do anything of the kind. But I can't remember who I turned it over to.

Q. Can you tell us anywheres near the month that you made your final proof?

A. No, I can't.

Q. How long after your husband's was it, to your best recollection?

A. Well, I should think it was something between six weeks and three months; somewhere along there.

Q. After your husband's final proof?

A. I think so. I won't say positively as to those dates, because I didn't think it was necessary, and didn't care, and didn't try to remember.

Q. At the time you went up to look at this land, had you had any talk with Pat Downs on the subject prior to that?

A. I never saw him until I saw him in the mountains there that I remember.

Q. So at the time that you went up to look at the land your conversations had been with your husband, neighbors, and Dean West?

A. Yes. Dean West said he would locate us when he got up there, and he was the one that gave me

(Testimony of Dora C. Burns.)

my information.

Q. I say, at the time you went up there to look at the land, you had never had any conversations on this timber deal with anybody except your husband, your neighbors and Dean West?

A. I think not.

Q. Now, when you returned from the land, how long after that was it that you filed your first papers?

A. Well, it was very shortly, but I would not say positively as to that.

Q. A day or two?

A. I don't think it was only just a few days.

Q. Now, up to the time you filed, had you had any more talks with West on the subject?

A. Well, I think I had, but I would not swear to that.

Q. Had you had any talk with anyone else besides West?

A. Because I didn't feel very good after I started in with it, and didn't want to talk about it.

Q. Had you had any talk with anybody else?

A. Maybe I had.

Q. Well, who? A. I don't know.

Q. Had you talked to Mr. Wells about it?

A. No, sir.

Q. So that right up to the time that you went to the land office and filed your first papers, all you knew about this land deal was what you had learned from West, your husband and your neighbors?

A. And those men on the road up there. We talked it over some.

(Testimony of Dora C. Burns.)

Q. Well, those men had been talking about the advisability of selling, hadn't they?

A. Well, I talked a little freer, I guess, than Miss Cassell thought I ought to, and she said, "You had better keep still; it ain't a very popular thing to talk about." I said, "I don't see why. If they give it to us and we have a right to sell it for so much, I don't see why I can't."

Q. I say, had you had any talk about what you should do with this land? A. Oh, no.

Q. You had no talk of that kind up until some time after you had made your filing?

(No response.)

Q. (By Mr. GORDON.) Who was saying that, with reference to the question that you answered a few minutes ago? You were saying somebody said it was not a very nice matter to talk about.

A. Well, Miss Cassell, one of the party who went up there.

Q. (By Mr. BUNDY.) I am talking about with reference to what you should do with it. You hadn't had any talk with anybody up to the time you filed your first papers, except the talks you have told us about with Dean West? That is right, is it?

A. My principal advice and information and all

Q. Well, that does not answer the question. The question is, at the time you filed your first papers?

A. Well, I don't know. I might have talked with others. I don't remember.

Q. Well, up to the time you filed your first papers, do you remember of talking to anybody as to what

(Testimony of Dora C. Burns.)

you should do with this land, except Dean West?

A. And the neighbors.

Q. And the neighbors?

A. That is all that I can remember of. I might have, possibly, but if I did I don't remember it.

Q. Now, had Dean West and the neighbors told you anything more than the fact that there was a chance to sell it at a profit? A. No, sir.

Q. Nobody had told you the name of any company at that time that would buy it of you, had they?

A. I had the names of some parties, but they was not a company, if I remember right, at that time. But then I didn't know whether it was true or not. I didn't care anything about it then. I was pretty well assured that what Mr. West was telling me was all right.

Q. Now, had anybody told you, did West tell you, of the name of some company that was going to buy this timber land from you, at the time you filed?

A. He didn't call it a company. I don't think it was a company then.

Q. Did Mr. West tell you at that time the name of a person that would buy it, the individual?

A. He said some of the parties.

Q. Did he name any names?

A. He very often spoke about that man that come down there to see me. He was implicated in it, he said.

Q. Did he tell you that Pritchard was buying it?

A. No; he didn't say that Pritchard was buying it. He said he was interested in it, or he would have

(Testimony of Dora C. Burns.)

part of it, or he was interested in the work and all. I don't know how he worded it.

Q. Well, I want you to tell us what he said.

A. Oh, I don't remember.

Q. How long since you have talked this over with any representative of the Government, Mrs. Burns?

A. Well, it has been some time.

Q. Did a man by the name of Watts call on you recently?

A. No, sir.

Q. How long has it been since you talked it over?

A. There was never any man that I know of come and talked to me about it but that one man, and that was right away afterwards when he come around to see all of them.

Q. Haven't you talked with anybody within the last month or so?

A. Not until this man came over there to summons me down here.

Q. And when was that?

A. That was day before yesterday, I believe.

Q. Was that Mr. Watts?

A. I don't know his name.

Q. Did he talk over these things with you?

A. I didn't want to come, and I told him first I didn't know anything about it.

Q. Did he talk over the facts, about what you would testify to?

A. No; he didn't talk over the facts. I talked some about it.

Q. Did you talk it over with anybody?

A. Maybe I have said some things to my friends.

(Testimony of Dora C. Burns.)

Q. Have you been before any grand jury, at Boise? A. No, sir.

Q. Or have you testified in any case?

A. Land case?

Q. Yes. A. No, sir.

Q. About this land?

A. No, sir; no, sir. I never have.

Q. Did your husband get a divorce from you?

A. Does that interest this case?

Q. Yes.

A. No, sir; he did not. That I consider my own private business. I got a divorce, and that is my affair.

Q. Are you married again?

A. That is none of your business; but I am not.

Q. How long did you live with Mr. Burns?

A. Oh, I didn't figure up the time.

Q. Eh? A. I have not figured up the time.

Q. Will you kindly figure it up?

A. I can't, now.

Q. Well, was it a short time or a long time?

A. Probably something like fifteen or sixteen years. I don't know, really.

Q. What was your maiden name, before you were married? A. My name was Wilfong.

Q. Was that your maiden name?

A. Yes, sir.

Q. Mr. Burns was your first husband?

A. Yes, sir.

Q. Do you remember of making a statement in the city of Boise, a short time after you drew down

(Testimony of Dora C. Burns.)

your money, to the effect that you would be willing to serve a short time for \$400, and was going to keep it?

A. No, sir; I never done anything of the kind. I don't want to serve any time for anything. But I consider when you are in Rome, do as Rome does.

Q. What occurred that made you conclude that you wanted to take your money back after you had made final proof, and done all the swearing that you were called on to do?

A. Well, I thought it would let me out of the deal entirely, but it seems it has not.

Q. That does not quite answer my question. What occurred, if anything?

A. Well, there was talk there would be trouble, and we would all go to the pen, and everything like that; and we laughed and joked about having plenty of company, and everything of the kind.

Q. So that is what induced you to go and draw down your money, was it? A. Oh, one thing.

Q. What was your answer?

A. I said that was one thing.

Q. Well, was there any other thing?

A. Well, I wanted to.

Q. Well, what made you want to?

A. Oh, smart people are always liable to change their mind.

Q. What is that?

A. I say smart people are always liable to change their mind.

(Testimony of Dora C. Burns.)

Q. Well, you had done all the swearing you were called on to do?

A. Well, I didn't know whether I had or not. I was told lots of things that were not true.

Q. You had been to the land office and testified, had you not?

A. Yes, sir; but how many more times might I be taken there?

Q. You had been to the land office and made your final proof and testified with reference to the questions they had asked you, had you not?

A. I was there once. I was there twice.

Q. Well, you had made your final proof and paid in your money?

A. Yes.

Q. And had a receipt for it?

A. Yes, sir; I got a receipt.

Q. And it was after that that you went back and took your money?

A. Yes; it was after that; some time after that.

Mr. BUNDY.—Now, Mr. Gordon, have you the proof papers of this lady that she filed?

Mr. GORDON.—I have not. I have been looking for them all day.

Mr. BUNDY.—The defendant, Barber Lumber Company, now requests and demands that the original filing papers and final proof papers of the witness, Dora C. Burns, be produced by the Government and offered in evidence, and serve notice that unless such final papers and proof papers are produced the defendant will move to strike out all her evidence on the trial of this case. That is all.

(Testimony of Dora C. Burns.)

The WITNESS.—I have not got any of them and don't want any of them.

Redirect Examination.

(By Mr. GORDON.)

Q. Have you contributed to the support of your husband since you have received your divorce from him?

A. He receives a portion, as we have agreed upon, out of the income of the property back there, and he shall as long as I own it.

Q. It is your property, in your name, is it?

A. Yes, sir.

Q. And I understand that you had \$400 of your own money at the time that you made your final proof and you carried that along with that you got from Mr. Wells, so that you could swear that the money you paid in the land office was your own money. Is that correct?

A. I had it all together. Yes, sir.

Q. That is the reason you took your money along, wasn't it? A. Yes, sir.

Q. Now, about this \$50 that you have been asked about. You say you don't remember when you got it?

A. No, sir, I can't say; and I won't say, because I don't remember. I don't deny getting it. He handed it to me, and that was all there was about it.

Q. You said somebody had told you that you would all go to the penitentiary. Do you remember who it was told you that?

A. Oh, the neighbors talked it over, and laughed and joked about it.

(Testimony of Dora C. Burns.)

Q. Who were the neighbors?

A. Different ones. I can't remember. Mrs. Driggs was frightened most to death, part of the time, by things we would hear. We would hear it through the Dye's.

Q. What Dye? Samuel Dye?

A. Well, they are relatives of Mr. West.

Q. And did Mr. West live in the immediate neighborhood where you lived?

A. Yes, sir; I think it was three or four lots from mine; all in the same block, all on Fourteenth street.

Q. Do you remember the name of any of the other neighbors whom you discussed this with?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and hearsay.

A. Why, the Thompson people.

Q. (By Mr. GORDON.) What Thompson?

A. Tommy Thompson's people.

Q. Did Peirson live in that neighborhood?

A. Yes, sir; and I talked with him too.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BUNDY.)

Q. Can you pretend to give us the conversations you had with these people, Tommy Thompson, and Peirson?

A. Oh, they asked what I thought about the danger of it, and if it was all truth; and I told her if she didn't have her own money there would not be any truth in it. But Mr. West told me I would not

(Testimony of Dora C. Burns.)

have to swear to certain things, and those things I did have to swear to.

Q. So your discussion was over what Mr. West had told you? A. Yes.

Q. Now, you say you took some of your own money, and the money that Mr. Wells gave you, and told me that you didn't mark the bills so you could tell which money you used. Is that still true, or do you want to change that?

A. Oh, I had my money with me.

Q. That does not answer the question. You told me awhile ago that you didn't mark the bills, so you didn't know whether you used the money that Mr. Wells gave or used your own money. Is that true?

A. Well, I considered it was my money after he handed it to me.

Q. Then I will put it this way: Did you use the money Mr. Wells gave you, or the other money you had in your pocket, or do you know?

A. I probably used what he gave me.

Q. Well, did you? Did you, Mrs. Burns?

A. Maybe I used part of it.

Q. You said awhile ago you didn't mark the bills.

A. Well, I didn't. I say, maybe I did.

Q. Well, do you know now whether you used the money he gave you or the other money, or part of each? A. I expect I used part of each.

Mr. BUNDY.—That is all.

Mr. GORDON.—That is all.

It is stipulated by and between counsel for the respective parties, that the signature of this witness

shall be dispensed with, subject to the right of either party to recall the witness at the expense of the United States for the correction of any errors in the transcription of her testimony concerning the correction of which counsel shall not be able to agree.

The further taking of testimony in the above-entitled cause was adjourned until the 2d day of April, 1909, at 10 o'clock A. M.

Los Angeles, California,
Friday, April 2, 1909, 10 o'clock A. M.

Met pursuant to adjournment, and the Government having no further testimony to introduce, the further taking of testimony herein before Leo Longley, as Special Examiner, was adjourned sine die.

State of California,
County of Los Angeles,—ss.

I, Leo Longley, duly appointed Special Examiner by the Circuit Court of the United States for the District of Idaho, do hereby certify that on the days mentioned in the foregoing proceedings and depositions in this cause, I was attended by the counsel and witnesses aforesaid, at the office of the United States Marshall, in the Tajo Building, Los Angeles, California; that said witnesses, to wit: A. G. Foster, Frank Lane, and Dora C. Burns, each were first duly sworn according to law as witnesses in the suit or cause in the caption hereto mentioned, and there examined before me orally by counsel; and by the consent of the parties by their several said solicitors the examinations and depositions of said

witnesses were severally stenographically written down and afterwards typewritten; that such examinations were had in the presence of the solicitors of the several parties hereto, and that the signatures thereto were waived by stipulation of counsel.

I further certify that the foregoing is a true statement of all the proceedings had before me on the days mentioned, in the matter of taking testimony herein, and that Complainant's Exhibits A. G. Foster Number 1 and Number 2, and Complainant's Exhibit Frank Lane Number 1, were duly introduced in evidence, and are herewith returned into court.

LEO LONGLEY,
Special Examiner.

[Endorsed]: Filed June 18, 1909. A. L. Richardson, Clerk.

[Proceedings Had March 22, 1909.]

San Francisco, California,

March 22d, 1909, 10 A. M.

Met pursuant to stipulation of counsel of record in the above-entitled case, there being present Clement Bennett, Examiner; Counsel for the complainant, Charles A. Keigwin, Esq., Special Assistant to the Attorney General, and counsel for the defendants, C. T. Bundy, Esq.,

Thereupon, on account of the absence of Peyton Gordon, Esq., Special Assistant to the Attorney General, and one of the counsel for the complainant, an adjournment is taken until 2 P. M.

Afternoon Session—2 P. M.

Met pursuant to stipulation of counsel of record in the above-entitled case, there being present: Clement Bennett, Examiner, counsel for the complainant, Peyton Gordon, Esquire, and Charles A. Keigwin, Special Assistants to the Attorney General, and counsel for the defendants, C. T. Bundy, Esquire.

[Testimony of Aaron Ownbey, on Behalf of the Complainant.]

Thereupon, AARON OWNBEY, a witness called for the United States, having been first duly sworn to testify to the truth, the whole truth and nothing but the truth in the above-entitled cause, deposed and said as follows:

Mr. GORDON.—Q. Your name is Aaron Ownbey?
A. Yes, sir.

Q. Where do you reside, Mr. Ownbey?

A. At the present time, Hopland, California.

Q. How long have you resided in Hopland?

A. About 6 months. I went there in September.

Q. And you at one time resided in Boise, Idaho?

A. Yes, sir.

Q. How long had you resided there, and when did you leave there?

A. Well, I was there since 1892; I left there a year ago last December.

Q. That was in December, 1907?

A. Yes, sir.

Q. What was your occupation in 1902?

(Testimony of Aaron Ownbey.)

A. I being on a toll road and ranch in connection with my brother; that is, in partners with my brother.

Q. What do you mean by being on the toll road?

A. We owned a toll road, and we had a ranch in connection with that.

Q. You entered a claim under the Timber and Stone Act September, 1902, did you not?

A. Well, I entered an entry; the date I don't remember.

Q. I show you timber and stone land, sworn statement of Aaron Ownbey, dated December 6, 1902, and ask you if you signed that paper and filed the same in the land office at Boise, Idaho (handing)?

A. Yes, sir.

Q. I show you a non-mineral affidavit of Aaron Ownbey of the same date, and ask you if you signed that paper and filed it in the land office at Boise, Idaho, on that date? A. Yes, sir.

Q. I show you the testimony of Aaron Ownbey, given on final proof December 18, 1902, and ask you if you signed that paper (handing)?

A. Yes, sir.

Q. I show you the cross-examination of Aaron Ownbey attached and ask you if you signed that?

A. That was taken in the land office there at Boise?

Q. Yes. A. Yes, sir.

Q. Mr. Ownbey, did you know Ex-Governor Frank Steunenberg in September, 1902?

A. I knew him when I seen him. I was not per-

(Testimony of Aaron Ownbey.)

sonally acquainted with him.

Q. Who first spoke with you about taking up a claim under the Timber and Stone Act?

A. Well, if my recollection is right it was a man by the name of Gibberd, though I won't be positive as to that.

Q. William Gibberd? A. Yes, sir.

Q. Was he a man that had something to do with one of the locks, a contractor,—a canal?

A. I believe he did.

Q. What did Mr. Gibberd say to you about it?

Mr. BUNDY.—We object to that as immaterial, irrelevant, incompetent and asking the witness to testify to hearsay.

A. Why, Mr. Gibberd had apparently taken up a claim, or had one in view; anyhow he passed there and was talking about the timber, and he told me it was good timber.

Mr. GORDON.—Q. Did he tell you to go to see it?

A. Well, I don't remember that he did.

Q. Did you know of any market for timber claims at that time? A. I did not.

Q. Did you know of any persons that were buying timber claims? A. No, sir.

Q. Did you know of any persons that were selling timber claims? A. No, I did not.

Q. And you went to view this claim that you located on, did you? A. Yes, sir.

Q. Who went with you?

A. Well, the locator was Downs, and the parties

(Testimony of Aaron Ownbey.)

that went with me were E. J. Starn and his wife.

Mr. BUNDY.—Q. Isn't it E. H. Starn?

A. Well, he might possibly sign his name that way.

Mr. GORDON.—Q. Did Mr. Youngkin go with you? A. No, sir—oh, yes, he did.

Q. Who arranged for this party?

A. That went down?

Q. Yes.

A. Well, I don't know who arranged with Youngkin to go, but I and Starn arranged to go together.

Q. Who told you that Mr. Starn was going up?

A. Well, I don't remember who did tell me.

Q. Were you intimately acquainted with Mr. Starn? A. I was.

Q. Did he tell you he was going?

A. Why, I don't remember how it came up to that; we went together.

Q. Did you use your own teams, or did you hire a team? A. Used my own team.

Q. Did Mr. Starn pay half for the team?

A. No, I don't know that he paid anything.

Q. Who told you to go and see Pat Downs?

A. Well, I knew Pat Downs was locating people there.

Q. Who told you that?

A. Well, I don't remember. I did not see anyone particularly, but he stopped at our place quite often.

Q. Did you know John I. Wells of Boise at that time? A. Yes—not at that time—

(Testimony of Aaron Ownbey.)

Q. Had you talked about the timber claim—

A. (Intg.) Not at that time. I did not know him at the time I went up there.

Q. What town did you go to?

A. I went up to Idaho City.

Q. And saw Mr. Downs there?

A. No, I saw Mr. Downs at Kempner's place.

Q. That is beyond Idaho City?

A. Yes, sir.

Q. Did you have an arrangement with Mr. Downs to meet him there? A. I did.

Q. How long before you went to see Mr. Downs did you have a conversation with him in which you made arrangements to meet him?

A. I don't remember that.

Q. Was it a week before, a month before, or a day before?

A. Well, it was sometime before, but I could not say positively.

Q. And did he tell you when it would be agreeable for him to have you come to Kempner's?

A. Well, I don't remember the conversation; we agreed on the day, or something to that effect.

Q. Agreed upon the day that you were to go there?

A. Yes, that is my recollection of it.

Q. Did he tell you how much it was going to cost you to take up a claim?

A. I don't know that he did.

Q. Did he tell you what it would cost you to locate?

(Testimony of Aaron Ownbey.)

A. I don't remember that Downs ever told me that.

Q. Did anybody ever tell you how much it was going to cost you?

A. Well, I would not be positive.

Q. Did you know how much it was going to cost you when you went to locate it?

A. My understanding was it would cost me \$2.50 an acre; where I got that, I don't remember.

Mr. BUNDY.—Q. \$2.50 an acre?

A. Yes, sir.

Mr. BUNDY.—I think he is inquiring about the locating fee.

Mr. GORDON.—I meant the whole course. If you knew what any of it was going to cost.

Q. Now, Mr. Downs took you out and showed you a claim and said, "This is a claim I locate you on, Mr. Ownbey"?

A. Yes, he took me and showed me the claim, and showed me the timber on it, and so I used my judgment as to whether I thought the timber was sufficient that I wanted to purchase the claim or not.

Q. He asked you that?

A. I say I used my judgment. We went over the land, and he showed me the lines; I took his word for the lines, and I used my judgment as to the value of the timber.

Q. Did he show you more than one claim?

A. He did.

Q. You say he did?

A. I went over the lines with Starn and his wife,

(Testimony of Aaron Ownbey.)

that is the claim that they had taken.

Q. Did he ask you if you wanted either one of those claims?

A. No, sir. I don't remember. I think my claim was the first one of the three.

Q. And you took the first one he showed you?

A. Yes, it looked all right.

Q. Did he give you the numbers of that property of description of it there?

A. Yes. There at the place.

Q. Yes?

A. Well, I don't remember that he did, but I think he did if I am not mistaken; I am not sure, though.

Q. Did he give you your numbers separately or did he give you the numbers with the rest of them, that were of that party?

A. He gave me my numbers separately.

Q. Did you ask him who was going to prepare the papers for you? A. I did.

Q. Who did he tell you?

A. He told me to go to Wells.

Q. John I. Wells?

A. I believe that is his initials.

Q. What else?

A. Well, from there on to a stenographer, I believe, where I got the papers made out.

Q. Did Wells go with you?

A. Well, no, I don't think he went along; he gave me information to that effect.

Q. What did you go to Wells for?

(Testimony of Aaron Ownbey.)

A. To pay the location fee.

Q. Did Wells give you a description of the property when you went there?

A. I don't remember that he did.

Q. What was the reason you did not pay Pat Downs the location fee?

A. He told me to pay it to Wells.

Q. Did you ask Wells about having your papers prepared? A. No, sir.

Q. Who prepared your papers for you?

A. I had taken some papers to the stenographer.

Q. What stenographer?

A. Well, I don't remember; it was a lady stenographer there.

Q. And she prepared your papers?

A. Yes, sir.

Q. She made out your sworn statement?

A. And I think I went before a notary public, something about it.

Q. Now, this notice of publication, who prepared that for you?

A. I don't remember who did it.

Q. Did you know Mr. Louis M. Pritchard at that time?

A. I don't remember him at all. Who was he?

Q. He was a lawyer there. Did you know him?

A. I don't remember him now.

Q. Do you know where you got that notice of publication that you filed in the land office?

A. No, I could not say now, I don't remember where I did get it.

(Testimony of Aaron Ownbey.)

Q. Do you remember who prepared that paper for you, the non-mineral affidavit?

A. No. I was under the impression that those were the papers that the stenographer looked out for. I cannot remember about that.

Q. Did anybody go to the land office with you?

A. Why, Starn and his wife was all. They were my witnesses.

Q. Do you recollect how much money you paid the first time you went to the land office?

A. If I remember it was \$412.50. That is my recollection; I am not positive.

Q. Did you go to Mr. Wells' office the day after you returned from Idaho City?

A. Well, I would not be positive. I don't remember whether it was the next day or following day.

Q. Did you go to Mr. Wells' office before you filed your papers?

A. No, sir.

Q. You did not?

A. I won't say that I did not. I don't remember whether I went to his office or not before I filed those papers. I ain't positive as to that.

Q. What is your best recollection?

A. I cannot remember whether I did or not.

Q. Didn't he tell you where to go to have those papers made out?

A. Downs?

Q. Wells, I mean?

A. Well, he gave me some information in regard to making out the papers.

Q. Then you did go to his office before you went

(Testimony of Aaron Ownbey.)

to the land office to file the papers?

A. I think so, if I remember it correctly now.

Q. You are positive about that, now, aren't you?

A. I would not be quite positive but to the best of my recollection, he gave me some information in regard to that.

Q. Was that the first time you had ever met John I. Wells? A. Yes, sir.

Q. And you say you don't know a man by the name of Louis M. Pritchard?

A. I don't remember of him.

Q. Did you know John T. Kincaid at that time?

A. Not at that time.

Q. Then the day you filed those papers you paid a certain amount of money into the land office?

A. Yes, sir.

Q. Do you recollect how much that was?

A. If I remember correctly it was \$412.50.

Q. Not the first time you went there. Didn't you pay an advertising fee and a filing fee when you went there? A. Yes, sir.

Q. How much was that?

A. To the best of my recollection it was \$7.50. I won't be positive.

Q. Did you say you deposited it, or you would not be positive?

A. I would not be positive as to the amount I paid for the advertising fee.

Q. Then in the course of several months you went to the land office to make your final proof?

A. Yes, sir.

(Testimony of Aaron Ownbey.)

Q. Now, at the time you went there to make your final proof, did you know of any market for this timber claim? A. No, sir.

Q. Didn't know of anybody who was buying them? A. No, sir.

Q. Or anybody who was selling timber claims?

A. No, sir.

Q. How much did you pay in the land office when you made your final proof? A. \$412.50.

Q. How did you pay that, by check or in cash?

A. I think I paid cash, I am quite positive I did.

Q. How long had you had that money in your actual possession?

A. Well, I don't think I can tell you that, all of that. That was money taken in right along in business.

Q. Did you borrow any money with which to make payment? A. No, sir.

Q. Did you have a bank account at that time?

A. I did.

Q. Which bank?

A. The Bank of Commerce.

Q. Did you have on the morning you made your final proof \$412.00 in the bank?

A. Yes, sir.

Q. Do you recollect when you put any of it in there? A. No, I could not tell you the date.

Q. I mean, did you put a large part of it in the day before?

A. Well, I might have put in some the day before, because when we came down from home there we

(Testimony of Aaron Ownbey.)

would bring what money we had taken in and deposit it in the bank, and whether I put it in or not, I don't remember.

Q. Did you buy a certificate of stock from the Bank of Commerce the day you made your final proof?

A. No, I drew the money on my own check, I think.

Q. They gave you a receipt for that land?

A. At the land office?

Q. I mean for the money that you paid in?

A. Why, I suppose they did. I don't remember.

Q. Now, as I understood you to say, up to that time you did not know of any person who was buying timber claims or that you did not know of any persons who were selling timber claims?

A. Yes, sir.

Q. How long after you made that \$412.00 payment into the land office did you start negotiations for the sale of this land?

A. Well, I don't remember exactly, but it was sometime, a few months.

Q. A few months? A. Yes, sir.

Q. Was it not less than two months?

A. Well, I wouldn't be positive as to the time.

Q. Who then spoke to you about buying your claims?

A. Well, the first I ever heard of anyone buying a claim, my brother was in the city, and he had a talk with some man there in regards to buying these claims, but who this man was, I don't know his name;

(Testimony of Aaron Ownbey.)

he was a man connected with the "Statesman." I am pretty sure he was connected with the "Statesman," what his name was I don't know. Anyhow, they did not make any deal.

Mr. BUNDY.—Was it Mr. D'Ardille?

A. I could not say. I don't remember whether it was or not. I don't know as I would remember if I heard the name now.

Mr. GORDON.—It was a man connected with the "Statesman" newspaper?

A. Yes, I think he was. I don't know what his position there was with the paper.

Q. You did not sell to him?

A. No, sir.

Q. Why?

A. Well, I don't remember now. I did not talk with him myself, but my brother was talking with him. I don't remember why they did not.

Q. With whom did you negotiate the sale for this property? A. I sold to Kincaid.

Q. Through John Kincaid?

A. Yes, sir.

Q. What did Wells have to do with your selling to Kincaid? A. Nothing.

Q. Did he send you to Kincaid?

A. No, I used Wells' name there when I intended to use Kincaid's there.

Q. Did Mr. Kincaid come to see you about it?

A. No, sir.

Q. Who told you to go and see Kincaid?

A. Well, I don't remember who it was. I had

(Testimony of Aaron Ownbey.)

some talk there among the boys who said that he would buy.

Q. Did you know Frank Steunenberg?

A. I knew him when I seen him.

Q. Did he speak to you about buying this?

A. No, sir.

Q. You deeded the property to Ex-Governor Frank Steunenberg though, didn't you?

A. That is my recollection; to the best of my memory it was him.

Q. Did you think it was singular to sell to Kincaid and make a deed to Frank Steunenberg?

A. Well, I didn't know. I supposed he would be an agent or something.

Q. How much money did he pay you for your timber claim? A. \$750.00.

Q. And you put the consideration in \$950.00?

A. I don't remember the consideration.

Q. Did you go to Mr. Kincaid's office alone?

A. Yes, I don't remember of anyone being with me.

Q. And you say you don't know who told you to go there?

A. I don't remember who was the first one that told me.

Q. You only went there the once, didn't you, the one time?

A. Well, I was there more than one time. I don't remember how many times.

Q. Were you married at that time?

A. Yes, sir.

(Testimony of Aaron Ownbey.)

Q. Did you take your wife with you the day that you collected your money? A. No, sir.

Q. Where did she sign the deed?

A. Well, I don't remember just where it was now; she was there in Boise. I don't remember just where she did.

Q. What did you do the first time you went to Kincaid's office with reference to selling this property?

A. Well, I talked to him about it, and he told me to come back later on.

Q. Why did he tell you to come back later on?

A. Why did he tell me?

Q. Yes. A. I don't know.

Q. Did he tell you why you should come back later on?

A. He told me to come back later on.

Q. Did he tell you why he did not buy it that day?

A. No, sir; he did not.

Q. Did he say that he would buy it some day later?

A. No, he did not say he would buy it later.

Q. What did he say?

A. He told me to come back later. I don't know whether he told me to come back the next day or not, but I went back the next day, to the best of my recollection.

Q. What did he say then?

A. Well, I don't remember exactly the conversation, but I know we agreed on the price of his taking it.

(Testimony of Aaron Ownbey.)

Q: Was there any disagreement on the price the first time you went there?

A. Well, I think I asked him \$800.00 for the claim in the first place.

Q. What did he say?

A. Well, he was not disposed to give that much.

Q. Did he make you an offer that day?

A. Well, I don't remember whether he made an offer that day or not. I don't remember whether we made the deal that day or the day following; I can't remember exactly.

Q. But it was the next day that you sold to him?

A. Well, I would not say positively that it was the next day. I was there two or three days.

Q. You read the deed over that you signed, did you?

A. Yes, sir.

Q. Was it dated?

A. Well, I would not swear to that; I don't remember it has been so long ago.

Q. Do you remember whether it was dated or whether the deed was in blank?

A. Well, I read the paper over, but I don't remember the date.

Q. How did he pay you, by check or in cash?

A. In cash.

Q. How much did he give you in cash?

A. \$750.00.

Q. Did your wife take up a timber claim?

A. No, sir.

Q. Did you ever make more than one deed for this piece of property?

A. No, sir.

(Testimony of Aaron Ownbey.)

Q. Were you ever asked to make another deed?

A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Aaron Ownbey, dated September 6, 1902, the notice of publication, the same date, the non-mineral affidavits, of the same date, the testimony of Aaron Ownbey taken on final proof December 18, 1902, the cross-examination attached, all of which papers have been identified by the witness Aaron Ownbey as having been signed and filed in the land office at Boise, Idaho, by himself; the testimony of the other witnesses on final proof, the receiver's certificate and the register's certificate dated December 18, 1902, and a certified copy of the patent dated May 13, 1904, all to the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ and the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 9, in Township 7 North of Range 8 East, Boise Meridian, said papers to be marked Complainant's Exhibit Aaron Ownbey No. 1.

(The papers are marked Complainant's Exhibit Aaron Ownbey No. 1, Clement Bennett, Notary Public.)

Mr. BUNDY.—It is stipulated that Aaron Ownbey and wife conveyed the land described in his entry to Frank Steunenberg on January 27, 1903; that Frank Steunenberg thereafter and on June 26, 1905, conveyed the same lands to the Barber Lumber Company.

Cross-examination.

Mr. BUNDY.—Q. Mr. Ownbey, at the time you filed your first papers in the Land Office which we

(Testimony of Aaron Ownbey.)

call the filing, at that time had you entered into any contract or agreement of any kind or character, express or implied, written or oral, with any person, firm or corporation by which you had obligated yourself to transfer or assign to any such person, firm or corporation, any right, title or interest in the lands you might acquire from the United States by your entry? A. No, sir; I had not.

Q. At that time had you entered into any agreement or was there in existence any agreement of the kind I have described by which any person, firm or corporation had any right, title or interest in the land you were acquiring from the Government or the timber upon that land? A. No, sir.

Q. Did you have any such or similar agreement at the time you made your final proof?

A. No, sir.

Q. Mr. Ownbey, the United States Government in this action we are trying charges and alleged in its complaint that you entered this land at the request of and for the benefit of the Barber Lumber Company, James T. Barber, Sumner G. Moon, and the other defendants named; is that true or is it false?

A. It is not true. I never knew there was a Barber Lumber Company, a corporation of that kind, until after I had the land.

Q. Is it true as to any of the other defendants. There are other defendants beside the Barber Lumber Company. Did you enter it at the request of or for the benefit of any person other than yourself?

A. No, sir; no one.

(Testimony of Aaron Ownbey.)

Q. The Government has also seen fit to charge you in this action we are trying, Mr. Ownbey, with having entered into an agreement with the Barber Lumber Company and the other defendants for the purpose of defrauding the United States out of 160 acres of timber land; is that true or is it false?

A. It is false.

Q. And it is alleged in this complaint that pursuant to that agreement you entered this land at the request of and for the benefit of the defendants and then went to the Land Office at their request and at their solicitation and swore to facts which you knew to be false; is that true or is it false?

A. It is false.

Redirect Examination.

Mr. KEIGWIN.—Q. Mr. Ownbey, at the time that you made this filing, did you understand that it was against the law to have an agreement with anybody by which you were to transfer the land to him?

A. Well, I had read in the papers where the Government had been after people in Oregon, I believe, and that was all that I knew about it.

Q. Did the officers at the Land Office tell you something of the kind?

A. I don't know that they ever did; I don't think so.

Q. At the time that you made your final proof and paid for the land was it your understanding that you were not allowed at that time to have any agreement for the sale of the land?

(Testimony of Aaron Ownbey.)

A. Well, I think they asked me that question; I remember that.

Q. You understood that it would be unlawful if you had made any agreement prior to that time?

A. I did.

Q. And that if you had made any such agreement you would have been guilty of a crime against the United States; did you understand that?

A. That is my recollection, that I understood that.

Q. That is still your understanding, I suppose?

A. Yes, sir.

Recross-examination.

Mr. BUNDY.—Q. Understanding the law as you have stated, would you have made any agreement if it had been solicited to do so with any person?

A. No, sir; I would not.

Q. You were not desiring or intending to violate the law of the United States in this timber entry, were you?

A. No, sir; it was not my intention.

Q. Did you in fact violate the law as you understood it to be? A. No, sir; I did not.

(It is stipulated by and between counsel that the signature of this witness to his testimony when transcribed shall be dispensed with, counsel on both sides reserving the right to recall the witness for the correction of any error in the transcription of his testimony, concerning the correction of which counsel cannot agree, and this stipulation applies to all of the witnesses examined at San Francisco.)

(An adjournment was here taken until to-morrow, Tuesday, March 23d, 1909, at 10 A. M.)

*In the Circuit Court of the United States, for the
District of Idaho.*

UNITED STATES

vs.

BARBER LUMBER CO. et al.

**Depositions of A. B. Campbell, H. A. Snow, Joseph
Ehrmantraut, Margaret Ehrmantraut and Will-
iam F. Snow.**

MALCOLM E. NICHOLS, Notary Public and Com-
missioner.

Appearances:

PEYTON GORDON, Esq., Special Assistant
Attorney General, appeared on behalf of the
Government.

C. T. BUNDY, Esq., Counsel for the Defendant,
the Barber Lumber Company.

STIPULATION.

It is hereby stipulated that the depositions of A. B. Campbell, H. A. Snow, Joseph Ehrmantraut, Margaret Ehrmantraut and William F. Snow may be taken before Malcolm E. Nichols, a notary public for Ramsey County, Minnesota, on the part of the complainant, beginning on this 12th day of April, 1909, and continuing from time to time thereafter until completed, with the same force and effect as if the same were taken before Charles H. Taylor, the commissioner appointed by said Court for that purpose, and that when taken said depositions may be filed and used in the above-entitled action with the

same force and effect as though taken before said commissioner.

And it is further stipulated by and between counsel for the respective parties that the signature of each of said witnesses to their respective depositions be and hereby is waived, subject to the right of either party to recall said witnesses at the expense of the complainant for the purpose of making any corrections in their evidence when the same shall be transcribed, in the event that such corrections cannot be made by agreement of counsel.

[Deposition of Amasa B. Campbell, on Behalf of the Complainant.]

AMASA B. CAMPBELL, a witness for the complainant, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. GORDON.)

Q. Where do you reside, Mr. Campbell?

A. Spokane, Washington.

Q. How long have you resided at Spokane?

A. Ten years.

Q. Where did you reside prior to that time?

A. Wallace, Idaho.

Q. What is your occupation? A. Mining.

Q. What was your occupation in 1902, and prior thereto? A. Same business.

Q. Did you know Frank Steunenbergh, one time governor of the State of Idaho, during his lifetime?

A. I did.

Q. State when you first met him or became acquainted with him?

(Deposition of Amasa B. Campbell.)

A. I think it was about 1899, at the time of the riots in the Coeur d'Alene country.

Q. He was governor of the State at that time?

A. Yes, sir.

Q. And your acquaintance continued from that time up to the time of his death, did it not?

A. Yes, sir.

Q. Did you know at that time, or in 1901 and 1902, a gentleman by the name of Albert E. Palmer?

A. I met him in Spokane, yes, sir.

Q. And how long had you known him, at that time?

A. Perhaps a few months; not very long.

Q. He lived in Spokane at that time, did he?

A. Made his headquarters there, yes.

Q. Do you know what his business was?

A. Well, I have heard he was engaged in mining.

Q. Do you know whether he was in the lumber business?

A. I didn't know at that time that he was in the lumber business.

Q. In the spring of 1902 did Governor Frank Steunenberg come to Spokane to see you on any business?

A. Well, yes; I suppose he did. You have got the dates there for all that. I suppose it was about that time. You will have to refresh my memory on all that.

Q. And what was that business, Mr. Campbell?

A. Well, he came to see me about borrowing some money.

(Deposition of Amasa B. Campbell.)

Q. Now, just state all that happened at that first visit with Governor Steunenberg.

A. I think the Governor came and told me that he was out of office, and he had no money and wanted to arrange with me to borrow fifteen thousand dollars.

Q. He came to you to borrow fifteen thousand dollars?

A. I stated that I knew there would be no difficulty in getting fifteen thousand dollars; the mine owners were under obligation to him and would give him fifteen thousand dollars; and he turned that down and said he would want to pay for it the same as any other man. Then I asked him what he proposed doing, and he mentioned several things, and among others he told me he had a chance to get in with a body of timber in the Boise Basin.

Q. That was in Idaho?

A. I told him that that was all right; that if everything was right about the timber there would be money in it, and he asked me if I wanted to join him in it and I told him that I didn't know about that, that I was pretty well loaded up, but that when he went back I wished he would give me a report, the number of acres, and the timber, and the chances about the matter, and in fact a full written report; and he did.

Q. And he did what?

A. Well, in connection with that he asked me if I would join him, and I told him I was pretty well loaded up; and he said he would send me the report.

(Deposition of Amasa B. Campbell.)

Q. Did he send you the report?

A. He did send me the report.

Q. And did you read the report? A. I did.

Q. And do you remember what the contents of that report was? A. No, I can't recall it.

Q. How large a report was it?

A. It covered several pages. It was written I think by himself, in his own handwriting.

Q. What do you call several pages?

A. Well, I should think there was twelve or ten pages; quite a report.

Q. And you say it was in his own handwriting?

A. I am pretty sure it was; pretty sure it was.

Q. And what did you do with that report?

A. Why, I gave it to Mr. Palmer.

Q. Well, how did you happen to give it to Mr. Palmer?

A. He came in my office to see whether he could purchase some timber, holdings that we had in the Coeur d'Alene country. I told him that wasn't for sale, and we were sitting there talking and I reached over and handed him this report and he read it all through and asked me if I was going into this thing, and I told him I didn't believe I would, that I had all I could carry. He asked me if I had any objections to his sending it back to his people in Wisconsin, and told him, "None whatever." He said it might appeal to them, and I would hear from him within a week. He took the report and a week after that he came up in my office with a telegram from parties in Eau Claire, Wisconsin, asking for Steun-

(Deposition of Amasa B. Campbell.)

enberg to come on there. I wired Steunenberg to come to Spokane prepared to go east on this timber deal. He met me and I introduced him to Palmer and he went east.

Q. He and Palmer went east together?

A. No, I don't think so; I think he went alone.

Q. How long has it been since you have seen Mr. Palmer?

A. It has been a good many years.

Q. Do you know where he is now?

A. Yes; I think he is in Canada; I don't know.

Q. Now, about the time—

A. I want to state there that when the Governor left—because it is fair to both sides—I requested him to write me, that I was interested, and to let me know what he did. I suppose you have got copies of those letters. And he wrote me that he had made a deal with those people, and he stated in one of those letters that the only thing that he hesitated about was the parties purchasing the timber compelled him to give a perfect title to the ground. I think that is in one of his letters.

Q. Now shortly after Governor Steunenberg's first visit and the receipt by you of the report from him that you have spoken about, did you write a letter to Governor Steunenberg concerning the same?

A. Yes, he wired me I think if he could draw on me for five thousand dollars.

Q. I show you a letter marked "Complainant's Exhibit A. B. Campbell No. 10," and ask you if that is a copy of the letter you wrote to Governor Steun-

(Deposition of Amasa B. Campbell.)

enberg? A. Well, I suppose it is.

Q. From the files, or your letter book?

A. I suppose it is.

Q. You haven't the original of that letter?

A. The Governor has got it I presume.

Q. And you sent the letter to Governor Steunenberg through the mails on or about that date?

A. Yes, sir.

Mr. GORDON.—We offer in evidence Complainant's Exhibit A. B. Campbell No. 10, and read the same into the record.

Mr. BUNDY.—We object to the introduction of this letter as incompetent, irrelevant and immaterial.

Complainant's Exhibit No. 10 A. B. Campbell is as follows:

[Complainant's Exhibit A. B. Campbell No. 10.]

Spokane, Wash., Feb. 8th, 1902.

Hon. Frank Steunenberg,
Caldwell, Idaho.

Dear Governor: Your letter, together with report on timber lands in Boise Basin, received. It is a very good report, and excellent timber, but the great objection, as outlined in your letter, to the whole proposition, is the haste. I do not for an instant doubt you, but my idea about the whole matter was that you would get Mr. Sweet to agree to organize a company, for the purpose of purchasing, locating, and buying these timber lands, he to take 1/4th, of the stock, and you 3/4ths. Then I would, with

my friends and others, try to take care of this 3/4ths. interest.

Of course this is new to me, and not particularly in my line of business. I have faith in my ability to swing the thing, but it would take time. I think it would be poor business for me, and you will appreciate this, to advance \$5,000, without any authority whatever, and virtually obligate myself to raise \$90,000 more, without even having a distinct understanding as to what plane we would organize under, etc.

If Mr. Sweet really desires to put this in some shape, we can handle the whole thing, as I have outlined above, so that for money that I might advance, to start the thing, I would at least have stock in the company, to protect myself. I am perfectly willing to trust you, and all that, but, at the same time, if there is anything in presenting a proposition to anybody, which involves \$120,000, he should at least have time to familiarize himself thoroughly with all the conditions and everything. I am not objecting to advancing, even to start the thing \$5,000, but I want it completely outlined as to just what the proposition will be. If you and Mr. Sweet will agree to organize a company on this property, and give me plenty of time to investigate everything, Mr. Sweet to take 1/4th of the stock, and you to take 3/4ths, so that as fast as the money is advanced the parties will take stock for their investment, I will join you in the enterprise.

I think, from a business standpoint, that this is very fair on my part, and I have no doubt but that

I will be able to swing the whole thing, but it strikes me as rather unreasonable for you to expect me to go into a blind pool, without first having an understanding as to just how we will organize, purposes, and all, it is not a question of confidence in your ability and integrity, but it is a plain business proposition, which, should I go into, I would desire to make a success of, on your account and my own and it should be put in proper shape. I know that you will appreciate this feature of it.

I am trying to arrange to borrow the \$15,000, which you want. About what time do you want this?

Yours very truly,

(Signed)

A. B. CAMPBELL.

(Letter-book of A. B. Campbell, January 2, 1901, to Apr. 21, 1907.)

Q. Mr. Campbell, I show you a letter dated Caldwell, Idaho, Feb. 8, 1902, addressed to Hon. A. B. Campbell and signed Frank Steunenberg, marked "Plaintiff's Exhibit A. B. Campbell No. 1," and ask you whether or not you wrote that letter.

A. Yes.

Q. I will ask you whether or not you are familiar with the handwriting of Frank Steunenberg.

A. I am.

Q. And that is in the handwriting of Frank Steunenberg? A. Yes, sir.

Q. And you received it through the mails on about the date indicated by the date of the letter?

A. I suppose so.

Q. I show you letter dated February 11, 1902,

(Deposition of Amasa B. Campbell.)

signed Frank Steunenberg, marked "Plaintiff's Exhibit A. B. Campbell No. 2," and ask you if you received that letter through the mail. A. Yes.

Q. And that is also in the handwriting of Frank Steunenberg and signed by him? A. Yes.

Q. I show you letter addressed to Hon. A. B. Campbell, dated March 6, 1902, Eau Claire House, Eau Claire, Wisconsin, purporting to be signed by Frank Steunenberg, marked "Complainant's Exhibit A. B. Campbell No. 3," and ask you if you received that through the mails on or about the date it bears, and whether or not it is in the handwriting of Frank Steunenberg and signed by him.

A. Yes, sir.

Q. I show you another letter dated Eau Claire, Wisconsin, March 13, 1902, addressed to A. B. Campbell, marked "Plaintiff's Exhibit A. B. Campbell No. 4, and signed by Frank Steunenberg, and ask you if you received that through the mail on or about the date it bears and whether that is in the handwriting of Frank Steunenberg and signed by him. A. Yes, sir.

Q. I show you a letter dated Caldwell, May the 17th, 1902, addressed "Dear Mace" and signed Frank Steunenberg, marked "Complainant's Exhibit A. B. Campbell No. 5," and ask you whether you received that letter through the mails on or about the date it bears, and if it is in the handwriting of Frank Steunenberg and signed by him?

A. I won't swear that that date is correct, because he got some of his dates wrong in some of his

(Deposition of Amasa B. Campbell.)

letters.

Q. Well I will show you the letters which, in reading the context, you will note the dates are wrong in them.

A. That is his writing, but I won't swear positively to the date.

Q. And you received the letter?

A. Yes, I did.

Q. I show you a letter addressed to A. B. Campbell, Spokane, Washington, dated Caldwell, Idaho, September 15, 1902, signed Frank Steunenberg, and marked Complainant's Exhibit A. B. Campbell No. 6, and will ask you whether you received that letter through the mails on or about the date it bears, and whether it is in the handwriting of Frank Steunenberg and signed by him? A. Yes.

Q. Mr. Campbell, I show you a letter dated Payette, Idaho, October 31, 1902, addressed A. B. Campbell, Spokane, Washington, signed Frank Steunenberg, marked "Complainant's Exhibit A. B. Campbell No. 7," and will ask you whether you received that letter through the mails on about the date it bears, and whether it is in the handwriting of Frank Steunenberg and signed by him? A. Yes, sir.

Q. I show you a letter dated Boise, Idaho, February 14, 1902, addressed to "Dear Mace," signed Frank Steunenberg, marked "Complainant's Exhibit A. B. Campbell No. 8," and ask you if that is in the handwriting of Frank Steunenberg and signed by him. A. It is, yes.

Q. And did you receive that through the mails,

(Deposition of Amasa B. Campbell.)

Mr. Campbell? A. Yes, sir.

Q. Do you remember whether you received it in February, 1902, or at some later date?

A. No, I don't remember; but I am satisfied that I looked that up at the time and found it when the legislature was in session in 1903.

Q. It should have been in 1903?

A. Yes, sir.

Q. And you found it among your letter-files of 1903? A. Yes, sir.

Q. I show you a letter dated, Boise, Idaho, February 11, 1902, addressed "Dear Mace" signed Frank Steunenberg, marked, "Complainant's Exhibit A. B. Campbell No. 9," and ask you whether or not that is in the handwriting of Frank Steunenberg and signed by him and whether you received that through the mail. A. Yes, sir.

Q. Do you know about the date that you received that?

A. Well, I found it in my files in 1903; I suppose I received it then.

Mr. GORDON.—We offer in evidence papers just identified by the witness marked "Complainant's Exhibits A. B. Campbell No. 1, A. B. Campbell No. 2, A. B. Campbell No. 3, A. B. Campbell No. 4, A. B. Campbell No. 5, A. B. Campbell No. 6, A. B. Campbell No. 7, A. B. Campbell No. 8, A. B. Campbell No. 9," and now proceed to read the same into the record.

The exhibits are as follows:

[Complainant's Exhibit A. B. Campbell No. 1.]

“Caldwell, Idaho, Feb. 8, 1902.

Hon. A. B. Campbell,
Spokane, Wash.

My Dear Friend: Did you receive report on timber deal sent you from here last Sunday? Inasmuch as I have not heard from you concerning it, have concluded that you have not opened it, thinking, on account of peculiar package, that it is a calendar. The express office here would not take it on Sunday and the P. O. would not register it on that date, so I had to send it by ordinary letter postage. If you have not received the report, look through your mail packages of last Tuesday for a brown mailing tube with white strip or band in center for address. Kindly wire me.

Very truly,

FRANK STEUNENBERG.”

Complainant's Exhibit A. B. Campbell No. I.

[Complainant's Exhibit A. B. Campbell No. 2.]

TURNER HOUSE.

American Plan.

W. J. Turner, Proprietor.

Mountain Home, Idaho, Feb. 11, 1902.

My Dear Mace: My wife informs me over the phone last last night of your telegram. I protected the timber deal in Boise yesterday for a few days by giving my personal note for the necessary amount. Am going to my sheep camps to be gone five days. Will write you immediately upon my return. Will

not know the contents of your letter until I return.

With kindest regards,

Your Friend,

FRANK STEUNENBERG.

P. S.—Hailey party not at home day I was there. Have arranged to go over again about first of next week.

Complainant's Exhibit A. B. Campbell No. 2.

[Complainant's Exhibit A. B. Campbell No. 3.]

EAU CLAIRE HOUSE,

R. E. Parkinson, Proprietor.

Eau Claire, Wis., March 6, 1902.

Hon. A. B. Campbell, Spokane, Wash.

My Dear Friend: Arrived here yesterday noon and had two conferences with the lumber folks. Did not find them ready to close on terms and conditions mentioned in my report. They want control—will not take on-half. I told them that Sweet would sell out that he wanted to double his money. They objected to him making this much—Sweet is now in Harrisburg, Pa., and I have wired him to meet me in Chicago, when I will learn if he is willing to take less for his interest. They are willing to carry me for a quarter interest providing they can control. I do not have much hope in selling Sweet's price, but will try. If this is accomplished to their satisfaction, then they will send a representative to examine the timber and iron, etc., so you see the seal is quite uncertain. In my opinion they are excellent people, and have treated me

very well.

Will write you from Chicago.

With kindest regards,

Yours very truly,

(Signed) FRANK STEUNENBERG.

P. S.—I have an Idaho friend, Maj. Williams, stopping at the Ontario Hotel, Chicago, so that will be my address in case you want to wire me within a day or two.

F. S.

Complainant's Exhibit A. B. Campbell No. 3.

[Complainant's Exhibit A. B. Campbell No. 4.]

EAU CLAIRE HOUSE.

R. E. Parkinson, Proprietor.

Eau Claire, Wis., March 13, 1902.

Hon. A. B. Campbell,
Spokane, Wash.

My Dear Friend: When I wrote you from here a week ago, I did not have any hope of closing with Mr. Barber in the timber deal, for the reason that he wanted to control the matter and was not willing to pay Sweet his price to get out. I went to Chicago for the purpose of meeting Sweet. I failed in this, but communicated with him by wire. Much to my surprise, he yielded, and wired me his willingness to take less than he authorized me to take originally. The Barber people accepted, and I have agreed to execute papers with them as soon as I get legal assignment of Sweet's interest. The latter is now in New York, and I expect to meet him

in Boise soon. The conditions of the deal are very exacting on me, as they practically bind me to complete the deal and make me financially responsible. In other words, I take all the risks as to title, etc. I do not like this feature. In other words, I hardly think it fair, but then I have every confidence in my representations and my ability to make them good, to have taken the chance.

I desire to thank you, most sincerely for your kind assistance, and will call and see you soon in all probability.

With kindest regards,

Very truly,

FRANK STEUNENBERG.

Complainant's Exhibit A. B. Campbell No. 4.

[Complainant's Exhibit A. B. Campbell No. 5.]

Caldwell, May 17, 1902.

Dear Mace:

Have been in Boise since Tuesday and upon return find yours of the 12th.

In regard to your franchise application I learned that the Land Board had ordered the State Engineer to inspect the Coeur d'Alene River and make report upon your application. This is the procedure in all the applications. The Engineer is a friend of mine, and I called him on the phone this morning to learn when he contemplated making the trip. He said, "Not during high water"; that he had been informed that the obstructions, rocks, etc., could not be seen during the high water period, and that the last of June would be sufficiently early, etc.,

etc. Now, if the river can be properly inspected, I think I can get the State Engineer to make the inspection about the first week in June. He told me he could not possibly get away before that date. Wish you would write me whether he can visit and view the obstructions enumerated in your specifications, during high water, or at any time, and I will use my influence to secure his early inspection.

In regard to your attorney, I think you cannot better the selection, as he is in political harmony with the two members of the Board, that I cannot reach. He is also one of the crowd that have been filing protests. Make just as much of this fee as possible contingent upon securing favorable action. I think I told you in a former letter that he was the best you could send down—everything considered. Mr. Cameron or someone of your people should come with him next time and keep him sober and at work. Then he will be all right.

My operation with the Wisconsin people is progressing very nicely, thus far and I do not anticipate any but the most pleasant relations.

If it were not for the fact that my operation with them requires my presence in Boise or vicinity, I would come to Spokane and see you. I may be able to get away soon—I want to have a talk with you concerning some business and personal matters.

Consider me at your command in the franchise matter, or anything else.

With kindest regards,

Very truly,

FRANK STEUNENBERG.

Complainant's Exhibit A. B. Campbell No. 5.

[Complainant's Exhibit A. B. Campbell No. 6.]

Judge

George H. Stewart, District Court.

Edgar Meek, Clerk.

W. H. Thorp, Sheriff.

H. A. Griffiths, County Att'y.

John C. Giesler, Assessor and Tax Collector.

John McGlinchy, Treasurer.

George Little, Probate Judge.

Edward Hedden, County Surveyor.

E. E. Dutton, County Corner.

Ella M. Walling, Supt. of Schools.

John M. Bernard,

Charles Hartley,

John F. Nesbit, County Commissioners.

CLAYTON COUNTY, IDAHO.

Caldwell, Idaho, Sept. 15, 1902.

Hon. A. B. Campbell,

Spokane, Wash.

My dear Friend: Have been confined to my bed for the last week, else would have given your kind and valued favor earlier consideration. I have taken the liberty to send Senator Foster's letter to my eastern associates with return request. The three principal men in the enterprise were here for about ten days, arriving Sept. 2nd. They expressed themselves as well pleased with the situation and my work. I do not anticipate any trouble with them as they are broad-gauge men and apparently have confidence in me.

The tie-up of the twelve entries still exists and bothers me a great deal, but I have faith that through the work of yourself and friends, we will soon have a solution—now that we have a pointer on the Inspection and those that are responsible for his appointment.

I expect to be in Spokane shortly when I will see you concerning business and other matters.

For your numerous acts of kindness and good-will I again express my thanks and trust I am duly appreciative.

Sincerely,

FRANK STEUNENBERG.

Complainant's Exhibit A. B. Campbell No. 6.

[Complainant's Exhibit A. B. Campbell No. 7.]

George V. Leighton,
President.

John J. O'Toole,
Vice-President.

P. A. Devers,
Cashier.

FIRST NATIONAL BANK OF PAYETTE,

Successor to

No. 5906.

PAYETTE VALLEY BANK.

Hon A. B. Campbell,

Spokane, Washington.

My Dear Friend: Your valued letter, with enclosures, at hand yesterday. Any time you can make appointment with Senator Foster, I can come.

This feature of the timber deal is getting into bad shape. Sharpe, the prospector, and the local land office people, have worked so secretly and used so much deception, even with their friends, that I have not been able to learn the true situation, much less do any work. If not asking too much, wish you would ask Senator Foster to hold Sharpe off until I can meet the Senator.

You had better wire me at Caldwell date of meeting.

Sincerely,

FRANK STEUNENBERG.

Complainant's Exhibit A. B. Campbell No. 7.

[Complainant's Exhibit A. B. Campbell No. 8.]

THE IDAN-HA.

Idan-ha Hotel Co., Ltd., Props.

E. W. Schubert, Mgr.

Boise, Idaho, Feb. 14, 1902.

Dear Mace:

For the first time since my return home I read the Legislative proceedings this morning, and stumbled on to the item herewith. I made some inquiry as to who was looking after your interests here and finding nobody wired you. Later in the day I met S. Donnelly and Martin Jacobs, but they told me that in their instructions and arrangements with you nothing was said about iron improvement.

Upon receipt of your wire (received at about 7:30 this evening) I went to work. Now, I do not know at this writing just how much "puch" there is behind this bill. A northern member (Price) of Tatab told me that Heyburn had advised it, in fact, drew the bill. It may take some hard work to head it off. You had better let me know at once what expense I can incur, if I find it necessary. Wire me. In the meantime I will do all that I can to control the situation. I showed your telegram to Donnelly and he said he would do what he could. Have also talked with several members within the last half hour. I find that somebody has been very industrious, particularly among the Democrats, the representation being made that the party lost Kootenai and Shoshone on account of the operation of the iron improvement act. Of course, this is a lie, but has had some effect and work will have to be done to conteract it.

There has been no opposition to the bill thus far— at least I have discovered none in the little time I have been at work. Regarding money paid out by you in interest of my timber operation I will remit in a few days. Expect some of the people here soon.

You can rest assured that anything I can do to defeat Page bill, will be done.

With regards,

Yours very truly,

FRANK STEUNENBERG.

Complainant's Exhibit A. B. Campbell No. 8.

[Complainant's Exhibit A. B. Campbell No. 9.]

The IDAN-HA.

Idan-ha Hotel Co., Ltd., Props.

E. W. Schubert, Mgr.,

Boise, Idaho, Feb. 11, 1902.

Dear Mace:

Have been doing everything necessary to defeat the Page bill for repeal of River Imp. Act., and have to report that the House today in committee of the whole voted to indefinitely postpone it. I have incurred some expense, and while you did not answer my letter in this behalf, I concluded that you would stand by me in what I did. The same bill has been introduced in the Senate by O'Neil but he can't make it win, after the action of the House today.

I wish you would write me soon the date of my note. I will attend to the interest upon receipt of your letter. I did not take any data of the time the note was drawn.

(Deposition of Amasa B. Campbell.)

Herewith check for \$200 as per your statement acct. timber matter.

Very truly,

FRANK STEUNENBERG.”

Complainant's Exhibit A. B. Campbell No. 9.

At this point a recess was taken until two o'clock in the afternoon of the same day, at which time, and at the same place, the examination of the witnesses was resumed as follows:

AMASA B. CAMPBELL, Direct Examination
Continued.

(Questions by Mr. GORDON.)

Q. Well, Mr. Campbell, did you meet a Government inspector by the name of Louis L. Sharpe?

A. Yes, sir.

Q. Will you tell the circumstances of your meeting him.

A. Well, I have got to recall my memory on that. Have you got a memorandum of all that?

Q. The only memorandum I have is your testimony in the Borah trial, and these letters here.

Mr. BUNDY.—I suppose we are entitled to Mr. Campbell's recollection of it now.

WITNESS.—Why, the circumstances of how I came to meet him?

Q. Yes.

A. I was in Washington, D. C. some time, I don't know when, during this transaction, and I met Governor Steunenberg down there.

Q. In Washington, D. C.

A. Yes; and the Governor told me that he was having more or less trouble in perfecting his title to that timber, and he told me that there was a man by the name of Sharpe, a timber inspector, had been

(Deposition of Amasa B. Campbell.)

giving him a good bit of trouble, and that he was an appointee of Governor Foster.

Q. Governor Foster, or Senator Foster?

A. Senator Foster. And he asked me if I would see the Senator and have him, instead of fighting him, try to help him to secure this. I said, "I have no objections to seeing the Senator"; and I did. The Senator asked me if I had any interest in this timber, and I told him no, that I was only anxious to help the Governor. Well, now, he told me that this man Sharpe was an appointee of his, his uncle, or his brother, that was a member of the legislature of the State; he says, "I don't know anything about this; I will write Sharpe to make a trip up there to see you and talk this over," and that is the way I came to see him.

Q. And Sharpe did come to see you?

A. Yes.

Q. And you had a conversation with him?

A. Yes, I asked him what the trouble was, and so forth.

Q. And how many times did you see Mr. Sharpe?

A. Only the once that I recollect of.

Q. Did Mr. Sharpe bring a letter to you from Mr. Foster?

A. I don't believe he did; I don't recollect about that; I don't think he did.

Q. Did Mr. Sharpe say anything to you about how his expenses of that trip were to be paid?

A. Well, Foster told me before I left that I would have to pay his expenses. He said he didn't have any money, and I said I would take care of that.

Q. You paid his expenses? A. Yes, sir.

Q. Do you remember how much it was?

(Deposition of Amasa B. Campbell.)

A. Two hundred dollars.

Q. Cash or check? A. Cash.

Q. Did you pay that in an account and charge it to Governor Steunenberg?

A. Yes, I wrote him about it, and told him I had been to that expense.

Q. And he sent you a check in payment of it?

A. Yes.

Q. Do you remember the month that Sharpe came to see you? A. Not now I don't.

Q. Now, did you meet Governor Steunenberg in Washington by appointment?

A. No, incidentally met him there.

Q. Did Governor Steunenberg ask you to use your influence with anyone else to get these timber claims through, other than Senator Foster?

A. Not at that time; I don't remember, but I am pretty sure he didn't.

Q. Well, did he later?

A. I think he did later on; he came over to New York to see me; told me he was having some trouble—about loaning him some money.

Q. Now, do you remember when that was?

A. No. It was about four years ago last January, I was in New York ready to sail for Europe. I sailed February 2d, I remember.

Q. 1903?

A. 1903—that would be six years ago. No, it must have been 1904.

Q. And was that conversation with reference to this timber in the Boise Basin?

A. Oh, yes; he wanted to get some additional money from me then and I couldn't give it to him.

Q. And did he ask you to see anybody with refer-

(Deposition of Amasa B. Campbell.)

ence to getting these timber claims through?

A. Why, I think he did; I think he asked me to go over to Washington with him, and wanted me to see some of my friends there.

Q. Whom did he want you to see?

A. I don't remember. I think it was Hanna or Spooner; I don't remember. He thought I could help him out.

Q. You didn't go, did you? A. No.

Q. Was it on the occasion that you met Governor Steunenberg in Washington that you had that talk with Senator Foster about Sharpe?

A. About seeing Sharpe?

Q. Yes?

A. Yes; yes, that was the time.

Q. And that was some time prior to the time that the Governor—Oh, did I ask you whether or not the Governor paid you the two hundred dollars that you had advanced? A. He did.

Q. And your talk with Foster and Sharpe had been some time prior to that?

A. Oh, yes. That was after I had come home from Washington and Sharpe came up to see me that I gave him the two hundred dollars; and the Governor paid soon after that.

Q. In your conversation with Mr. Sharpe did you ask him to do anything with reference to these timber claims?

Mr. BUNDY.—I think that I ought to note an objection to all conversation between this witness and Mr. Sharpe, or anything about them, as incompetent, irrelevant and hearsay.

A. No, I don't believe I did. I would like to answer that in a little different way. Why, I asked

(Deposition of Amasa B. Campbell.)

him what the trouble was with those claims, and he told me that there was four or five I think of those entries that he couldn't approve or pass on. Then I asked him if he wouldn't go to Governor Steunenberg and tell him the facts and not get him into trouble. That is about all that occurred.

Q. Now, do you remember any other conversations that you had with Governor Steunenberg concerning that timber transaction?

A. No, not outside of the one in New York afterwards.

Q. Well, that is the one that you have referred to in which he asked you to see some other people whom you have mentioned?

A. Yes. I don't believe I ever saw the Governor after that. If I did I don't remember.

Q. Did Governor Steunenberg tell you what he wanted with the money that he wanted to get from you while in New York?

A. No, I don't believe he did. I have a faint recollection that he wanted to buy Sweet out—mentioned something about that.

Q. And on the occasion that you saw the Governor in New York did he want you to go back to Washington with him to see these people?

A. He would like to have me go back if I would, yes.

Q. At that time Senator Foster was United States Senator from the State of Washington, was he not?

A. Yes, sir.

Cross-examination.

(Questions by Mr. BUNDY.)

Q. Mr. Campbell, your correspondence with Governor Steunenberg seems to have commenced in

(Deposition of Amasa B. Campbell.)

February, 1902. Did you have any information of any kind from Governor Steunenberg or elsewhere relative to timber in the Boise Basin prior to the time you began negotiating with Governor Steunenberg? A. I think not.

Q. Did you have any knowledge or information from him or elsewhere as to the number of people who have made entries or filings or final proofs at that time? A. No, I don't think so.

Q. Did you have any information on the subject of lands in the Boise Basin except that certain lands had been entered and were for sale and that Governor Steunenberg wanted to make up a pool to buy them? A. That was all.

Q. And did you get from Governor Steunenberg at that time he was borrowing money from you and you were considering going in with him, any information as to any timber deal other than simply making up a pool of money and buying the timber claims that were for sale in the Basin?

A. That was all.

Q. You didn't have any discussion, or didn't entertain any proposition for the purpose of colonizing Government lands or employing people to enter them for you, or anything of that kind?

A. Oh, my, no.

Q. Did Governor Steunenberg make any such suggestion to you? A. No, none whatever.

Q. Governor Steunenberg was a man who stood well in the state in which he lived, did he not?

A. Indeed he did.

Q. And both politically and as a business man had the highest standing, did he not?

A. He did.

(Deposition of Amasa B. Campbell.)

Q. Now, Mr. Campbell, at any of these talks that you have narrated here on the witness-stand with Governor Steunenberg, I will ask you whether or not he ever made any suggestion to you with reference to the employment of any illegal or improper means, of either acquiring lands or having them rushed on to patent, or expediting the issuance of patents, or anything of that kind?

A. No, sir; I never questioned the titles at all. He never insinuated any question of title to me.

Q. And during those interviews did Governor Steunenberg ever request you to ask Senator Foster to do anything that was wrong? A. No.

Q. Or did he make any suggestion or intimation that you should procure Mr. Sharpe, the inspector, to do anything that was wrong?

A. No, indeed.

Q. And did you understand or consider, or do you now understand or consider, that you are paying Mr. Sharpe for any wrongdoing on his part?

A. Not a bit. No such idea.

Q. Now, the two hundred dollars which you paid Mr. Sharpe was simply to reimburse him for his expenses in making a trip in that matter?

A. Yes, sir, that was all.

Q. Didn't consider you were paying Mr. Sharpe for any wrongdoing or any other kind of transaction, did you?

A. No. There was a little politics in it. I wanted to do a little work for the Senator, that was all.

Q. I notice in one of these letters that Governor Steunenberg mailed you—

A. In connection with that two hundred dollars

(Deposition of Amasa B. Campbell.)

Governor Steunenberg never asked me to pay Sharpe or anything of the kind. I did that knowing full well that the Governor would reimburse me, but he never suggested it.

Q. In one of your letters from Governor Steunenberg to you, dated February 11, 1902, and which you say should have been 1903, it says, "Herewith check for two hundred dollars as per your statement account timber matter." That is the two hundred dollars that you referred to that you paid Mr. Sharpe?

A. Yes, sir.

Q. Now, Mr. Campbell, did you pay Mr. Sharpe the full two hundred dollars? A. Yes.

Q. Did you ever pay Mr. Sharpe money at any time other than once? A. That was all.

Q. Did you in your office at Spokane slip Mr. Sharpe a hundred dollar bill?

A. No. I handed him two bills at once.

Q. I ask you that, because Mr. Sharpe testified you slipped him a hundred dollar bill.

A. He said I gave him a hundred dollars.

Mr. GORDON.—Who told you that?

WITNESS.—Mr. Sharpe told me that himself down at Boise. He said it was a hundred dollars, and I said it was two, and I said, "I must have got away with a hundred dollars, because he refunded me two hundred dollars."

Q. Now, what is the fact as to the amount you paid Mr. Sharpe?

A. I gave Mr. Sharpe two hundred dollars.

Q. Now, Mr. Campbell, at the time that Governor Steunenberg first spoke to you with reference to the trouble over titles in the Boise Basin sometime in the spring of 1902, do you recall that he stated to you

(Deposition of Amasa B. Campbell.)

that there was a general order that all timber and stone claims in the Basin were suspended and couldn't get any action on them one way or the other, or words to that effect?

A. No, I never heard anything of that sort.

Q. Well, he was asking you to find out what the trouble was with the titles in the Basin; isn't that it?

A. Why, yes, why his claims were being held up. He couldn't find out and he thought perhaps I could find it out through Senator Foster and Sharpe.

Q. Now, wasn't that the sole motive that Governor Steunenberg had, was in finding out what if anything was the matter that these claims were being held up? A. I understood so; yes, sir.

Q. And did you make any effort to do anything through Sharpe or Senator Foster except to ask them to find out what was the matter with those claims? A. That was all I did.

Q. And that was all you were ever asked to do.

A. And that was all I was ever asked to do.

Q. You didn't go to Mr. Sharpe or to Senator Foster or to either of them for the purpose of asking them to see that illegal claims were put through?

A. Oh, my, I haven't the remotest idea that there was anything illegal at the time.

Q. And when Mr. Sharpe told you that there were four or five claims that were in his opinion bad, you simply requested him to advise Governor Steunenberg of that fact?

A. Yes, advise him of that fact and have them thrown out.

Q. And your idea was to protect Governor Steun-

(Deposition of Amasa B. Campbell.)

enberg from buying bad claims?

A. That was all.

Q. And did you have any other motive in the thing, Mr. Campbell, except to find out what claims were bad and protect Governor Steunenberg in buying them? A. That was my only motive.

Q. Did you, Mr. Campbell, at any time, at the request of Governor Steunenberg or anyone else, ask Mr. Sharpe or Senator Foster or either of them to use their influence or make any effort to procure the allowance of any claims that weren't properly and lawfully entered? A. I never did.

Q. During all your negotiations in this matter with Governor Steunenberg did he tell you of anything, or did you learn of anything which led you to believe that Governor Steunenberg was attempting through your influence or the influence of any official, to get decisions on any land claim that wasn't proper or properly entered?

A. Never insinuated anything of the kind.

Q. I notice in the letter of February 4, 1902, and which should be February 4, 1903, Governor Steunenberg says, among other things, "Regarding money paid out by you in interest of my timber operations, I will remit in a few days. Expect some of the people here soon." Do you know what money that refers to?

A. That was the two hundred dollars.

Q. And how long prior to that was it that you had paid it to Mr. Sharpe?

A. Well, I couldn't tell exactly. I think it was

(Deposition of Amasa B. Campbell.)

two or three months; something like that.

Q. Now, you spoke of seeing Governor Steunenberg in New York in 1904, at the time he wanted a sum of money when you say he wanted to buy Mr. Sweet out—or that is your indistinct recollection; that was the same time that he asked you to go to Washington with him? A. Yes.

Q. Now, did he ask you or intimate to you that he wanted you to go to Washington to assist in the procuring of any illegal titles? A. Oh, my, no.

Q. Now, at that time don't you recall, Mr. Campbell, that Governor Steunenberg was very much interested in getting patents allowed for claims which had already been allowed, and that it was the patents that were troubling him at that time, was it not?

A. That is what I understood.

Q. And he went to Washington on a trip on purpose to get patents?

A. I believe so. I never—I have always had more or less trouble in getting patents through, in land and mining claims, and I suppose he was having some of the same kind of trouble.

Q. The first conversation you had in the spring before was with reference to final receipts or patents?

A. Yes. I don't know whether it was final receipts or patents. I don't know what it was.

Q. I show you a letter which has been marked "Plaintiff's Exhibit A. B. Campbell No. 10, and which is marked "Copy." That is not a letter-press copy of any letter you wrote, is it, Mr. Campbell,

(Deposition of Amasa B. Campbell.)

or carbon copy? A. I should judge—

Q. Is that your typewriting or the Governor's?

A. Well, I can't tell that. I suppose that is a copy of my letter, but I don't know.

Q. Well, how did you copy your letters at that time? A. Copied them in a letter-book.

Q. A thin letter-book?

A. Yes, tissue.

Q. Did you sign them in ink? A. Yes.

Q. I notice this is signed in typewriter, "A. B. Campbell."

A. Well, this is taken from my tissue copy-book.

Q. Was this letter signed and copied in the regular course of business in your letters?

A. No.

Mr. BUNDY.—I move that Exhibit 10 be struck out as incompetent, irrelevant and immaterial, and purporting to be a copy of a copy, and no foundation laid.

Mr. GORDON.—Didn't you read that letter and say that to the best of your recollection that was a copy of the letter?

WITNESS.—Yes, that is true.

Mr. GORDON.—The facts stated in that copy taere, that exhibit that has just been shown you, you have read it over, haven't you?

WITNESS.—Yes, I read it all over.

Mr. GORDON.—And you remember writing the things stated in there, don't you?

WITNESS.—Yes, I am very certain that is a correct copy.

(Deposition of Amasa B. Campbell.)

Mr. GORDON.—Do you remember where the letter-press copy of the original of the letter is?

WITNESS.—It is in my letter-press book at home. Do you mean where the original letter—

Mr. GORDON.—Yes, sir.

WITNESS.—I have no recollection.

Mr. GORDON.—Well, did you take the letter-press copy out of your letter-book?

WITNESS.—No; they had my whole letter-book.

Mr. GORDON.—Did they return it to you?

WITNESS.—Yes, sir.

Q. And you are not prepared to testify from recollection as to the correctness of a copy of a written instrument dated something over seven years afterwards, are you?

A. Well, I am very confident that that is about the letter I wrote. I read it over two or three times in the copy-book when this transaction came up and I am pretty well satisfied that is about the substance.

Q. The substance?

A. Yes; but I couldn't tell without comparing.

Mr. BUNDY.—I renew my motion to strike it out.

Q. At the time you met Governor Steunenbergh in New York and he requested you to go to Washington with him for the purpose of seeing certain people, did he ask, intimate or suggest that you see any person in Washington, official or otherwise, in any improper or unlawful way?

(Deposition of Amasa B. Campbell.)

A. He did not.

Q. Did he ask you to use your influence with any official for the purpose of procuring any titles which were not proper and legal?

A. He did not.

Q. Was there any intimation of that kind at all?

A. No, sir, nothing of the kind.

Q. In any of your dealings with Governor Steunenberg? A. No.

Q. Now at Governor Steunenberg's request you called on Senator Foster? A. I did.

Q. State whether or not you asked Senator Foster anything except to find out what if anything was the matter with these titles?

A. That was all.

Q. And Senator Foster stated to you that he would have Mr. Sharpe come and see you?

A. Yes, sir.

Q. Now, pursuant to that and afterwards, Mr. Sharpe did come and see you?

A. Yes, sir.

Q. And you asked him what was the matter with the titles? A. Yes, sir.

Q. And his reply was that there were some four or five that in his opinion were fraudulent?

A. Yes, sir.

Q. And you then asked him if he would advise Governor Steunenberg which the fraudulent ones were, and that ended your connection with it?

A. That ended my connection with the whole affair.

(Deposition of Amasa B. Campbell.)

Redirect Examination.

(Questions by Mr. GORDON.)

Q. Mr. Campbell, how long would it take to get your letter-book here?

A. Oh, it would take, by telegraphing to-day, it could leave to-morrow morning and get here probably Thursday afternoon.

Mr. BUNDY.—You can have it at Boise City on rebuttal and I won't make any objection to it. I presume the letter is all right.

Mr. GORDON.—All right, then. I think there is a stipulation to the effect that we can recall witnesses that we have called in rebuttal, to ask them about some things that perchance we didn't cover in the examination in chief.

Mr. BUNDY.—Yes.

Q. Now, Mr. Campbell, in reading the testimony that you gave in the Borah trial I think that you fixed your date of going to Europe in 1903. Now, will you think again and see if you can remember whether that conversation that you had with Governor Steunenberg was in 1903 or 1904.

A. Well, I know that it was at the time that I sailed to Europe, and I can't recall just now what year that was. When I get home I can tell you. I know it was on February 2d that we left New York.

Q. And you remember of having this correspondence with Governor Steunenberg in January or February and March and along through the year 1902?

A. Yes.

Q. Now, does that refresh your recollection as to

(Deposition of Amasa B. Campbell.)

whether or not this effort to get you to interest yourself in these matters extended over just a part of the year, or did it go over two years?

A. It didn't go over two years. I think that must have been 1903 that I sailed for Europe.

Mr. BUNDY.—You sailed February 2d of that year?

WITNESS.—It was February 2d of that year.

Mr. BUNDY.—Then if these letters were 1903, it must have been 1904. These letters are February 4th and 11th.

WITNESS.—Well, it must have been 1903, on the "Augusta Victoria"; but I am now satisfied it was later, by those letters; it must have been 1904.

Q. Now, I have forgotten what you said in your examination in chief with reference to how Sharpe happened to come to see you. I understood you to say that you were down in Washington and met Senator Foster and Governor Steunenberg.

A. I met Steunenberg first and he requested me to see Foster.

Q. And Foster was at Washington at the same time? A. Yes.

Q. And then shortly after that you went back to Spokane? A. Yes.

Q. Did you write for Sharpe to come to see you?

A. Foster said that he would write to Sharpe to come up and see me, which he did do.

Q. And did you know where Sharpe was at that time? A. No.

Q. Do you know where Sharpe came from to see you?

A. Why I understood he came from Boise; I am pretty sure he told me he came from Boise.

(Deposition of Amasa B. Campbell.)

Q. You didn't ask him what his expenses were?

A. Oh, no, no, I didn't. But I want to explain that on Mr. Sharpe's account, Mr. Gordon, if you will allow it to go into the record. In that conversation with Mr. Foster at that time he told me that Sharpe's uncle or father or someone was a member of the legislature. Now, he says, "If he comes up there to see you men I want you to be pretty liberal with him on his expenses, because I want him to do some work up there for me." So I says, "All right." And that is why I say there was politics in it; it wasn't on timber business or anything else; it was a little politics mixed in it, although I don't know but what two hundred dollars wouldn't be any too much; my expenses down here are very nearly three hundred dollars.

[Deposition of Margaret M. Ehrmanntraut on Behalf of the Complainant.]

MARGARET M. EHRMANNTRAUT, a witness for the complainant, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. GORDON.)

Q. Your name is Mrs. Margaret M. Ehrmanntraut?

A. Yes, Margaret Myra Ehrmanntraut.

Q. And you are the wife of Joseph Ehrmanntraut, Junior?

A. Yes, sir.

Q. And where did you reside in September, 1903, Mrs. Ehrmanntraut?

A. In Boise, Idaho.

Q. And how long had you resided in Boise at that time?

A. Well, we had been there, let me see, we went

(Deposition of Margaret M. Ehrmanntraut.)

there in August, and this was the following September we took up—we went out to the land a year before.

Q. And did you ever take up more than one timber claim?

A. I took 160 acres and that is all?

Q. That is the only claim you ever took up?

A. That is all.

Q. And do you remember the day of the month that you filed on your timber claim?

A. No, I couldn't; I couldn't tell you that. I know about the time. It was that same year, I think in December, but I couldn't tell you the day.

Q. No, I mean the date that you went to the land office the first time and filed your papers.

A. Oh, yes, that was in September.

Q. Do you know what date in September?

A. No, I can't tell you. I have got an awful poor memory as to date and names.

Q. Do you remember how long it was before you filed your first papers in the land office that you went to view this timber claim?

A. Well, it wasn't a great while.

Q. Well, how long?

A. Well, I couldn't tell you that really, but it wasn't so very long.

Q. Was it a day, or a week, or ten days?

A. Oh, it was more than a day.

Q. Well now what is your best recollection as to how long it was?

A. Well, indeed I can't tell you. Mr. Ehrmanntraut attended to the business so much that I didn't

(Deposition of Margaret M. Ehrmanntraut.)

have really much to do with the details, only went out and went on the land.

Q. With whom did you go?

A. There was a whole party that went, I can't remember their names. There was a woman and she had two brothers.

A. I want their names.

A. I can't tell you the names because I don't remember. I have never paid any attention to it since because I was mad because Mr. Ehrmanntraut sold the land—I wanted to keep it—the fool.

Q. Did Mr. Ehrmanntraut go with you?

A. Yes, sir.

Q. Who located you, do you remember?

A. Well, I ought to know that man's name.

Q. Was it Patrick Downs?

A. Yes, that is the man.

Q. And with whom did you talk concerning this land before you went to look at it?

A. Oh, there were several, they were all talking about taking up claims, I don't remember who, a good many talked about going that didn't go at all. I know there was seven or eight that went at the same time with us.

Q. Did you know Mr. John I. Wells at that time?

A. Well, Mr. Wells, I don't know whether I knew him.

Q. Did you know Mr. John Kincaid at that time?

A. Well, that name is familiar to me.

Q. Do you know who prepared your filing papers?

(Deposition of Margaret M. Ehrmanntraut.)

A. No, I don't. I told you Mr. Ehrmanntraut attended to all that business and I didn't pay much attention to it, because I didn't have to, that is all.

Q. Do you know where you first saw the papers that you filed in the land office?

A. Well, now, I can't tell you either. Mr. Ehrmanntraut—we went together I know and filed them.

Q. Well, did you get them at the land office or did you get them before you went to the land office?

A. Well, I wouldn't be sure whether we got them at the land office or where.

Q. Do you remember how long you had to wait at the land office before you filed?

A. Well, I know that there was one night that the whole party stayed up all night and they had to get a man in my place, waiting for the office to open, so we would come in turn. I know that. I remember that very distinctly. We had a good deal of fun over it.

Q. Do you remember who the man was who stayed in your place?

A. Yes, his name was Henry—he was an old German—Henry—

Q. R-i-c-h-s?

A. No, that ain't it; it ain't Richs. Oh, dear, what is that old man's name! Well, that is curious. I know I paid him five dollars for staying there that night.

Q. Do you know who told you to stand in line?

A. Nobody told me, but Mr. Ehrmanntraut stayed in line that night and he is the one that got

(Deposition of Margaret M. Ehrmanntraut.)

this Henry to take my place.

Q. At the time you made your entry and filed your papers did you know of a market for timber claims in that locality?

A. No, I didn't, but they were talking about selling. The way I understood it, the party that went with us, why we were taking land contiguous timber land. They said, "Why we can hold on, so many of us together, so the timber sharks can't take advantage of us," but they did though, after all.

Q. Who are the people that made those statements?

A. The parties that went out, this woman and her brothers, there were seven or eight; two teams; two wagon loads, we found out afterwards, were the first, and they talked more about keeping the land than anybody else, and I found out afterwards that they were the first that sold. I was surprised to find out, too, because I thought if we all got together we could hold it.

Q. To whom did you sell your land?

A. I don't know that either.

Q. Where did you sell it? A. In Boise.

Q. Did you sell it at your own house?

A. No, sir, Mr. Ehrmanntraut sold it and made a bargain for it.

Q. You signed the deed for it?

A. Yes, sir.

Q. Where did you sign the deed?

A. I signed it in an office.

Q. Do you know whose office it was?

(Deposition of Margaret M. Ehrmanntraut.)

A. Let me see; I know that man well enough, too. Let me see; I could tell that man I believe if I heard it.

Q. Pritchard?

(No answer.)

Q. Kincaid?

A. Kincaid; I believe that is the name. Yes, Kincaid is the name.

Q. And how long after you made your final proof did you begin negotiations for the sale of this land?

A. I didn't begin negotiations at all, because I was opposed to it, and Mr. Ehrmanntraut had an awful time to get me to sign the papers at all, because I didn't want to sell, because it was the understanding that so many were going to get timber contiguously and we could hold onto it.

Q. And you held on about nine days?

A. Mr. Ehrmanntraut was going to California and thought he never was going back to Boise, and he said, "I find out from the Mormons we can hold that land for a hundred years before we can sell it."

Q. How much did you pay for the land?

A. Well, I think we paid two dollars and a half an acre.

Q. Did you go to the land office to make that payment yourself?

A. Yes, sir, Mr. Ehrmanntraut both went together.

Q. You say Mr. Ehrmanntraut attended to all the minor details? A. Yes, sir.

Q. And he furnished the money?

(Deposition of Margaret M. Ehrmanntraut.)

A. Yes, sir, it was his money anyway; I can swear that; and that money can be traced, too, because he had to come by St. Paul to get the money. It came in October. We filed in September, and he came in October and brought back nineteen hundred dollars, and in the Boise City Bank it can be found that we deposited the money there, so I knew it was our money that paid for it. Oh, there is one thing I would like to know. I would like to know who the party is that bought it. I think they skinned us awfully, and I would like to show them up, too, if I had a chance, but I don't know anything about it. That is just all there is to it.

Q. All I can say is that I didn't buy it.

A. I don't think you did, but still you may have bought it and I wouldn't have known it. I don't think I would recognize anybody that had anything to do with that land. Only out at the Star Ranch I had to get a pony to go on the mountain; I couldn't walk.

Q. How far did you ride?

A. I don't know how many miles. I thought it was a good many more miles than it was, because it was hard riding. Said we had to go to the different corners. But I thought that was an outrage for to go and sell that land for that little money we got for it.

Q. How much was that?

A. I think we didn't get over eight hundred dollars for the two pieces. But Mr. Ehrmanntraut says, "You can't hold on and pay taxes, and that is

(Deposition of Margaret M. Ehrmanntraut.)

all you get for it." I says, "What did you get for it?" I says, "I don't want to sell." So much timber as I saw there, and sell it for that amount of money, I thought it was awful, and I feel hard to this day, and I always shall, because I think I was cheated.

Cross-examination.

(Questions by Mr. BUNDY.)

Q. Do you want to buy it back for what you sold it for? A. I don't know.

Q. Do you want it? A. No.

Q. I bought the land, and I will sell it back to you for what you sold it and five per cent interest.

A. Well I don't want it now. I think I could have done better with the land afterwards.

Q. Your husband's judgment was better than yours. He made a good sale.

A. Do you think so?

Q. Now, Mrs. Ehrmanntraut, you say you got eight hundred dollars for the two claims over and above what it cost you?

A. Well, something like that; in that neighborhood.

Q. That is, you paid four hundred dollars for the land—two dollars and a half an acre?

A. Well, the expense was over nine hundred dollars, buying the land and what it cost us for the man that went with us to locate us.

Q. Do you remember what you paid him?

A. No, I don't really know; but we had to hire a rig, and we stayed there at that place, and we had to advertise a bit, and it cost us I think nine hundred

(Deposition of Margaret M. Ehrmanntraut.)

dollars anyway, I am pretty sure, for the two pieces.

Q. And you sold it for eight hundred dollars profit? A. Yes.

Q. Mrs. Ehrmanntraut, did you make your filing upon that land at the request or for the benefit of anybody other than yourself?

A. No, sir, I never did.

Q. At the time you filed your first papers, had you at that time entered into any agreement, either in writing or orally, express or implied, with any person, firm or corporation— A. No, sir.

Q. —by which you had agreed or obligated yourself to turn over or sell the land when you got it to such person, firm or corporation, or to anybody else?

A. No, sir, no, sir.

Q. Had you made or entered into any such or similar agreement at the time you made your final proof? A. No, sir.

Q. Did you ever at any time have any outstanding obligation— A. No, sir.

Q. —by which any person, firm, or corporation had any interest in or lien upon the lands you acquired from the Government, prior to selling it?

A. No, sir, we had our own money, and I intended when we got that land to keep it until we could get a good big price for it; that is what I thought, and that is what I think yet.

**[Deposition of Joseph Ehrmanntraut, Jr., on Behalf
of the Complainant.]**

JOSEPH EH RMANNTRAUT, Jr., a witness for the complainant, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. GORDON.)

Q. Where did you reside in September, 1903, Mr. Ehrmanntraut? A. September 1903?

Q. September, 1903.

A. I came back from Long Valley on the 31st of August.

Q. Long Valley, where? A. Idaho.

Q. How long did you reside in Idaho prior to that time?

A. I went to Idaho in October, 1880; to Silver City, Idaho.

Q. And did you reside there continuously from 1880? A. No, I resided there three years.

Q. Then you left there in 1883?

A. Yes, sir.

Q. Then where did you go?

A. Come back to St. Paul.

Q. And how long had you lived in Idaho prior to September, 1903?

A. I came to Boise in 1902, on the 18th day of August.

Q. Then you resided there about a year?

A. Yes.

Q. You took up a claim under the Timber and

(Deposition of Joseph Ehrmanntraut, Jr.)
Stone Act in September, 1903, did you?

A. Yes, sir.

Q. And you never took up but one claim under the Timber and Stone Act?

A. No, that was the first one.

Q. And the last one, too?

A. And the last one, too.

Q. And you and your wife filed on your claims at the same time? A. Yes, sir.

Q. And your wife's name is Margaret M. Ehrmanntraut, who has just testified? A. Yes.

Q. Who spoke with you first, Mr. Ehrmanntraut, about taking up a claim under the Timber and Stone Act? A. In Boise?

Q. Yes, sir.

A. Why, the first talk I had was, my wife has a relative of her first husband's, Edward Brisbin, and he had a partner living in the yard there called Henry Rice, and he was the first man that spoke about it.

Q. And when was that?

A. Well, that was about the time I came to Boise in 1902.

Q. And you didn't take one up at that time?

A. No, sir.

Q. Well, was there anything happened that induced you to take up one in 1903?

A. Well, I had a nephew that had a claim on Crooked River, his name was Cliff Blivens, and he spoke about it and he said he could introduce me to a man that would locate people.

(Deposition of Joseph Ehrmanntraut, Jr.)

Q. Now, was that in 1902, or was that later?

A. I think that was in 1903. It was an auction day in the spring of 1903.

Q. And did he introduce you to anybody?

A. There was an auction held there in the yard and he introduced me to Mr. Patrick Downs.

Q. And did he make any arrangements, or did you make any arrangements with Mr. Downs to locate you?

A. I spoke to him and he said he would let me know if anything would turn up.

Q. And did he let you know?

A. He said—I wanted to go camping in June with my wife and this Blivens, up to Long Valley, and he told me he would let me know when I should come home and file on the timber. He said there wouldn't be anything until—

Q. You said that he told you there wouldn't be anything until—and then you stopped.

A. I don't know exactly, until he would let me know. I wanted to go to Long Valley and he said he would let me know when I should come home and file, he would go cruising and find out.

Q. When did you come home from Long Valley?

A. I got a letter in August from Ed. Brisbin telling me to go home, that *there* was going to file on some claims.

Q. What part of August was that?

A. That was the latter part of August, 27th or 28th, because I left two days afterwards—waiting for a team.

(Deposition of Joseph Ehrmanntraut, Jr.)

Q. And did you see Mr. Brisbin when you returned, or did he direct you to see somebody else in the letter?

A. Mr. Brisbin told me in the letter that Mr. Rice had told him I must come home—Henry Rice—they lived in the same yard.

Q. How far did you live from them?

A. Oh, about four or five blocks.

Q. And you returned, did you?

A. Yes, sir.

Q. Did you go to see Mr. Rice?

A. Yes, sir.

Q. And did Mr. Rice direct you to see somebody else?

A. Well, I hunted up Mr. Downs.

Q. Did Mr. Rice tell you to hunt up Mr. Downs?

A. Well, I knew I had to see Mr. Downs.

Q. What did you go to see Mr. Downs for?

A. Well, we was together every day. He lived with this Brisbin, a relation of my wife's, and we was together every day.

Q. But I understood you to say that Mr. Blivens wrote you.

A. No, no, Mr. Brisbin wrote me.

Q. Mr. Brisbin wrote you tell you that Mr. Rice sent for you to come home?

A. Rice couldn't write, you know. That is the reason Brisbin wrote.

Q. And that there were going to be some claims taken up?

A. Yes, sir.

Q. And in response you came home and did go to see Rice?

A. Yes, sir.

(Deposition of Joseph Ehrmanntraut, Jr.)

Q. Did Rice tell you about these claims?

A. He didn't know anything except to tell me to go and see Downs.

Q. Well, did he go to see Downs for you?

A. No, I saw Downs myself.

Q. And did you go to see Downs the day after you came home?

A. I think I saw him the same night.

Q. And what day did you return?

A. The 31st of August, I think.

Q. And that was 1903? A. 1903.

Q. And what did Downs tell you?

A. That he was going to go over in the Boise Basin, and get ready to be over there about the 12th; I think it was the 12th of September.

Q. And when did you go to look at this land?

A. We went the 12th of September. I started from Boise and went to the Star Ranch.

Q. And what day did you get there?

A. The same day.

Q. And what day did you go over the land?

A. I think it was Sunday, it was the 13th, I think. I know we went there the next day.

Q. *Do you went up Saturday and was located* on Sunday, were you?

A. I think so. That is my impression.

Q. And did you come back the same day?

A. The day we located, yes, sir, I come back that same night.

Q. And what day of the week did you get to Boise?

(Deposition of Joseph Ehrmanntraut, Jr.)

A. Well, we got back the same day we located.

Q. Well, didn't you stand in line all night?

A. I mean on the timber.

Q. I mean did you stand in line all night at the land office? A. Yes, we did.

Q. Then, did you stand in line one night or two nights?

A. We only stood there one night; we stood in the land office. We got back Sunday night, and my impression is we located the 15th. Whatever it was, I waited one day. We stood in line all night, and we located the next day.

Q. And who did you get to stand in line for your wife? A. Well, now, that is a thing—

Q. Did Henry Rice stand in line for you?

A. No, he was too old, he was seventy-five years old. Let me see, I don't remember that.

Q. Did you employ any person to stand in line?

A. No, sir, I didn't pay him nothing.

Q. Who paid him? A. Why, no one did.

Q. He just stood in line for nothing?

A. It was either one of these friends I had there; I don't know whether it was Cliff Blivens did, or somebody else did.

Q. Now, had you met John Kincaid at that time?

A. John Kincaid, yes, sir.

Q. Had you talked with him about this timber land before you went up there? A. No, sir.

Q. Did you meet John Kincaid with reference to your timber entry the day you returned?

A. No, sir.

(Deposition of Joseph Ehrmantraut, Jr.)

Q. Who prepared your papers that you filed with the land office?

A. They were prepared right in the office.

Q. Whose office? A. In the land office.

Q. Who prepared them for you?

A. Well, they were prepared right there. Mr. Simms, I think that is his name, Harry Simms; I don't say that he prepared them, but that is what he testified there.

Q. Didn't you go to Mr. John Kincaid's office and have him make out those papers for you?

A. No, sir.

Q. And Mr. Simms gave them to you already made out?

A. Now, that is a thing I don't remember. My recollection is that we went in the office and they had the blanks there and filled them out.

Q. The papers weren't brought you in line while you were standing there? A. No, sir.

Q. And who told you to get in line?

A. When we came home, why Mr. Downs came back with us and I went up to the building and I saw there was people in line, some six or seven of them.

Q. How did you happen to go to the building on Sunday?

A. It wasn't Sunday night; it was Monday night, because I didn't come home until ten o'clock and I never went up to the building that night. It must have been Monday night when I went up there.

Mr. BUNDY.—It must have been the other way.

(Deposition of Joseph Ehrmanntraut, Jr.)

It must have been Saturday. It was Monday you located.

WITNESS.—I say I don't remember, only I know it was the 12th or 13th; it was my impression we located or proved up on the 15th, when I located over on the land, looking at the land.

Q. How did you happen to go to the land office at night?

Mr. BUNDY.—He says he didn't.

A. I didn't go that night. I went in the daytime.

Q. You stayed there all night, one night?

A. I stayed there one night and the next morning she opened up. There was a talk around; we were all acquainted, and somebody came and said there was some fellows wanted to get ahead of us.

Q. Who was it that told you that?

A. Oh, some of the boys along with me; I think the Martin boys.

Q. Wheeler Martin?

A. I couldn't tell you. There were two brothers. It was either one of them.

Q. Did they come to your house?

A. I lived right within two blocks of that building where the office was in.

Q. And they came by and told you that somebody was trying to get ahead of you?

A. I met them right there over the Capital Hotel, I think.

Q. Did Downs tell you to get in line?

A. No, sir.

Q. Did Downs give you the description of your

(Deposition of Joseph Ehrmanntraut, Jr.)

property? A. Yes, sir.

Q. Did he tell you to take it anywhere and that the papers would be prepared for you by anybody?

A. No, sir; he took me right on the ground and showed me just where my land was and my wife's.

Q. Did he tell you that when you returned to Boise that there would be somebody to prepare your papers or he would send you to somebody to prepare your papers and that would be included in your fee that you were to pay him for locating him?

A. That is a thing I can't remember. I can't recall how that come about. That is a thing I can't remember.

Q. Mr. Ehrmanntraut, at that time, at the time you located on this land, did you know of any person or corporation that was buying timber land?

A. I did not.

Q. Did Mr. Blivens or Mr. Rice tell you that they had taken lands and sold them?

A. Blivens had taken land.

Q. Did he tell you that he had sold it?

A. Yes, he told me that he had sold it.

Q. Did he tell you to whom he sold it?

A. No, sir.

Q. Did he tell you how much he made out of it?

A. No, he didn't.

Q. You didn't know, then, anybody to whom you could sell it when you entered this land?

A. I did not.

Q. And how much did you pay Mr. Downs for locating you?

(Deposition of Joseph Ehrmanntraut, Jr.)

A. Twenty-five dollars for myself and twenty-five dollars for my wife.

Q. And in the course of several months it came time to make your final proof? Do you remember that occasion?

A. We proved the 15th day of September. It took three months, I think.

Q. And you went to the land office with your wife and made your final proof? A. Yes, sir.

Q. Do you remember whether you gave a check at the land office for payment, or paid in cash?

A. I gave a certified check on the Boise City National Bank for both claims.

Q. And for how long had you the money in the Boise City National Bank?

A. My father was dying in October and I came home to St. Paul, and I had a draft of nineteen hundred dollars when I came back from St. Paul, and deposited it in the Boise City National Bank.

Q. Did you borrow it?

A. No, sir; it was my own money. I sold property here.

Q. And was it property that you inherited?

A. No, sir; my own property that I sold.

Q. Now, how long after you made your final proof did you start negotiations for the sale of this land?

A. Well, it wasn't very long. My wife wanted to go and live in California—Los Angeles. I was out on the Coast for my health and I talked about on the street and I found that—first we talked together we were going to hold our property in a bunch so we

(Deposition of Joseph Ehrmanntraut, Jr.)

could realize the benefit of it. I always had an idea timber was going up and lumber was going up. And one day I found out that most of the boys I understood had sold, and my wife didn't want to sell, she wanted to hang onto it, and I told her if I could sell and get a fair price I would go to California and I didn't want to come back on account of this land I would sell.

Q. To whom did you sell?

A. I went to Mr. Kincaid.

Q. Mr. John Kincaid?

A. I guess that is his first name.

Q. Is that the first time that you met Mr. Kincaid?

A. No, sir; I met him before that in politics. We were delegates in the Democratic Convention.

Q. I mean that was the first time you talked with Mr. Kincaid with reference to the claims upon which you had entered?

A. That was the first time.

Q. How did you happen to go to Mr. Kincaid?

A. Well, I believe it came through Mr. Martin.

Q. Which Martin?

A. I think it was—the one that was in Manila with Simms.

Q. What is his name?

A. I don't know. He was a soldier and came back from Manila out from the Philippines. There is two brothers, but I don't know their initials.

Q. And did he direct you to Mr. Kincaid?

A. He told me if I would go to Kincaid I might

(Deposition of Joseph Ehrmanntraut, Jr.)

sell my land.

Q. And you went to Mr. Kincaid's office?

A. Yes, sir.

Q. And did you sell the land the first time that you saw Mr. Kincaid? A. Yes, sir.

Q. How much did he give you for it?

A. He offered me—well, now, it is either eight hundred or eight hundred and fifty dollars for the claim.

Q. And you sold that day, did you?

A. No, I went back and told my wife, and she refused to sell hers. Then I just told her that it was no use to fool around from what I could see, it might be fifty years before we could realize anything more than what was offered then, on account of the way the land lay; and I went back to Mr. Kincaid and told him to make out the papers and my wife would sign them anyhow. She refused flatly to sign them, and after the papers were made out I went home and told her and she came back the next day and executed the deeds.

Cross-examination.

(Questions by Mr. BUNDY.)

Q. Mr. Ehrmanntraut, at the time you filed your first papers had you entered into any kind of an agreement, oral or written, express or implied, with any person, firm or corporation, by which you had obligated yourself or agreed to transfer the title you might acquire from the United States to them or to any person they should direct? A. No, sir.

Q. Had you entered into any such or similar

(Deposition of Joseph Ehrmanntraut, Jr.)

agreement at the time you made final proof?

A. No, sir.

Q. Did any person, firm or corporation have any interest in any of the land or lien upon the land you acquired from the United States prior to the time you sold it on the twenty-fourth day of December, 1903?

A. No, sir.

Q. It is charged in the complaint in this action we are trying, Mr. Ehrmanntraut, that you entered this land for the benefit of and at the request of the defendants in this action. Is that true or false?

A. Who is the defendant?

Q. Barber Lumber Company. A. No, sir.

Q. It is also charged in the complaint in this action that both you and your wife, for the purpose of defrauding the United States, went to the land office and at the request of the Barber Lumber Company and other defendants testified to what you knew to be absolutely false. Is that true or false so far as you are concerned? A. It is not true.

Mr. BUNDY.—The defendant, the Barber Lumber Company, moved to strike out the evidence of the last two witnesses called, unless their filing papers are offered in evidence; and that the defendant will move to strike out the evidence of all the witnesses called by the Government unless the Government shall offer and submit in evidence the land office files relative to their respective entries, patents and deeds.

[**Deposition of Henry A. Snow, on Behalf of the Complainant.**]

HENRY A. SNOW, a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. GORDON.)

Q. Mr. Snow, where do you reside?

A. At present 331 East Sixteenth Street, Minneapolis, Minnesota.

Q. What is your occupation, Mr. Snow?

A. Why, I am a lumber-jack, I guess; work in the sawmill in the summertime and work for the State in the winter scaling logs.

Q. What sawmill do you work for?

A. Itasca Lumber Company, of Minneapolis.

Q. And what do they pay you as a salary as a sawyer?

A. Why, the last three years, eight dollars; prior to that they paid us nine dollars a day. Prosperity struck the country in the last three years and it goes down a dollar.

Q. Do you know Mr. Patrick Downs?

A. Yes, sir.

Q. When did you first meet Mr. Downs?

A. Oh, about fourteen years ago.

Q. Where did you meet him?

A. At the mill.

Q. In Minneapolis?

A. In Minneapolis.

Q. The Itasca Mill?

A. It was the Ackley.

Q. Were you ever at Boise, Idaho?

(Deposition of Henry A. Snow.)

A. Yes, sir.

Q. When did you first go to Boise, Idaho?

A. I think it was the first part of June, 1901, I think I left the 2d day of June—not June, but August, the 2d day of August, I left Minneapolis for Boise, Idaho, 1901.

Q. And you arrived there—

A. About three days later.

Q. Did you go alone or with someone?

A. There was four of us went in the party.

Q. Who were they? A. Mr. Downs—

Q. Mr. Patrick Downs?

A. Mr. Patrick Downs; and Miss Anderson, Mrs. Walker.

Q. And what did you go to Idaho for?

A. With the intentions of taking up timber claims.

Q. At the instance or suggestion of anyone?

A. Why, I don't know as I can just say that. We had made up our minds to take up timber lands along in the summer, Mr. Downs and I; I think it was through an advertisement of the Paris & Manning Land & Lumber Company; I think it was through an advertisement that they had in the paper stating that there was a large tract of land opened in the West and that they were locating. We went down there and saw them and they said they were locating lands with the intention of getting quite a little together and then offering it to some party, by getting a large number we would get a better price.

Q. What was that to cost you? _

(Deposition of Henry A. Snow.)

A. We paid them a hundred and thirty-seven dollars for location fees, including our railroad fare and sleeping berths to Boise, our transportation out to the Basin and back to Boise.

Mr. BUNDY.—And the location?

WITNESS.—Yes.

Q. And you say you got there sometime along the fifth or sixth of August? A. Yes, sir.

Q. And you left here on the 2d?

A. About that time.

Q. And did you go out to view your piece of land?

A. Yes, sir; Mr. Manning took us out there.

Q. And where was that land?

A. In the Boise Basin.

Q. And you located on a piece?

A. Yes, sir.

Q. Do you know a gentleman by the name of John I. Wells? A. Yes, sir.

Q. When and where did you meet Mr. Wells?

A. Oh, I think it was about two months, probably after we got there, after we had filed; I don't know just exactly. I think it was at Centerville or near Centerville; I think Downs and I.

Q. That was in Idaho?

A. That was in Idaho, yes. I think, but I am not sure, that we met him right near Centerville. We were going out cruising and we met him on the road, I think; I don't just remember how that meeting come about. It was some way like that we met him around Centerville.

Q. And state what happened then.

(Deposition of Henry A. Snow.)

A. Well, I don't know as much of anything happened. He asked us our business and we told him we were cruising and looking up land and locating whoever we could get to locate. And he said he was thinking some of locating himself on some timber claims, something like that. And that was all that was said, and he went on about his business and we went on about our business.

Q. Did you see him after that?

A. Yes. I think it was probably two weeks or so after that. I think we met him next in Boise.

Q. Well, did you and Mr. Downs and Mr. Wells start into the locating business as a combination afterwards?

A. No, sir; never did.

Q. Well, did you have any arrangement with Mr. Wells as to what sections you should locate in and what sections of the country he would locate people in?

A. No, sir.

Q. Were you and Mr. Downs in the locating business as a partnership?

A. Yes, sir, in a way.

Q. And was Mr. Wells ever a member of that partnership?

A. No, sir; not any more than whatever applications he got, people that wanted claims, why we divided our location fees.

Q. And what were the location fees?

A. Twenty-five dollars.

Q. Now, what were your duties as a member of that locating firm?

A. I beg your pardon.

Q. What were your duties as a member of that locating firm of Downs & Snow?

(Deposition of Henry A. Snow.)

A. Why, there was no particular duties to it. We had this land. We had worked for the Paris & Manning Company. This is when we first went there, you know, after I had filed.

Q. Yes.

A. After Downs and I had filed, this Manning, he said that was just what he wanted, he would learn cruising and locating, and he said it was just what he wanted, to get two cruisers working for him to cruise out the country there and blaze out the land, and take the timber, etc., and we went to work for him and worked probably six weeks, and he was going to have quite a number of people come out there and keep us busy. He was to stay in town and pilot the people out to the Basin, and we camped in the Basin; and we worked along there for six weeks and there was only one man came out there. Mr. Manning had quite a good bit of wind in him. Downs thought he was all right, slow in getting started. And I went to Boise.

Q. You were going to throw him out of the window; is that it?

A. Yes, I went to Boise about six weeks later and I met him at the Capital Hotel and wanted an understanding with him about what we were going to do. I says, "There is no people coming out here," I says, "and we been out here about six weeks and you haven't shown up with any money to pay us. We have been paying our own expenses, and I think we ought to have some money for our work and some understanding as to when we were going to get paid."

(Deposition of Henry A. Snow.)

He kind of put me off; he would have a big bunch come out, and put us off; and so I wasn't quite contented with that statement, and I cornered him right down so he finally admitted that if he didn't get the parties to locate he couldn't pay us. If it hadn't been in the Capital Hotel I guess I would have seen who was the best man.

Mr. BUNDY.—Never did pay you, did he?

WITNESS.—Never did pay me; no. And after I came back that fall I went to Mr. Paris and of course I demanded my pay from him; and Paris, he was the same as Manning, they had been up against hard luck and they couldn't get the applicants they expected, etc., and I didn't let up on him though, until I got a mortgage on his furniture for a hundred and twenty dollars.

Q. Cruel man!

A. That is what I got out of the six weeks' work and my expenses.

Q. And how many people did you and Mr. Downs locate?

A. Why, I couldn't remember; I couldn't count them sure.

Q. Well, how many do you think?

A. Well, let me see; I can recall some of the names. Well, including Mr. Walker and Miss Anderson and Burchard, that's three; Hamilton is four; Hollister & Folsom, six; and four in another party that Wells had got up for us; and this one man from Wisconsin—that is the one man that Manning got, he was from Wisconsin, I don't remember his name.

(Deposition of Henry A. Snow.)

Q. That made eleven.

A. Well, I don't remember if there was any more than that or not; there probably would be some more, but I don't remember.

Q. Now, Downs did most of the locating, did he?

A. Well, we done the cruising, mind you, in the first place; we had this land looked up; and Downs stayed right at the camp there, and the parties that we took out there, I just drove the team back and forth to Boise, and took them out and fetched them back to town is we hadn't anybody I stayed out in the camp with him.

Q. Now, all these people that you drove back and forth there—

A. Just a minute. There is a man by the name of Johnson, he got two parties from Mankato, Mrs. Thompson is one, and I forget the other person's name that we located.

Mr. BUNDY.—Beckie?

WITNESS.—Yes, I think so; he is a cattle man.

Q. Now, did you have any talk with these people as to what they were to do with their land when they purchased it?

A. No, sir.

Q. Did any of them talk to you about it?

A. Why, yes, some of them did.

Q. Tell what they said.

A. Some was talking in regards to what was going to come of the land, in a way like that, and this party, the four—

Q. What party of four?

A. The ones I got from Wells, I think it was,

(Deposition of Henry A. Snow.)

they got pretty tired going out on the way. We had a single team, and one said, "My goodness, I would like to know what company is going to take up these lands here." I says, "I don't know of any company at present." And they thought it would be a pretty big company to get out that timber. And that is about all that was said.

Q. Do you know the names of those persons?

A. No, those are the persons, I can't remember the names. There was married man and his wife. There was two women and two men. They was the last ones I took out there and located.

Q. Now, you proved up on your claim—

A. In 1901.

Q. Do you remember the date?

A. I think it was sometime in November, about the 10th or the 14th.

Q. Now, were these people that you located in conjunction with Downs located prior to that time or after that time?

A. Prior to that time.

Q. And you never located any party that you know of after November, 1901?

A. I never located anybody since that, never located a soul.

Q. Do you remember when you returned, when you left Boise?

A. It was shortly after I proved up, within a week or so.

Q. That would be either November or December, 1901.

(Deposition of Henry A. Snow.)

A. I think it was November, 1901, yes.

Q. And did you locate any other property there for yourself other than your claim under the Timber and Stone Act? A. I filed on a homestead.

Q. Where was this homestead?

A. In Section 17-7-5 West.

Q. The whole of Section 17?

A. Oh, no; just a quarter-section.

Q. Which quarter was it?

A. It was the south half of the southeast quarter and the northeast of the southeast and the southeast of the northeast, I think.

Q. Of what section? A. Seventeen.

Q. What township? A. 7-5 West.

Q. Township seven?

A. Seven north, five west. I am quite positive that is the one.

Q. Now, how was that claim located as regards the waterfront there?

A. Why it come down and covered—cut off three ravines right down in front of three ravines, an L-fashion, L-shape.

Q. Did you know Mr. John Kincaid, or did you meet Mr. John Kincaid before you left Idaho in November, 1901? A. Yes, sir.

Q. Did you have any business with him?

A. No, sir.

Q. With whom did you meet him?

A. Why, I don't hardly remember. I think probably it was Wells.

Q. Did you have any talk with him concerning

(Deposition of Henry A. Snow.)

any of this property in the Basin? A. No.

Q. And as I understood you to say you left for Minneapolis sometime—

A. In the latter part of November, 1901.

Q. —in the latter part of November, 1901. Now, after you returned to Minneapolis did you have any correspondence with Mr. Downs?

A. No; oh, I think probably the next spring I did.

Q. And did he write you anything about how the business was out there?

A. No, not in particular. He wrote me that there was a contest on the claim.

Q. On what claim?

A. That was the homestead, and that he hadn't been locating very much that winter, but he expected next summer would be better for locating.

Q. Did he tell you why there wasn't much locating that winter?

A. I am not sure, I don't think so, I think it was the next winter that he told me they had had trouble about their land.

Q. What did he say?

A. He said the reason they wasn't doing much, there had been a mix-up or stir-up and somebody else was trying to hold up their land.

Q. Did he express himself as expecting better times? A. Yes, sir, oh, yes.

Q. Did he say anything about a Government inspector?

A. Yes, he said there was a Government inspector

(Deposition of Henry A. Snow.)

went out there after the muss was stirred up and investigated and went back and said it was all right.

Q. Did he write you to the effect that "Now that we have the Government inspector crossed up things will be all right?"

Mr. BUNDY.—Objected to as incompetent irrelevant and immaterial and hearsay.

A. No, he didn't, not in writing.

Q. Well, did he say that to you?

Mr. BUNDY.—Same objection.

A. Yes, sir.

Q. Now, what did he say, Mr. Snow?

Mr. BUNDY.—Same objection, incompetent, irrelevant and immaterial.

A. Why, it was in 1903 after I went out there to live on the homestead, I got back there in May, I think it was, sometime. And of course we were old friends and I met him on the street and we got to talking over the past and so forth, and he got to telling me about—well, he didn't go into details at all about it, he just simply said there was a mix-up, and those people in the Basin had been making some correspondence with Washington and there had been an inspector out there and looked the thing over *the* reported it all O. K.; he guessed he must have been tossed up in some way, or something like that, and reported it all O. K.

Q. Now, after your return to Boise in May, 1903, was it? A. Yes.

Q. And did you see Mr. Wells on that occasion?

A. Why, yes, I met him there several times.

(Deposition of Henry A. Snow.)

Q. Now, do you remember whether or not Downs told you about somebody that had beaten the people out of some money—some woman.

A. I remember him saying about some lady beating him out of four hundred dollars to prove up with?

Q. What did he say about that?

Mr. BUNDY.—Objected as incompetent, irrelevant, immaterial and hearsay.

Q. State the circumstances, where you were and all.

A. We were on the street and walking around town, just killing time, and some lady passed us and he says, "There is a woman," he says,—well I won't say which, whether he said, "beat us" or "beat them" or whoever she beat—it was something like that—"out of four hundred dollars." Instead of proving up she went to the land office and didn't prove up and got the four hundred dollars.

Q. How long after you saw that lady on the street did you see Mr. Wells?

A. Oh, probably a half an hour or so.

Q. Did you say anything to Mr. Wells about seeing that lady?

A. Why, I don't know whether I spoke of the subject first or Mr. Downs. Anyway it came about. I says, "I seen one of your victims," and Downs says, "Yes, the one that got the four hundred dollars and built the cottage with."

Q. And what did Wells say?

A. Wells kind of smiled and laughed and says,

(Deposition of Henry A. Snow.)

“Yes, she got the four hundred,” or something like that, “but we were more careful,” or some effect, “who we located.”

Q. Did he tell you they had to have some assurance before they located people at that time?

Mr. BUNDY.—Objected to as incompetent, irrelevant, immaterial, leading, suggestive and hearsay.

A. No, I don't think he did put it in that way, those words; but they had to have kind of confidence in people that they wouldn't beat them out of their money, that they would prove up; something like that; he didn't use the word assurance.

Q. Now, did you locate, I mean did you make your proof on your homestead? A. No, sir.

Q. Did you have any talk with Mr. Downs or Mr. Wells about that? A. Not with Mr. Wells.

Q. Did you have any talk with Mr. Downs?

A. Yes, sir.

Q. State what it was.

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, for the reason that the homestead is not involved in this action, nor the land embraced in it.

A. Why, when I first got there in May I told Downs that I was going to move out on the homestead and try to prove up and he says to me, “If I was you I wouldn't do it; you better take and get some location fees out of it and let it go.” He says, “I don't think you can make it.”

Q. Did he tell you why you couldn't make it?

(Deposition of Henry A. Snow.)

A. I wanted to know why. He says, "The people out there are watching that claim pretty close and I don't think they will let you prove up unless you live the full time on it.

Q. Did he tell you who the people were?

A. I think he mentioned this man O'Brien, the man that contested us. He wanted the claim on Section 16, southwest quarter, and of course we couldn't locate him on sixteen, and he didn't know the difference why we couldn't locate him on sixteen, it was school land, he was mad at both of us, he was a miner.

Q. Did you employ an attorney there to represent you? A. Yes, sir.

Q. Who did you employ?

A. Frank Martin.

Q. Ex-attorney General of the State?

A. I don't know what he was, I am sure.

Q. And did you have a hearing before the land office, or did you drop it?

A. Why, the case was dismissed before I got there that spring, in the spring of 1903.

Q. Now, when you were out there in the spring of 1903 did anyone tell you about Governor Steunenberg and Mr. Palmer having anything to do with these lands?

A. Why, Mr. Downs I think was telling me something about it, about the trouble, he said it was started—

Mr. BUNDY.—Just answer the question yes, so I can make an objection.

(Deposition of Henry A. Snow.)

WITNESS.—Yes, sir.

Q. What was that?

Mr. BUNDY.—Objected to as incompetent, irrelevant, immaterial and hearsay.

A. We were talking over things and he said, trying to explain to me the trouble or the cause, and he said, I think it was a man by the name of Sweet had furnished the money for buying up the claims, and Sweet, and he mentioned Palmer and Steunenberg in the deal.

Q. Well, now, did he say anything about a company that Palmer and Steunenberg had gotten?

Mr. BUNDY.—Objected to as hearsay, leading and suggestive.

A. These parties, as I understood him to say, approached the Barber Lumber Company to take up this land.

Q. And what was Steunenberg to get out of it?

Mr. BUNDY.—Objected to as incompetent, irrelevant, immaterial, leading and suggestive.

A. The way I understood from Downs—

Mr. BUNDY.—Never mind what you understood. Tell us what he said.

WITNESS.—It is just my memory as I can tell it.

Q. Tell us what your recollection is that he said.

A. He said the way the company was started, was parties had approached the Barber Lumber Company, and to make the thing clear and safe to the Barber Lumber Company, Steunenberg was to take two hundred dollars out of each claim, that was the Barber Lumber Company allowing a thousand dol-

(Deposition of Henry A. Snow.)

lars, and two hundred dollars was to go to Steunenberg as stock in the company, and their claims would be then got for eight hundred dollars coming to Steunenberg.

Q. And did he tell you anything further about what Steunenberg was allowing for the claims?

A. I asked him why they were not paying eight hundred dollars for the claims, and he says, "Steunenberg must get something for himself," seven hundred and fifty dollars, or something like that, and he said Steunenberg was making the difference for his trouble—something like that—I didn't pay much attention to it; I don't remember just how the conversation was, I didn't pay any more attention to that than I would pay to any other ordinary conversation.

Q. When you went back there in 1903 did you go for the purpose of remaining in Boise?

A. Well, I don't know as I just went for the purpose of remaining in Boise.

Q. Well, remaining in Idaho?

A. Yes, remaining in Idaho.

Q. And what changed your mind?

A. Well, it was the condition of times, and the country; I couldn't do as well there as I could here.

Q. Did you have any talk with Downs and Wells about further cruising?

A. No, I had no more intentions of doing any more cruising, there wasn't enough money in it.

Q. Did you have any talk with Mr. Downs or Mr. Wells with reference to what is known as the 6-4

(Deposition of Henry A. Snow.)

tract? A. Not with Mr. Wells.

Q. Did you have it with Mr. Downs?

A. Yes, sir.

Q. State what he said about that.

A. Why, he said he had 6-4, that he had done a lot of cruising in 6-4, it was coming into the market, but the State was going to make a selection and what was left was going to be thrown open as timber claims, or whatever it was, and he had quite a number of claims picked out as soon as the State made its selection.

Q. Did he say anything about any company with reference to that?

A. No, he didn't mention the company's name.

Q. Did he mention the company?

A. Yes, sir.

Q. What did he say?

A. Let me see; well, sir, I couldn't say, I am sure.

Q. See if this refreshed your memory. Do you remember whether or not Mr. Downs told you that the company had almost all the land they wanted, but there was some good timber in 6-4, they were going to take and after that they were going to quit?

Mr. BUNDY.—Objected to as leading, suggestive, incompetent, irrelevant, immaterial and hearsay.

A. He didn't put it in that way.

Q. Well, now, what did he say?

A. He said that after the company got 6-4, what they could get out of 6-4, they wasn't going to take any more land, that they had about all the land they wanted.

(Deposition of Henry A. Snow.)

Q. Now, do you remember when you left Boise or left Idaho the last time for the East?

A. I think I arrived in Minneapolis; well, it was the first part of September; I wouldn't be certain about the dates, but I think it was the second or the tenth; those two dates seem to kind of strike me, I ain't sure.

Mr. BUNDY.—What year was that—in 1903?

WITNESS.—1903.

Q. And do you know whether or not when you had this talk with Mr. Downs the 6-4 lands were open for entry at that time? A. No, sir.

Q. They were not? A. They were not.

Q. Do you remember how long before you left for the East in September, 1903, you had that talk with Mr. Downs about that 6-4 land?

A. Why no, I don't remember just when that was.

Q. Well, I mean approximately how long?

A. Well, it might have been—it might have been before I went out to live on my homestead, or it might have been afterwards. If it was afterwards, it was three weeks; and if it was before that, it was before the first of May. I was out on my homestead for awhile and didn't see anybody, Downs or anybody else.

Q. Did you have any talk with Mr. Downs after you returned in 1903, you returned to Idaho in 1903, about isolated forties and eighties?

A. Yes, sir.

Q. What did he say about that?

(Deposition of Henry A. Snow.)

A. Why, the conversation started like this. There is two forties laying west of my homestead that were pretty good timber forties, and I asked him about them, if he had located them or not, and he said no, but he had. Well, I can't say how it was; he had picked them out or selected them for scrip, and in locating these claims there would be quite a number of forties he could apply scrip on, and he was getting five dollars a forty for cruising it and estimating it in that way.

Q. Who was giving him that?

A. He didn't say.

Q. Did he say a company was giving him that?

Mr. BUNDY.—Oh, don't lead him so.

A. I wouldn't say; I don't remember.

Q. I will ask you whether or not you remember of Mr. Downs telling you that shortly after you left he began to isolate forty and eighty-acre tracts which the company afterwards intended to scrip, and that the company paid him five dollars for each forty he fixed that way?

A. He didn't say shortly after that, but he said he was doing that and he was getting five dollars. I wouldn't say whether it was a company or who it was, but he was getting five dollars for every forty left in that way, and they, or the company, intended to put scrip on.

Q. And he was isolating those forties intentionally?

Mr. BUNDY.—Objected to as leading and objectional, and ask that the witness give the conversation.

(Deposition of Henry A. Snow.)

A. I couldn't say that he said he was doing it intentionally; I wouldn't say.

Q. Didn't he tell you that he was isolating forties and eighties? A. Yes, sir.

Q. And that for each one that he isolated he was getting five dollars?

A. He didn't use the word isolated; he used the words cruising and estimating.

Q. Now, these people that you were taking up to look at the land, that were talking about the company—if you can tell me what they said about the company, on the way up, the four that you referred to.

A. About as near as I can tell you is what I told you. They wanted to know what company would ever come in and take up that land, if there was any company they said it would have to be a very strong company to go back in them hills and hold and take up the lands.

Q. Did they say what company it was that was going to take up the lands?

A. No, just what I said.

Cross-examination.

(Questions by Mr. BUNDY.)

Q. Well, did you know of any company that was going to take the lands up? A. No, sir.

Q. Wasn't any company talked of?

A. No, sir, not at that time.

Q. They were simply wondering whether any company would be foolish enough to come in and buy that? A. That is the way I took it.

Q. You didn't go out there for any company?

(Deposition of Henry A. Snow.)

A. No, sir.

Q. And you didn't know of any company that was then buying or was going to buy?

A. No, sir.

Q. And Mr. Downs and Mr. Wells or nobody else had told you that there was any company?

A. No, sir.

Q. These four men that you speak of that you say got tired from the long ride said they wondered what company would come in and take it?

A. They were parties that Wells got for us, and he got eight dollars and thirty cents, and the other eight-thirty was split up into equal parts.

Q. And they said they wondered what company would come in and take the lumber?

A. It was near Central—

Q. They didn't ask you about any particular company? A. No, sir.

Q. Nor if there was any company?

A. No, sir.

Q. Simply talking among themselves and spoke about some company?

A. It was talk among themselves, and then they *approached* it to me and wondered what company would come in and take up this land here. "Oh," I said, "there will soon be some company come in some day and take up this timber."

Q. You are a personal friend of Pat Downs?

A. Yes, sir.

Q. And always have been? A. Yes, sir.

Q. And Pat and you have always been friendly?

(Deposition of Henry A. Snow.)

A. Yes, sir.

Q. Now, Mr. Snow, who did you first tell of these talks that you had with Pat Downs?

A. Why, that is pretty hard to tell. I think it was up at the mill. At the Borah trial these papers were full of it and it was commented on, and the parties at the mill knew I had been there, and Downs was out there, and there was a friend of mine named Charles Cunningham worked up there and stopped at my place.

Q. That is the mill in Minneapolis?

A. Yes, sir. And amongst the hands there, I think that was the first one I ever spoke to about it.

Q. What Government official did you first tell these things to? A. Mr. Peyton Gordon.

Q. Where?

A. Minneapolis. We had a little conversation at the mill and at the Vendome Hotel in Minneapolis.

Q. When? A. Last summer.

Q. Any other time? A. No, sir.

Q. Talked to any special agents?

A. No, sir,

Q. Any secret service men been after you?

A. No, sir.

Q. This talk you had with Mr. Gordon you voluntarily told him? A. Yes, sir.

Q. Make you any threats? A. No, sir.

Q. Promise you any money? A. No, sir.

Q. Where was this?

A. At the mill at noon hour, just a rough sketch;

(Deposition of Henry A. Snow.)

and that evening at the Vendome Hotel I told him just about what I said here to-day.

Q. Now, Mr. Snow, there are a few things that you didn't understand Mr. Gordon or he didn't understand you. Do you mean to tell Mr. Gordon that Pat Downs was locating entrymen, was saving out particular pieces for the Barber Lumber Company to put scrip on?

A. No, sir, not for the Barber Lumber Company.

Q. Or for anyone?

A. Not that I know of. Now, listen; not for any company that I could say.

Q. Wasn't any honest locator who locates an entryman and charges him twenty-five dollars for it, always striving to give his customer the best 160?

A. Yes, sir.

Q. When you picked out 160 acres you could give them better results by leaving out 40 or 80 acres here or there that wasn't quite up to the standard?

A. Yes, sir.

Q. And if you did that in one instance, and the next man didn't take it, if you located entrymen on the best land, there would be certain pieces left?

A. Yes, sir.

Q. And Mr. Downs told you that he was being paid five dollars for estimating and cruising these isolated forties?

A. Yes, sir.

Q. You didn't understand from anything that Mr. Downs told you that he had intentionally saved out the best forties to be scripped by somebody in the future?

(Deposition of Henry A. Snow.)

A. I don't know whether he meant intentionally or not; I couldn't say just what he did.

Q. Pat Downs is an honest man, isn't he?

A. Yes, sir.

Q. You have always found him to be so?

A. I think so.

Q. Do you think Mr. Downs would go out when he was employed by entrymen and entrywomen and put them on poor forties and leave the best of it for somebody else? A. No, sir.

Q. Mr. Downs didn't tell you that he ever did so? A. No, sir.

Q. And you didn't tell Mr. Gordon so?

A. No, sir.

Q. You didn't mean to say that Mr. Downs in entering these entrymen and women was leaving out forties so he could scrip them in the future?

A. No.

Q. All you mean is that there was some left out, and afterwards he was paid five dollars for cruising and estimating those forties? A. Yes, sir.

Q. Now, sometime before you came back on September 10, 1903, you had a talk with Downs about 6-4? A. Yes, sir.

Q. That was just a casual conversation?

A. Yes, sir.

Q. On the street?

A. I don't know where it was really.

Q. Do you remember who was present?

A. There wasn't anybody present.

Q. Were you interested in 6-4 at that time.

(Deposition of Henry A. Snow.)

A. Not a particle.

Q. Do you have any interest in remembering the exact language that Pat Downs used?

A. No, sir.

Q. Had you ever had your attention called to it until the summer of 1908? A. No, sir.

Q. Never gave it a thought?

A. No, sir.

Q. And so for five years that hadn't been called to your attention? A. No, sir.

Q. Are you very certain then, Mr. Snow, that your friend Downs told you that prior to September 10th that the company was going to take 6-4?

A. Yes, sir.

Q. That the company was going to take 6-4?

A. I wouldn't say whether it was the company or who it was, but somebody was going to take it. He was going to locate some of the claims after the State had made its selection in 6-4.

Q. Did he tell you when the State was going to make a selection? A. I don't think he knew.

Q. Did he tell you that he had cruised it?

A. Yes, sir.

Q. Did he tell you he would locate the people at twenty-five dollars each? A. I don't know.

Q. He was locating people and charging them for locating them? A. Yes.

Q. You didn't understand that Mr. Downs was working for any company?

A. I didn't understand it that way.

Q. When Mr. Downs said he was going to locate

(Deposition of Henry A. Snow.)

people on lands in 6-4 that the State left—

A. After the State made its selection; he had it all cruised.

Q. —isn't that about all he told you, in substance? A. I think, yes, sir.

Q. You testified to another conversation that you had with Mr. Downs in which he told you something about a lady losing on taking four hundred dollars. Was that Mrs. Burns?

A. I couldn't remember the name; I don't believe the name was spoken.

Q. You didn't mean to say that Mr. Downs said he had lost four hundred dollars? A. No, sir.

Q. The fact is that Mr. Wells had lost the four hundred dollars?

A. I don't know whether he said "they," I think he said, "they."

Q. That they had lost four hundred dollars?

A. Yes, sir.

Q. But he didn't say he had lost four hundred dollars? A. Yes, sir. (?)

Q. Are you certain of him saying that Sweet had been buying up claims?

A. I don't remember just that conversation, but I can remember that Sweet was the first one buying up the claims—Sweet and Palmer, I think it was, and Steunenbergh, and they approached Barber Lumber Company just as I testified to before.

Q. That Palmer approached Barber Lumber Company?

(Deposition of Henry A. Snow.)

A. It was between the three of them, I took it for granted.

Q. A good deal of your evidence is from inferences from what they told you?

A. It is all from what they told me.

Q. A good deal of it is from inferences from what they told you?

A. I am telling it just as near as I can remember.

Q. But I say, a good deal of this is from incidents from what they told you, rather than from the exact words?

A. I am trying to remember the exact words just as nearly as I can.

Q. Did he tell you that Sweet bought any claims, or that Sweet advanced some money?

A. He mentioned Sweet and Palmer, I think it was; he didn't come right out in details, it was kind of a rough conversation.

Q. Well, about all you remember about it is that he mentioned those three names—Sweet, Palmer and Steunenberg—in connection with the starting of this deal? A. The starting of that deal.

Q. And just what part each took you don't know.

A. No; of course, he didn't give me the details.

Q. You went out there in August, 1901, for the express purpose of filing there? A. Yes, sir.

Q. And came back in November, 1901?

A. Yes, sir.

Q. So that all you did in the way of locating was between those dates?

A. Between those dates, yes, sir.

(Deposition of Henry A. Snow.)

Redirect Examination.

(Questions by Mr. GORDON.)

Q. Mr. Snow, do you remember the circumstance of your meeting me? If you do, I wish you would state it. A. You mean last summer?

Q. Yes.

A. Why yes, you came up to the mill there to see me, and I saw someone, I didn't know whether it was you or not, at the back end of the mill before dinner time, and after the whistle blowed, why you met me down at the carpenter shop eating my lunch.

Q. But I mean before that. Had you telegraphed me? A. Oh, yes.

Q. Now, state what that was.

A. Why I got a telegram addressed to this Charles Cunningham, addressed to my home.

Q. And who was that from?

A. Cunningham had left, and he told me if he got any papers, to open them up and forward them. He was headed for Seattle, he didn't know just where he was going; going out west to try and better himself.

Q. And you opened that telegram?

A. I opened that telegram and answered it to you that with Cunningham's permission I opened the telegram, and Cunningham had gone west.

Q. And then I showed your letter from Cunningham to the effect that you knew something about this?

A. Yes, sir, about the timber deal out west.

Q. Now, Mr. Snow, you remember the conver-

(Deposition of Henry A. Snow.)

sation you had with me in October of this last year, the only conversations you had with me?

A. Pretty nearly all of it.

Q. And you remember having some conversation with me about forties and eighties that were to be scripped? A. Yes, sir.

Q. Now, do you remember telling me at that conversation that Downs told you the reason that they were paying him five dollars to scrip this land was that they didn't have to pay interest and taxes on the land, and that nobody would take those isolated forties and they weren't running any chance of having it burned, and therefore the company was paying five dollars to isolate each one of those forties?

A. I think he used the word "they"; I wouldn't say the company.

Q. Did he use all the rest of the expressions that I have related here, and did you tell me that?

A. Yes, sir, pretty nearly as you repeated it.

Q. That is, that that was the reason they or the company were paying him five dollars to locate these lands, so there would be an isolated forty, because nobody would take it up and then they could put the scrip on it whenever they got ready.

A. No, that wasn't the reason they was paying the five. The reason was for cruising and estimating. That wouldn't be no wages to go to work and figure out all this.

Q. Well, do you remember telling me the rest of that conversation about its being cheaper, that

(Deposition of Henry A. Snow.)

there wouldn't anybody take these forties isolated that way and therefore they could run the risk of not having to buy it so they could locate on it that way?

A. In the conversation it was said that it would be cheaper and of course it has been known all over in this State the *companied* leave out forties; nobody could take up a forty; and they would plant scrip on it, but he didn't express it to me in that way, just scheming on laying out forties. You see an applicant being given the best there is you make an L-shape or a cross, sometimes. But he expressed it to me, those forties he was leaving out like that, he was getting five dollars each for putting an estimate on it and cruising it.

Q. Well, do you remember telling me that they wouldn't have to pay taxes on lands isolated like that until they wanted to use them?

A. Yes, but I don't know that I said the company.

Q. Well, didn't you tell me that Downs said that?

A. Understand me that all companies do that. Downs I don't suppose had reference to any one company, but all companies that would save taxes. In a township, forty or fifty odd forties, it would be quite natural to leave those forties until you got ready to cut them. Nobody would take up the forties. Any company would be safe on that—wait until you got ready.

Mr. BUNDY.—Mr. Downs didn't tell you that in

(Deposition of Henry A. Snow.)

locating entrymen that he had designedly left forties for scripping?

A. No, sir, but in locating it would happen, and he was getting five dollars for it for locating and estimating.

Q. Do you remember using the expression that shortly after you went away he began to isolate these forties?

A. Just as I testified a moment ago. That eighty laying west of my homestead, I asked him if he had located on that. He said that was left out, and there was quite a number of other forties left out, and he was getting five dollars a forty for cruising and estimating those. I think that conversation we had there was universal, it covers all companies.

Q. When you were out in Idaho in September, 1903, did you see Mr. Barber and Mr. Moon out there? A. Why, I saw them by hearsay.

Q. I say in September; I mean the time that you were in there that you returned in September?

A. That was the summer of 1903?

Q. Yes.

A. I can answer it in this way; that I thought I saw them. I saw two men there and they told me it was Barber and Moon.

Q. Who told you that?

A. Downs. Downs was talking with them. It was the time after this cruiser had been up in the Basin looking over the timber, and Downs was on the street with him, and he said, "I have got to go up

(Deposition of Henry A. Snow.)

to the Idan-ha Hotel to see (I think he said) Barber and Moon." I walked up to the Idan-ha with them and I waited outside for them, oh, probably ten or fifteen minutes and I walked through the office of the Idan-ha and I saw two men there talking with Downs. After Downs come out, why he says, "There is Barber and Moon that I was talking to."

Q. When was the last time you were at Boise?

A. Last fall. Well, it was the last of December or the first of January. No, let's see; hold on; it was in December, 1908.

Q. Did you see Mr. Downs there?

A. Yes, sir.

Q. Did you stop with him while you were there?

A. No, sir.

Q. And did you tell him that you had seen me and talked with me about this case? A. Yes.

Q. Did you talk over this case with him?

A. No; I told him that I didn't think it would ever amount anything.

At this point an adjournment was taken until 10 o'clock on the morning of Tuesday, April 13, 1909, at which time, and at the same place, the taking of the depositions was continued as follows:

[**Deposition of William F. Snow, on Behalf of the Complainant.**]

WILLIAM F. SNOW, a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. GORDON.)

Q. Your name is William F. Snow, is it?

A. Yes, sir.

Q. Where do you reside, Mr. Snow?

A. No. 12, Ninth Street, north.

Q. That is, Minneapolis.

A. Yes, sir, Minneapolis.

Q. How long have you resided there?

A. Well, I have lived in Minneapolis twelve years.

Q. What is your business?

A. I am a setter.

Q. That is, in a sawmill? A. Yes, sir.

Q. Are you married? A. Yes, sir.

Q. How long have you been married?

A. About six months.

Q. Did you take up a claim under the Timber and Stone Act in the land district of Idaho in 1901?

A. Yes, sir.

Q. Do you remember when you went to Idaho?

A. Why, no, not the exact date. It was shortly before McKinley was assassinated. I remember that part of it.

Q. That was along the first of September?

(Deposition of William F. Snow.)

A. I think it was after August, if I ain't mistaken.

Q. You entered a claim under the Timber and Stone Act on September 10, 1901. Did you ever enter but the one claim or file on but the one claim?

A. That is the only one.

Q. And at the time you filed did you know of any market for timber claims? A. No, sir.

Q. Did you know any persons that were buying timber claims? A. No, sir.

Q. Any persons that were selling timber claims?

A. No, sir.

Q. And who located you on your timber claim?

A. My brother, Henry Snow.

Q. And how did you happen to go to Idaho to locate?

A. Why he wrote me to come. Said he had filed and wanted me to come out.

Q. How much did it cost you for your location fee? A. Nothing.

Q. Who prepared your filing papers for you?

A. Why up in the office, up in the receiver's office.

Q. Did you prepare them yourself?

A. Why, I think my brother helped me.

Q. I mean did you do the writing?

A. Yes, sir.

Q. And did you use your own money to make your final proof? A. Yes, sir.

Q. Did you borrow any of it? A. No, sir.

(Deposition of William F. Snow.)

Q. Took the money from Minnesota with you, did you?

A. Well, not all of it. I sent for some afterwards.

Q. And at the time that you made final proof did you know of any persons that were buying timber claims? A. No, sir.

Q. Know of any market for them?

A. No, sir.

Q. And how long after you made your final proof did you start negotiations for the sale of this property?

A. Why the way it was, after I had made proof, I think it was about a week afterwards, I tried to get work around, and couldn't get no work, and I was short of money, and it seems to me I was telling Mr. Wells about it, and he says, "I think I can get a loan for you," and he did; went up to an office there.

Q. Whose office was it?

A. I think it was a man by the name of Kincaid.

Q. John Kincaid? A. Yes, sir.

Q. And did you make a deed at that time?

A. Why, I don't know. It seems to me that I signed a note for the money, and I had an option of paying this money back or selling the land after I got my patent.

Q. And how much did you get on that occasion?

A. I think it was a hundred dollars, not to be exact, but I think it was a hundred dollars.

Q. And are you sure it wasn't a deed that you made that day?

(Deposition of William F. Snow.)

A. I couldn't swear whether it was a deed or not.

Q. Did you go before a notary public?

A. No, sir; not as I remember of.

Q. And did you meet Mr. Louis M. Pritchard while you were there? A. No, sir.

Q. How long were you in Idaho?

A. Well, sir; I think about four months.

Q. And how long was this before you left Idaho that you got this money from Mr. Kincaid?

A. Just a few days.

Q. And then did you make a deed later?

A. Well, Mr. Downs came to Minneapolis and he said that there was a man out West buying up these claims and he asked if I wanted to sell; he said they were paying a certain price, and he said I could sell if I wanted to, and I told him I would, and then we went down to the courthouse and the papers were made out, and I signed the papers.

Q. Went down to the courthouse where—Minneapolis? A. Yes, sir.

Q. Didn't he bring a deed with him, Mr. Downs?

A. Why, I am sure I don't know, but I think he did.

Q. And you went to the courthouse and acknowledged the deed; is that what you mean?

A. Yes, sir.

Q. And how much money did Mr. Downs give you?

A. Well, he gave me five hundred and fifty dollars, I think it was.

Q. And that was that they paid you six hundred

(Deposition of William F. Snow.)

and fifty for your claim?

A. For the claim, yes; I think it was something similar to it.

Q. Do you know who the person was to whom you conveyed that land; do you know who the grantee was? A. No, sir; I don't remember.

Q. Where did you get this hundred dollars—at Mr. Kincaid's office? A. Yes, sir.

Q. Mr. Kincaid give it to you?

A. Yes, sir.

Q. Now, you didn't get your final proof at the time that you made—you didn't get your final certificate at the time that you paid the four hundred dollars at the land office, did you?

A. No. The patent from Washington?

Q. I mean when you paid the money in the office they gave you a temporary receipt?

A. Yes, sir; the receiver's receipt, we call it.

Q. And then did they hold your claim up for a time and later you got—

A. My patent.

Q. No; the final receipt?

A. Well, I got the Receiver's receipt right at the time I proved; that is the statement that they received four hundred dollars for making proof on this tract of land.

Q. Did Mr. Downs bring back to you the paper that you signed in Kincaid's office when you settled this thing up with him?

A. Why, I don't remember; I couldn't say positive.

(Deposition of William F. Snow.)

Q. Now, you say that you borrowed—or didn't have with you all of the money that you made your final proof with? A. Yes, sir.

Q. And that you sent back here for some money?

A. Yes, sir.

Q. Who did you send to?

A. Mr. Johnnie Halloran, in Minneapolis.

Q. And how much was it that you sent for?

A. I think it was a hundred dollars.

Q. And was that money delayed in coming?

A. Yes, sir.

Q. How long?

A. Well, I think it was something like nearly a week.

Cross-examination.

(Questions by Mr. BUNDY.)

Q. Mr. Snow, at the time you filed upon this land, filed your first papers in the land office, I will ask you to state whether or not you had at that time entered into any agreement of any kind or character, written or oral, express or implied, with any person, firm or corporation, with reference to what you should do with this land after you had procured title? A. No, sir.

Q. At the time you filed upon this land, had anybody talked with you about buying it, or had you talked to anybody about selling it to them?

A. No, sir.

Q. At the time you made your final proof on November 30, 1901, and paid the land office, up to that time had you entered into any such or similar agree-

(Deposition of William F. Snow.)

ment with any person, firm or corporation?

A. No, sir.

Q. —up to that time had you had any talk with any person with reference to selling to them or their buying of you? A. No, sir.

Q. Now, after you had paid in the money to the land office on November 30, 1901, they gave you a receipt for the money? A. Yes, sir.

Q. Now, I will ask you as to whether or not the loan you made through Mr. Wells was made after that receipt was given to you, or before?

A. After.

Q. How long after you made your final proof was it that you left Idaho and came back East?

A. Well, I couldn't say positively. I think probably two weeks. Not to be positive.

Q. And how long before you came was it that you made the loan of the hundred dollars with which to come? A. Oh, it was only a few days.

Q. Now you say that Mr. Downs afterwards came to Minneapolis? A. Yes, sir.

Q. You know Mr. Downs, do you?

A. Yes, sir.

Q. Knew him before he left here?

A. Yes, sir.

Q. And he is a friend of yours?

A. Yes, sir.

Q. Now, Mr. Downs, at that time, was out here on a visit? A. So he said.

Q. You didn't understand that he came out on purpose to buy this land, did you?

(Deposition of William F. Snow.)

A. I don't think so; no, sir.

Q. And while here he bought the land and had you execute the deed which he brought with him, and you were paid five hundred dollars?

A. Yes, sir.

Q. And as a part consideration, was he to take care of the note back there?

A. I think so, yes.

Q. Well, that is the way you made up the six hundred and fifty dollars? A. Yes, sir.

Q. It is charged in the complaint in this action, Mr. Snow, that you made this entry and filed upon this land at the request of and for the benefit of the Barber Lumber Company, James T. Barber, S. G. Moon, John Kincaid, William Sweet, and the other defendants. I will ask you whether or not that is true or false? A. No, sir.

Q. And it is also alleged in this action we are trying, that pursuant to the agreement you had with these defendants or some of them, you agreed to and did go before the land office at the time you made you first filing, and afterwards at the time you made your final proof, and testified to things that you knew were false? Is that true?

A. No, sir; it is false.

Q. Did you at the time you made your filing and at the time you made your final proof, testify honestly and correctly before the land office?

A. Yes, sir; to the best of my knowledge.

Q. Did you at any time have any agreement with any of these people, at any time, or at the time you

(Deposition of William F. Snow.)

made your final proof, as to what you should do with this land? A. No, sir.

Q. Did you enter it for any person other than yourself? A. Just for myself.

Q. Did you know to whom you were going to sell it, or convey it at the time you made your entry or final proof? A. No, sir.

[Stipulation Re Patents Issued, etc.]

IT IS HEREBY STIPULATED by and between the counsel for the respective parties to this suit that patents were duly issued by the complainant to each of the entrymen and entrywomen named in the bill, covering the lands therein described, all of which patents were issued prior to the commencement of this action; and that duly certified copies of each of said patents were offered in evidence by the complainant and duly received.

IT IS FURTHER STIPULATED that papers and documents referred by witnesses for the complainant, which have not been produced, and which counsel for the complainant have undertaken to produce may be offered in evidence during the taking of complainant's evidence in rebuttal, with the same force and effect as though same were offered in their case in chief.

I, Malcolm E. Nichols, Notary Public, in and for Ramsey County, Minnesota, do hereby certify that the above and foregoing depositions of Amasa B. Campbell, Henry A. Snow, Joseph Ehrmanntraut, Jr., Mrs. Margaret M. Ehrmanntraut and William F. Snow, were taken before me in the city of St.

Paul, County of Ramsey, and State of Minnesota, commencing on the 12th day of April, 1909, and continuing thereafter until the same were completed; that said depositions were taken pursuant to the above and foregoing stipulations made before me by counsel representing the respective parties; that the signatures of the respective witnesses were waived, pursuant to the above and foregoing stipulation of counsel for the respective parties; and that said depositions were taken by and on behalf of the complainant to be used in an action entitled as above, now pending in the United States Circuit Court for the District of Idaho.

In witness whereof I have here set my hand and seal this 29th day of May, 1909.

MALCOLM E. NICHOLS,

Notary Public, Ramsey County, Minnesota.

My Commission expires February 28, 1915.

[Endorsed]: Filed June 2, 1909. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, for the
District of Idaho.*

UNITED STATES,

Complainant,

vs.

BARBER LUMBER CO. et al.,

Defendants.

[Proceedings Had May 20, 1909.]

On this 20th day of May, A. C. 1909, at St. Paul, Minnesota, the parties met pursuant to agreement of

counsel, there being present on behalf of the United States, Messrs. Peyton Gordon and Charles A. Keigwin, and for the defendants, Mr. A. E. Maccartney.

IT IS STIPULATED by and between counsel for the respective parties that the depositions of the witnesses to be offered at the present session may be taken before Malcolm E. Nichols, Notary Public, with the same force and effect as if the same had been taken before the examiner specially appointed for that purpose; that the signature of the depositions by the various witnesses is hereby waived, with the liberty reserved to either side to recall any witness for the correction of any errors in the transcription of his testimony which cannot be corrected by agreement of counsel.

**[Deposition of William F. Von Deyn, on Behalf of
the Complainant.]**

WILLIAM F. VON DEYN, called as a witness on behalf of the complainant, after being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. GORDON.)

Q. Your name is William F. Von Deyn?

A. Yes, sir; capital V-o-n capital D-e-y-n.

Q. Where do you reside, Mr. Von Deyn?

A. St. Paul, Minnesota.

Q. And what is your occupation?

A. I am—well, I am a clerk in the land department of the Northern Pacific Railway Company.

Q. And how long have you been so employed?

A. Since April 1, 1895.

(Deposition of William F. Von Deyn.)

Q. You are a notary public?

A. Yes, sir. In those days we had no expiration stamp; now we have one.

Q. You are a notary Public in and for Ramsey County?
A. Ramsey County, Minnesota.

Q. And you were such on the fourth of September, 1903?
A. Yes, sir.

Q. I show you, Mr. Von Deyn, a paper marked "Land Department, Northern Pacific Railway, List No. 1," purporting to be a list of selections made by the Northern Pacific Railway Company of public land in Idaho, and ask you to state if the certificate attached to that paper was acknowledged before you by Mr. William H. Phipps?

A. Yes, sir; he was our Land Commissioner.

Q. And that is your signature to the jurat, is it?

A. Yes, sir.

Q. And it was subscribed and sworn to before you on the fourth day of September, 1903?

A. Yes, sir.

Q. That being the date expressed in the jurat. Is that correct?

A. I don't know what you mean by that.

Q. Well, that is the jurat (indicating).

A. This whole business?

Q. Yes.

A. Oh, yes. I am not attorney at law; I am a claim notary, who said this man came before me and did this.

Q. And that is your notarial seal on that paper?

A. Yes, sir.

(Deposition of William F. Von Deyn.)

Q. And what was Mr. Phipp's business at that time?

A. Land Commissioner of the Northern Pacific Railway, 1903; yes.

Q. That date, September 4, 1904, is in your handwriting? A. Yes, sir.

Q. And it was put there on that date?

A. Yes. That is the best of my recollection. Of course, I don't ever say that somebody appeared before me either before or after; when Mr. Cooper, our present Commissioner, or Mr. Elliott wants to sign, I says, "Is Mr. Cooper here this morning? Is Mr. Elliott here this morning"? "Yes." And I look in the crack and I see if he is there. If he went away I inquired when Mr. Elliott went away, and they tell me, "Well, on the 12th of May," or so. Well, when a paper comes in on the 12th I know it that he is here. This notary business isn't like a man who transacts land business and has his wife there.

Q. And Mr. Phipps was there at that time?

A. According to that he was there. I wouldn't take it for granted that he was there when he was not there. I knew it.

Mr. GORDON.—We offer this paper, identified by the witness, in evidence, and the same reads as follows:

Act of March 2d, 1899.

Form L. D. 153.

Filed Nov. 5th, 1903. Approved Nov. 5th, 1903.

Land Department.

Northern Pacific Railway Co.

List No. 1 of selections of public lands made by the Northern Pacific Railway Company as inuring to it under grants of July 2, 1864, and May 31, 1870, in the Boise City U. S. Land District, Idaho.

U. S. Land Office, Boise, Idaho,

Filed Nov. 5th, 1903.

Land Department.

Northern Pacific Railway Company.

List No. 1.

Act of March 2, 1899.

State of Idaho.

U. S. Land Office at Boise City.

The Northern Pacific Railroad Company and the Northern Pacific Railway Company, as the successor in interest of the Northern Pacific Railroad Company, having executed and delivered to the United States their certain deed, dated July 19, 1899, conveying and relinquishing to the United States certain lands situated within the limits of the Mount Ranier National Park and the Pacific Forest Reserve, as defined by the Act of Congress entitled, "An Act to set aside a portion of certain lands in the State of Washington, now known as the Pacific Forest Reserve, as a public park, to be known as the Mount Ranier National Park," which Act was approved March 2, 1899, in pursuance of said Act of Congress above mentioned, now, by virtue of the right conferred upon the said Northern Pacific Railroad Company by said

Act of Congress approved March 2, 1899, the said Northern Pacific Railway Company as the successor in interest of the Northern Pacific Railroad Company, hereby selects the lands hereinafter specified in lieu of a like quantity of land so relinquished and conveyed, the descriptions hereinafter set opposite the lands selected being assigned as the particular base for the tracts hereby selected.

All the lands hereby selected are situated within the Boise City land district, in the state of Idaho.

LIST OF LANDS north of base line and East of Boise principal meridian, selected by the Northern Pacific Railway Company, as the successor in interest of the Northern Pacific Railroad Company, under the Act of Congress, approved March 2, 1899, entitled "An Act to set aside a portion of certain lands in the State of Washington, now known as the Pacific Forest Reserve, as a public park, to be known as the Mount Ranier National Park," in lieu of lands set opposite thereto, relinquished under said act of March 2, 1899.

Part of Section.	Sec. Town. Range.	Area. Acres 100ths.	Remarks.
Those certain tracts of land, which when surveyed will be described as follows, to wit:			
1 NW. ¼ NE. ¼, S. ½ NE. ¼, & N. ½ NW. ¼	26-8-7	200	In lieu of
2 NE. ¼ SE. ¼ & S. ½ SE. ¼	26 " "	120	" " "
3 NW. ¼, E. ½ SW. ¼, & SW. ¼ SE. ¼	30-8-8	280	" " "
4 SE. ¼ SE. ¼	32 " "	40	" " "
5 NW. ¼ NE. ¼ & N. ½ NW. ¼	4-6-9	120	" " "
6 SW. ¼ SW. ¼	18-7-9	40	" " "
7 SW. ¼ NW. ¼	28 " "	40	" " "
8 N. ½ NW. ¼ & SW. ¼ NW. ¼	30 " "	120	" " "
9 NE. ¼ SE. ¼	32 " "	40	" " "
Total,		1000	

LIST OF LANDS RELINQUISHED to the United States by the Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company, under the Act of Congress, approved March 2, 1899, entitled, "An Act to set aside a portion of certain lands in the State of Washington, now known as the Pacific Forest Reserve, as a public park, to be known as the Mount Ranier, National Park," and specified as bases for the particular tracts set opposite and hereby selected.

Part of Section.	Sec.	Town.	Range.	Area.	Remarks.
				Acres 100ths.	

Those certain tracts of land which when surveyed will be described as follows, to wit:

	Northeast.	W. M.
1 NE. ¼ & NE. ¼ NW.....	31-18-14	200
2 NW. ¼ NW. ¼ & S. ½ NW. ¼.....	31 " "	120
3 SW. ¼, N. ½ SE. ¼, SW. ¼ SE. ¼.....	31 " "	280
4 SE. ¼ SE. ¼.....	31 " "	40
5 N. ½ NE. ¼ & SW. ¼ NE. ¼.....	35 " "	120
6 SE. ¼ NE. ¼.....	35 " "	40
7 NE. ¼ NW. ¼.....	35 " "	40
8 NW. ¼ NW. ¼ & S. ½ NW. ¼.....	35 " "	120
9 NE. ¼ SW. ¼.....	35 " "	40
	Total,	<u>1000</u>

State of Minnesota,
County of Ramsey,—ss.

I, Wm. H. Phipps, being duly sworn, depose and say: that I am the Land Commissioner of the Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company; that the lands described in the foregoing list, and which are hereby selected by the Northern Pacific Railway Company, under the Act of Congress ap-

proved March 2, 1899, entitled, "An Act to set aside a portion of certain lands in the State of Washington, now known as the Pacific Forest Reserve, as a public park, to be known as the Mount Ranier National Park," and all of them, are vacant, unappropriated lands of the United States, not reserved, and to which no adverse right or claim has attached, and have been found, upon examination, to be non-mineral in character, and said lands, and all thereof are of the character contemplated by said Act of Congress approved March 2, 1899; and that the specific lands heretofore relinquished and conveyed to the United States by said Northern Pacific Railway Company, as successor in interest of the Northern Pacific Railroad Company, in lieu of which the lands herein described are selected, are truly set forth and described in this list, and no selection has heretofore been made in lieu of any of the lands herein specified as the basis for the lands hereby selected.

[Notarial Seal] (Signed) W. F. VON DEYN,

Notary Public, Ramsey County, Minnesota,
Triplicate.

U. S. Land Office at Boise, Idaho,
November 5, 1903.

We hereby certify that we have carefully examined the foregoing selection list filed by the Northern Pacific Railway Company, as the successor of the Northern Pacific Railroad Company, under the Act of Congress approved March 2, 1899, entitled, "An Act to set aside a portion of certain lands in the State of Washington, now known as the Pacific Forest Reserve, as a public park, to be known as the Mount

Ranier National Park," and have critically examined the plats and records of this office, and that the lands selected appear by the records of this office to be subject to such selection; and said lands, and all of them are public lands of the United States, not reserved. We have, therefore, approved the foregoing list and the selection of the lands therein described, and have made due notation thereof upon the records of this office.

It is further certified that the foregoing list shows an assessment of the fees payable hereunder, and that said Northern Pacific Railway Company has paid to the undersigned, the receiver, the full sum of Fourteen dollars in full payment and discharge of said fees.

(Signed) HARRY J. SYMS,
Register.

(Signed) EDWARD E. GARRETT,
Receiver.

Q. Mr. Von Deyn, I show you paper marked "Land Department Northern Pacific Railway Company, List No. 2."

A. Yes, sir.

Q. I show you the jurat on the 4th page of that and ask you if that is your signature?

A. It is, sir.

Q. And that was signed by you as notary public?

A. Yes, sir.

Q. And Mr. William H. Phipps appeared before you on the date it bears and acknowledged each paper?

A. To the very best of my recollection.

Q. And it bears the date of September, 1903, and that is in your handwriting? A. Yes, sir.

Q. And that is your notarial seal attached?

A. It is, sir.

Q. We offer in evidence the list No. 2, identified by the witness, and the same reads, as follows:

Act of July 1st, 1898.

Form L. D. 153.

Filed Nov. 5th, 1903. Approved Nov. 5th, 1903.

Land Department.

Northern Pacific Railway Co.

List No. 2.

Of selections of public lands made by the Northern Pacific Railway Company as inuring to it under grants of July 2, 1864, and May 31, 1870, in the Boise City U. S. Land District.

Idaho.

U. S. Land Office, Boise Ida.	} Rubber	
Filed		} Stamp
Nov. 5, 1903.		

L. D. No. 211 6-27-08 2M ER

Land Department

Northern Pacific Railway Company

List No. 2.

Act of July 1st, 1898.

State of Idaho.

U. S. Land Office at Boise City.

The Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company, having relinquished to the United States certain lands hereinafter described, under the provisions of the Act of Congress approved July 1st,

1898 (30 Stat. 597, 620), and said relinquishments having been duly accepted by the commissioner of the general land office, now by virtue of the right conferred upon said Northern Pacific Railway Company, as the successor in interest of the Northern Pacific Railroad Company, by said Act of Congress, approved July 1st, 1898, hereby selects the lands hereinafter specified in lieu of the respective tracts of land so relinquished and hereinafter set opposite and specified as the particular bases for the several tracts hereby selected.

All the lands hereby selected are situated within the Boise City Land District.

LIST OF LAND North of base line and East of Boise principal meridian, selected by Northern Pacific Railway Company as successor in interest of the Northern Pacific Railroad Company under the Act of Congress approved July 1st, 1898, in lieu of lands set opposite, relinquished under said act of 1898.

Part of Section.	Sec. Town. Range.	Area. Acres 100ths.	Remarks.
Those certain tracts of land which when surveyed will be described as follows, to wit:			
1 S. ½ SW. ¼	23-8-7	80	In lieu of
2 NE. ¼ SW. ¼ & NW. ¼ SE. ¼	25 " "	80	"
3 S. ½ SW. ¼	25 " "	80	"
4 S. ½ SE. ¼	25 " "	80	"
5 NE. ¼	35 " "	160	"
6 E. ½ SE. ¼	35 " "	80	"
7 E. ½ NW. ¼	31-8-8	80	"
8 S. ½ SW. ¼ & SW. ¼ SE. ¼	33 " "	120	"
9 NW. ¼ & W. ½ SE. ¼	19-7-9	240	"
10 SW. ¼	19 " "	160	"
11 SW. ¼ SW. ¼	21 " "	40	"
12 W. ½ NW. ¼ & NW. ¼ SW. ¼	29 " "	120	"
13 S. ½ NW. ¼ & E. ½ SW. ¼	33 " "	160	"
14 SW. ¼ SW. ¼	33 " "	40	"
15 W. ½ SE. ¼	33 " "	80	"
16 SW. ¼ SE. ¼	35-8-7	40	"
Total,		1,640	

LIST OF LANDS RELINQUISHED to the United States by the Northern Pacific Railway Company, successor in interest of the Northern Pacific Railroad Company, under Act of Congress approved July 1st, 1898, and specified as bases for the particular tracts set opposite and hereby selected.

Part of Section.	Sec. Town. Range.	Area. Acres 100ths.	Remarks.
Northwest.			
1 N. ½ SE. ¼	21-12-22	80	Relinquished in Montana Relinquishment No. 13. Accepted by Secretary of Interior, October 3, 1901.
2 S. ½ SE. ¼	21 " "	80	
3 N. ½ NE. ¼	35 " "	80	
4 NW. ¼ NE. ¼ & NE. ¼ NW. ¼	17-30-29	80	Southwest.
5 SE. ¼	1-1-3	160	
Northwest.			
6 W. ½ SW. ¼	29-29-30	80	"
Southwest			
7 S. ½ NE. ¼	1-1-3	80	"
8 N. ½ SW. ¼ & SW. ¼ SW. ¼	1 " "	120	"
9 S. ½ NE. ¼ & SE. ¼	3 " "	240	"
10 NW. ¼	15 " "	160	"
Northwest.			
11 SW. ¼ NW. ¼	29-29-30	40	"
12 SE. ¼ SW. ¼ & S. ½ SE. ¼	33-5-20	120	"
13 SW. ¼ NE. ¼ SW. ¼ & W. ½ SE. ¼	23 " "	160	"
SW.			
14 SE. ¼ NW. ¼	1-1-3	40	"
SE.			
15 E. ½ NE. ¼	11-2-8	80	"
SW.			
16 SE. ¼ SE. ¼	21-1-3	40	"
Total,		1,640	

State of Minnesota,
County of Ramsey,—ss.

I, Wm. H. Phipps, being duly sworn, depose and say, that I am the Land Commissioner of the Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company; that the lands described in the foregoing list, and which are hereby selected by the Northern Pacific Railway Company, under the Act of Congress approved July 1st, 1898, and all of them, are vacant, unappropriated lands of the United States, not reserved, and have been found, upon examination, to be non-mineral in character; and said lands, and all thereof, are of the character contemplated by said Act of Congress approved July 1st, 1898; and that the specific lands heretofore relinquished to the United States by said Northern Pacific Railway Company, as successor in interest of the Northern Pacific Railroad Company in lieu of which the lands herein described are selected, are truly set forth and described in this list, and no selection has heretofore been made in lieu of any of the lands herein specified as the bases for the lands hereby selected.

(Signed) WM. H. PHIPPS. (Seal)

Subscribed and sworn to before me this fourth day of September, 1903.

[Notarial Seal] (Signed) W. F. VON DEYN,
Notary Public, Ramsey County, Minnesota.

U. S. Land Office, at Boise, Idaho.

Triplicate.

November, 5, 1903.

We hereby certify that we have carefully examined the foregoing selection list filed by the Northern Pacific Railway Company, as successor of the Northern Pacific Railroad Company, under the Act of Congress, approved July 1st, 1898, and have critically examined the plats and records of this office to be subject to such selection. We have, therefore, accepted and approved the foregoing list and the selection of the lands therein described, and have made due notation thereof upon the records of this office.

It is further certified that the foregoing list shows an assessment of the fees payable hereunder, and that said Northern Pacific Railway Company has paid to the undersigned, the receiver, the full sum of twenty-two dollars in full payment and discharge of said fees.

(Signed)

HARRY J. SYMS,

Register,

(Signed)

EDWARD E. GARRETT,

Receiver,

Cross-examination.

(Questions by Mr. MACARTNEY.)

Q. Mr. Von Deyn, do you know what the practice is in the land office of the Northern Pacific in regard to signing these lists such as are offered in evidence?

A. To be signed by whom? Well, the Land Commissioner—first they are made up and then carefully compared with papers from which they are made,

(Deposition of William F. Von Deyn.)

then presented to the Land Commissioner, and he signs them, and then they go to the Notary and he says that he did sign them.

Q. Do you know whether or not these lists are used at the time they are signed or not?

Mr. KEIGWIN.—Objected to on the ground that it is immaterial and irrelevant to the issues in this case.

A. That I could not say; they may have kept them for a few days or a week or two. That is not my business, Mr. Macartney. All I have to do is to say that he appeared before me, but I was always very careful about knowing that the person signing the papers was there.

Q. Was there at the time—

A. That we put the date on.

Q. But that wasn't necessarily the date that they brought it to you; it might have been some other date that they brought it to you, but you always took the acknowledgment when the Land Commissioner was in St. Paul?

A. That is right. I just explained that.

Q. It might have been some other date when it was brought to you?

Mr. KEIGWIN.—Objected to on the ground that it is incompetent, *attending* to vary the official certificate of a Notary.

A. I knew when I signed as a notary that the man was there.

Q. On that date? A. Yes, sir.

Q. But this might have been presented to you at

(Deposition of John M. Hughes.)

some other time?

A. Oh, maybe a day or two later.

[Deposition of John M. Hughes, on Behalf of the Defendants.]

JOHN M. HUGHES, called as a witness on behalf of the defendants, after being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MACARTNEY.)

Q. Where do you reside, Mr. Hughes?

A. Hudson, Wisconsin.

Q. What is your business?

A. Chief Clerk of the Land Department of the Northern Pacific Railway Company, St. Paul.

Q. How long have you been in the Land Department?
A. Thirteen years.

Q. Are you familiar with the scripped locations such as have been introduced in evidence, or offered in evidence by the complainant here to day?

A. Yes, sir, I am familiar with them.

Q. I call your attention, Mr. Hughes, to the fact that this affidavit on both of the exhibits purports to be sworn to before Mr. Von Deyn, a notary, on the 4th day of September, 1903, and signed by Mr. Phipps; state, if you please, what the practice is in regard to locations of this kind?

Mr. KEIGWIN.—Objected to upon the ground that it is immaterial and irrelevant and that so far as it seeks or tends to impeach the correctness of the

(Deposition of John M. Hughes.)

notarial certificate it is incompetent.

A. So far as the custom was at the time when this affidavit was taken, it was the custom to have the Land Commissioner, who was the selecting agent for the company, sign up these certificates in lots so as to provide for possible contingencies as they might arrive. This particular case was no doubt one of those in which a large number of these affidavits were signed up and kept in the office for possible use.

Q. Are you the party that made this location?

A. I am the party who attempted to make it.

Q. When did you attempt to make it?

A. October, 13, 1903.

Q. Do you know, Mr. Hughes, when this scrip in question was purchased by the Barber Lumber Company?

A. No.

Q. Do you know about when?

A. To the best of my knowledge on or about the 7th of October, 1903.

Q. Do you remember of my calling your attention to the fact that the Barber Lumber Company desired to purchase this scrip, and requesting you to go to Boise and locate it?

A. I have no definite recollection on that point.

Q. Do you remember how you happened to go to Boise to locate the scrip?

A. I was instructed by the Land Commissioner, Mr. Phipps.

Q. Wasn't the matter left in your hands so far that I notified you that we desired to purchase the scrip and you were to go there and locate it?

(Deposition of John M. Hughes.)

A. I have no such present recollection.

Q. You say you did go about the 7th of October?

A. Yes, I left St. Paul on the 7th of October.

Cross-examination.

(Questions by Mr. GORDON.)

Q. Mr. Hughes, do you mean that the Land Commissioner in preparing these lists would sit down and make up a number of such lists as this or these, without having any notion of who was going to buy them or where they were going to be located?

A. Yes, sir.

Q. You would take and make up a list—

A. Let me explain that answer. The list is not considered a list until the descriptions are filled in, but the affidavits would be filled up.

Q. What do you mean by the descriptions?

A. The selected lands and the base lands.

Q. Well, what I was trying to get at was this:—would Mr. Phipps prepare or have somebody else prepare a list of base lands and put it away, for say a thousand acres, and wait for somebody to come in and ask for a thousand acres? A. No, sir.

Q. He would wait until somebody came in and asked for the land? A. Yes, sir.

Q. He wouldn't know how much to put in any particular list until somebody came in and gave him an order for so many acres? A. No, sir.

[Deposition of **A. E. Macartney**, on Behalf of the
Defendant.]

A. E. MACARTNEY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

I negotiated for the purpose of the scrip shown by these exhibits, for the Barber Lumber Company, on about the 7th day of October, either a day or two of that time, 1903. I received either a telegram or a telephone message from Mr. Barber saying that he desired to purchase some scrip from the Northern Pacific Railway Company. I thereupon either saw Mr. Hughes or telephoned him, stating that Mr. Barber desired to purchase the scrip. He said that Mr. Phipps was away, as I remember it, but that he knew about the matter and would go at once to Boise, Idaho, and locate the scrip. The Barber Lumber Company never purchased the (?) in question until about the 7th day of October, and certainly not until after the 1st day of October, 1903, and I think it was on the 7th day of October.

Cross-examination.

(Questions by Mr. KEIGWIN.)

Q. You are a practicing attorney in St. Paul, Mr. Macartney? A. Yes, sir.

Q. And you sometimes represent the Barber Lumber Company of Eau Claire in their professional matters?

A. No, sir, never have represented the Barber Lumber Company.

(Deposition of A. E. Macartney.)

Q. Well, Mr. Barber then?

A. No, nor Mr. Barber.

Q. Who did you represent in negotiating for this scrip?

A. Mr. Barber and the Lumber Company—Barber Lumber Company—but not in a professional way.

Q. You are not their regular attorney?

A. No, sir, and never have been.

Q. And not a general agent for them?

A. No, sir, never have been. I did some work in regard to this scrip, after this date, for the Barber Lumber Company, drawing contracts or something of that kind, but that is all I remember of representing them in a professional way.

Q. You are a stockholder in the Barber Lumber Company? A. Yes, sir, and was at that time.

I, Malcolm E. Nichols, Notary Public, in and for Ramsey County, Minnesota, do hereby certify that the above and foregoing depositions of William F. Von Deyn, John M. Hughes and A. E. Macartney, were taken before me in the city of St. Paul, County of Ramsey and State of Minnesota, on the 20th day of May, 1909; that said depositions were taken pursuant to the above and foregoing stipulation made before me by counsel representing the respective parties; that the signatures of the respective witnesses were waived pursuant to the above and foregoing stipulation of counsel for the respective parties; and that said depositions were taken by counsel to be used in an action entitled as above, now

pending in the United States Circuit Court for the District of Idaho.

In witness whereof, I have here set my hand and seal this 29th day of May, 1909.

[Seal] (Signed) MALCOLM E. NICHOLS.

Notary Public, Ramsey County, Minnesota.

My commission expires February 28, 1915.

[Endorsed]: Filed June 2, 1909. A. L. Richardson, Clerk.

1:30 P. M., Friday, March 5, 1909.

[Deposition of William H. Taylor, on Behalf of the Defendants.]

WILLIAM H. TAYLOR, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Your present residence is where?

A. Thunder, Idaho.

Q. And your present occupation or business is what? A. Farming and stock-raising.

Q. State what, if any, official position you hold at present?

A. I am a member of the Tenth Session of the Legislature.

Q. Assembly or Senate? A. Assembly.

Q. Where did you reside in 1902 and 1903?

A. Well, I resided in the town of Payette, in this State.

(Deposition of William H. Taylor.)

Q. And for how many years have you lived in Idaho?

A. Twenty-seven years this coming summer.

Q. What, if any, position did you hold with the State prior to 1902 and 1903, relative to its lands?

A. Well, I held the position of land selector and estimator.

Q. And in that position, were you called upon to estimate the amount of timber on lands, and so forth?

A. Yes, sir.

Q. And you are competent to do that?

A. Yes, sir.

Q. And when did you hold that position, Mr. Taylor?

A. In 1879 and 1880, and, I think, up till 1891, I think, '90, or '91; '91, I think, was the last perhaps, that—

Q. Did you know ex-Governor Frank Steunenberg in his lifetime?

A. I did.

Q. State as to whether or not you were employed by Governor Steunenberg at any time during the fall of 1902 or the winter of 1902 and 1903, with reference to certain lands up in what is known as the Crooked River country.

A. I was employed both in the fall of 1902 and the winter of 1903.

Q. Now, will you please state fully, state your employment, what you were employed to do, in the fall of 1902.

A. The first employment in 1902, he employed me to look over the Crooked River country, with the

(Deposition of William H. Taylor.)

object of placing scrip upon lands in, I think, 7-7, 7-8, and, I think, some in 6-8.

Q. Now, what if anything, did you do before commencing to work, with reference to looking up those towns in the land office?

A. Well, we secured plats from the land office here, that is, I didn't get them myself, but they were gotten by another party, which showed that those lands were still Government lands, and subject to entry, or to be scripped, or anything of that kind.

Q. Do you remember anything about the number of acres approximately in that condition, or were the whole towns in that condition?

A. I think the whole towns, I think showed, as we had them, with the exception of just one entry—I think Kempner had an entry on Crooked River, and, as I remember, that was the only entry on those townships.

Q. As the plats showed? A. Yes.

Q. Can you recall about what time of the year it was that you went up into the townships mentioned? A. It was in October.

Q. 1902? A. Yes.

Q. What, if anything, did you discover or learn, after your arrival in the Crooked River country, Mr. Taylor?

A. I was up in there, I think, probably ten days, possibly two weeks, and I found out that there had been a considerable number of stone and timber entries taken in there, and that they didn't show on the plats that I had, the plats didn't show any en-

(Deposition of William H. Taylor.)

tries as being made.

Q. And did you thereupon return to Boise?

A. Yes, sir, I came back, because I saw that my plats were incorrect, and that it would be no use for me to cruise the country unless I had plats that would be correct.

Q. Did you report to Governor Steunenberg?

A. I did.

Q. What, if anything, did you or he again do with reference to going to the land office?

A. I went to the land office with another party and we asked the register if the plats were corrected up to date, and he said that the plats were not, that the books were, but that there had been a good many entries made, and that they didn't mark them off on the plats until the entries were perfected, and he said the plats were not always up to date, so we got new plats directly from the books.

Q. And from the new plats what did you find with reference to timber and stone entries in those townships?

A. We found that they were practically all taken, that is, all the lands that were valuable for timber lands had already been taken.

Q. And state what, if any, conversation you had with Governor Steunenberg with reference to this proposed scripping?

A. Well, I told him when I came down that the plats were evidently faulty, because I had found out positively that there had been a considerable number at least of stone and timber entries taken

(Deposition of William H. Taylor.)

there, and that we had better find out and correct the plats, and after we did I told him it would be useless to go back up there, because from the cruising I had done I was satisfied that practically all of the stone and timber had been taken.

Q. What talk did you have with him before you went up there with reference to the purpose for which he wanted this knowledge?

A. Well, he said that he was informd that there was a good body of timber up there, and asked me if I knew anything about it, and I told him that I did, because I had been up in that country along in the '80's and that there was a good body of timber there, but as to whether it was vacant or not I didn't know, and he said he had been informed that it was Government land, and could be scripped, and that they had scrip that they wished to place on it if they could find land that would be worth scripping.

Q. So that culminated in your employment to go up there? A. Yes.

Q. Now, after you had returned and had your corrected plats showing that the towns had been practically entered, did you afterwards have another talk with Governor Steunenberg about this land? A. I did, in 1903.

Q. About what time of the year, do you remember?

A. I think that was sometime in January, 1903.

Q. Just state what that conversation was.

A. Well, he stated that the land had all been taken under the Timber and Stone Act, and that it

(Deposition of William H. Taylor.)

could be secured; that he was connected with a company that wanted to buy a body of timber, if they could get a body sufficiently large together that would justify them in putting up a plant, and that he had been informed that these lands which had been taken under the Stone and Timber Act could be bought, and he wanted to know if I would go and look it over and make an estimate as to the value of the timber, the amount of timber, and the cost of getting it out, and make a general report upon the proposition.

Q. Now, did you make any arrangement with him and go up? A. Yes, I did.

Q. Did you attempt to estimate each 40 or each quarter section on that trip, Mr. Taylor?

A. No, I did not; it was in the winter time, and I demurred to going at that time of the year, and told him it was a very bad time and a very hard trip to make, but he finally prevailed upon me to go, and I think I suggested that it would be possible to take promiscuously a certain number of quarter sections from different parts of the townships and estimate those, and perhaps get an approximate idea as to the amount of timber, and the value.

Q. Well, did you do it in that way?

A. Yes.

Q. Then you did go up sometime in January, and go over this same timber, and make the kind of estimate you have spoken of? A. Yes, sir.

Q. Do you remember what time you returned?

A. Well, no, I couldn't say exactly; I went some-

(Deposition of William H. Taylor.)

time in January, 1903, and I presume that I came back sometime in February, but I couldn't just say.

Q. Do you recall the fact of Governor Steunenberg being very anxious for your return before he would commence buying timber, waiting for your estimate, do you remember anything about that?

A. Yes, I remember that he told me that he was very anxious to get the report as soon as possible; I think he said that Mr. Barber and some other parties—I don't just remember—were here, and were waiting, and that they wanted to know as soon as possible as to whether they would be justified in buying this timber or not, whether the price that was asked for it would be a reasonable price, and whether there would be a sufficient amount to justify them in making the deal, and I think he stated that there was other lands they could buy provided they could get this, and, as I remember, they wanted to get a certain amount of land, or else they didn't care to purchase at all.

Q. You had someone with you on those trips, did you?

A. Yes, sir.

Q. Mr. Buchannan?

A. Yes, sir, on the first trip.

Q. And who was on the second?

A. Pat Downs.

Q. And had Pat Downs made some kind of an estimate on this land before?

A. I don't know as to whether or not he had, but I think he had located—I found out after I came back from the first trip that he had located a good

(Deposition of William H. Taylor.)

many of these people who had taken stone and timber claims there, and consequently was familiar with the country and would be able to take me to the section corners and the like of that, which was difficult to find some times at that time of the year.

Q. Your compensation and expenses on these trips were, of course, paid by Governor Steunenberg?

A. Yes, they were paid by Governor Steunenberg.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Taylor, when you went up there at the instance of Governor Steunenberg the first time, did you know whether any estimates had been made of the lands that you went over for Governor Steunenberg?

A. No, sir.

Q. And that was in what month in 1901?

A. 1902; it was in October.

Q. 1902? A. Yes, sir.

Q. And were there any other estimators or cruisers up there at that time, that you know of?

A. I didn't meet any at the time I was in there.

Q. Now, what land did you estimate, or what timber land, at that time?

A. I didn't estimate any at that time; I simply went to look it over.

Q. Well, what townships did you go to look over?

A. Well, it was 7-7, 7-8 and 6-8; that was what was considered the Crooked River country, and was

(Deposition of William H. Taylor.)

tributary to the North Fork of the Boise River.

Q. And you went over all of those townships, did you?
A. Well, yes, I was in all of them.

Q. And you say you learned that there had been flings made on some of those sections in those townships?
A. Yes.

Q. Who told you that?

A. Well, I found out first from a couple of parties that was mining on what is known as Lost Creek in there.

Q. Who were they?

A. I don't know as I can recall their names; it was an old gentleman and his son, and we had occasion to camp with them there, and they told us that there had been cruisers in there then, and the reason they mentioned it more particularly, they had mining claims in there, and they said they went with them and showed them where their mining claims were and they didn't locate that.

Q. Did these persons tell you how many persons had been located in that section?

A. No, they didn't tell me how many; they said, there had been cruisers in there that summer or fall sometime, and they said they knew positively about these certain claims, and they said they thought there had been a good many more, but they didn't know.

Q. That was in 1902?
A. 1902.

Q. What month, do you remember?

A. October.

Q. Now, what month was it that you had your

(Deposition of William H. Taylor.)

conversation with Governor Steunenberg, before going there?

A. Well, I presume it was the very last of September; it might have been the first of October; I don't remember just what time in October I went up there, but I do remember distinctly the time that I came back.

Q. And you returned here and saw Mr. Steunenberg?
A. Yes.

Q. That is Frank Steunenberg, the ex-Governor of this State?
A. Yes, sir.

Q. He is dead now, is he?
A. Yes, sir.

Q. Do you remember when he died?

A. Well, he was killed on the 30th of December, I think.

Q. What year?

A. In 1904, I think, or 1905, I wouldn't be positive—1905, I guess it was.

Q. And did you go to see Governor Steunenberg before you went to the land office, on your return?

A. Yes, sir.

Q. And what did you tell him?

A. I told him that I had found out positively that our plats were not correct; that I had found out, that is, without a question of doubt, that there had been stone and timber claims taken there, and that the plats didn't show that there had been any entries made.

Q. This is what you call the Crooked River country, is it?
A. Yes, sir.

Q. And how far is that from what is known as

(Deposition of William H. Taylor.)
the Boise Basin?

A. Well, I couldn't say just how far that would be in a direct line; the way we go from Idaho City to Crooked River, it is about twenty, from Idaho City, which is a portion of Boise Basin, it is about twenty odd miles before you strike Crooked River, as near as I remember.

Q. And your trip up there the first time was for the purpose of seeing what land was there that had sufficient timber on it to justify scripping it, is that right? A. Yes, sir.

Q. Did Governor Steunenberg tell you that he had any scrip at that time, or that he was going to buy some scrip?

A. I don't remember whether he said he had the scrip, or whether he had made any arrangements for the scrip; I don't remember as to that. He told me that he wished to scrip it if there was anything there that would be worth scripping, which I thought there was, if it was vacant, as the plats showed. I think he asked me if I had any knowledge of it, and I told him I had been over that country a good many years ago.

Q. He mentioned to you the fact that you should go and look over these townships you have mentioned, did he? A. Yes, sir.

Q. And did he tell you that he wanted to scrip the whole of those townships or just a certain number of quarter sections?

A. My understanding was that he wanted to scrip everything that would be worth scripping.

(Deposition of William H. Taylor.)

Q. And then you say you spoke to him before you went to the land office, when you returned from the Crooked River country, did you? A. Yes, sir.

Q. And what did he say as to your report?

A. Well, he said, "We will go back and find out what is wrong with the plats."

Q. Did you report to him on that occasion whether or not the country that you had gone over was timbered in such quantities as would justify scripping it?

A. Yes, I told him there was some very good timber there.

Q. You didn't tell him any more than you told him at the first conversation, did you?

A. Yes, I told him more, because at the time I was in there twenty-odd years before, or about twenty years before, I hadn't looked it over for that purpose; I was in there looking it over for the purpose of getting out ties, and we did get out some ties there, and so, of course, being a long time before, simply my remembrance of it might have been somewhat vague, but I told him that as near as I remembered there was some very good timber there.

Q. How long were you up in the Crooked River country on your first visit?

A. As near as I remember, I think we were probably gone two weeks; it might have been possibly three weeks, but not longer than that.

Q. You mean you were in the woods that long?

A. No, from the time we left here until we got back.

(Deposition of William H. Taylor.)

Q. And it was what the two persons whose names you can't remember told you that made you return to Boise, was it?

A. Yes; then afterwards, when I came back to Kempner's, Mr. Kempner told me also that there had been a lot of people up there.

Q. Did he tell you how many had taken claims up there?

A. No, I don't think he told me the number, but he told me that this was the place they came to, and that was as far as they could go with a wagon, and they got pack horses when they went up, as I did, and I went to Idaho City on the stage and got a pack outfit from him.

Q. And Governor Steunenberg said, "We will go up there again," or what did he say?

A. He said, "I will have the party"—I didn't get the plats myself from the land office, the first plats—and he said, "I will have the other party go and see what is wrong and find out why those plats,"—I told him, of course, that I was very positive in regard to these locations having been made there, and he said, "We will go and see what is wrong with the plats."

Q. And who was the party that he had go to the land office and get the plats?

A. I think it was his brother, C. B. Steunenberg, that got the first plats.

Q. When was it that he told you that he could buy that timber up there?

A. That was some time in January, 1903.

(Deposition of William H. Taylor.)

Q. Then you didn't talk with him any further on the subject from some time in October until January, 1903, as I understand you?

A. No, I don't remember that I did; I don't remember that I saw him after I came down in 1902 until he called me up by phone and asked me to come up to Boise, and I came up; he phoned me, I think, that he would like to have me come up prepared to go up in the Crooked River country, and I told him I didn't care about going at that time of the year, and I think he said then for me to come up to Boise and we would talk it over.

Q. And you came here in January, 1903?

A. Yes, sir.

Q. Did he give you any plats then?

A. Yes, we had plats of the townships, and, of course, we had the numbers that I was to make estimates on.

Q. Now, he gave you the plats of how many townships?

A. I think it was either three or four townships, as I remember now.

Q. Do you remember what they were?

A. It was 7-7, I think, and 7-8, and 8-8, and 6-8, I think; I might be mistaken possibly, but I think that all of those four townships were included in the plats that he wanted me—

Q. 7-7, 7-8 and 8-8 and 6-8?

A. Now, of course, I wouldn't be positive as to that, but it was the Crooked River country.

Q. And I understand you to say that he gave you

(Deposition of William H. Taylor.)

the plats of those four townships? A. Yes.

Q. Now, were you to estimate the timber on the whole of those four townships? A. No.

Q. What were you to estimate?

A. We picked out certain forties promiscuously in the different townships, and figured that that might be some kind of an average as to the amount of timber; and those were picked out promiscuously, and I went over those.

Q. Did you pick them out with him, or were they indicated on these plats?

A. No, they were picked out promiscuously; I didn't have anything to do with that.

Q. Have you any recollection as to how many forties were marked off on those townships?

A. No, I couldn't say.

Q. Were there ten or fifty?

A. No, there wouldn't have been fifty; you understand I had been over the timber before and had made a report in regard to it, but didn't make any estimates the first time I went up; I only had knowledge of it just by observation.

Q. Then when you went on the second trip to the Crooked River country, you did make estimates of each quarter section they gave you?

A. Yes, sir.

Q. And you turned them over to Mr. Steunenberg?

A. I think I turned them over to Mr. Barber; Mr. Barber was here when I came back.

Q. When was that?

A. That was either the last of January or the

(Deposition of William H. Taylor.)

first of February, 1903.

Q. Do you remember how long Mr. Barber was here on that occasion? A. No, I don't.

Q. Who else did you meet besides Mr. Barber and Mr. Steunenberg with reference to these lands you were to make estimates on?

A. Well, I can't say; I didn't meet any of them until after I came back; I think there were three or four gentlemen in the party, but I don't recall who the other gentleman was—I remember Mr. Barber very distinctly, because I think I had most of the conversation with Mr. Barber.

Q. Did you meet Mr. Kinkaid at that time?

A. No, sir, I don't think I met Mr. Kinkaid at that time.

Mr. BUNDY.—Mr. Carson and Mr. Lockwood probably, wasn't it?

A. Perhaps; they were gentlemen I never met before.

Mr. GORDON.—Q. Now, the second time you went up there, that was in January, 1903, did Mr. Patrick Downs go along with you?

A. Yes, sir, he went with me.

Q. Who secured him to go with you?

A. Mr. Steunenberg.

Q. And did Downs come to see you, or did Steunenberg bring him to see you?

A. Well, I don't just remember how we met; we met here in the city and made arrangements as to going.

Q. Did Mr. Steunenberg tell you in some con-

(Deposition of William H. Taylor.)

versation that he would have Mr. Downs go with you?

A. Yes, he told me he would have Mr. Downs go with me, said he was familiar with the country.

Q. Did you talk with Mr. Barber about Mr. Downs going with you?

A. No, I hadn't seen Mr. Barber at that time.

Q. You didn't meet Mr. Barber until you returned? A. No.

Q. And how long was Mr. Downs with you on this trip?

A. He was with me all the time, whatever time we were gone; we left here together and came back together.

Q. And did you and Mr. Downs make a report to Mr. Barber?

A. I made a report to him; I don't know as to Mr. Downs.

Q. I mean he didn't go with you.

A. No, sir; he may have made a separate report, but he had nothing to do with my report, because he was not working with me in any way—he was simply showing me the corners, so that I could find the legal subdivisions that I wished to make estimates on.

Q. And the corners he showed you were the corners of the forties that were indicated on the plat that Mr. Steunenberg gave you?

A. No, not the corners of the forties; there isn't any corners on the forties—the section corners, when you get to a section corner you can always find any forty in the section.

(Deposition of William H. Taylor.)

Q. He took you to the corners of the quarters?

A. The section corners, yes, the section in which the quarter was located which I wished to make an estimate on.

Q. And you wished to make an estimate on the quarters that were indicated on the plats Steunenberg had given you? A. Yes, sir.

Q. Now, when was it that Governor Steunenberg told you that he wanted you to look over this land, that they could buy it?

A. Well, it was some time in December—I should say some time in January.

Q. And what did he say he could buy? What property did he say he could buy?

A. I understood he said he could buy practically all of the stone and timber claims that had been taken in this country.

Q. And which township was it that they only had one entry on it, that of Mr. Kempner, when you were up there the first time?

A. Well, I think that possibly might have been in 6-8—I don't think it is; I think probably that is in 7-8.

Q. It is in the section that Mose Kempner has his residence?

A. Yes, where he has his residence; he has been there a long time, twenty-five or six years to my knowledge.

Q. This information you had to the effect that the plats of the townships in the land office weren't up to date was given you by Governor Steunenberg, as

(Deposition of William H. Taylor.)

I understand it?

A. No, I gave him that information.

Q. I understood you to say that you went to Governor Steunenberg and he sent to the land office.

A. Well, but I found out from parties who were there on those lands that these entries had been made, and I came back and told him that the plats were evidently wrong, and then he said that he would go to the office and find out.

Q. And did you go to the office with him?

A. I didn't go with him; I went with his brother—his brother had gotten the first plats, and so I went with his brother, and found out in regard to the plats.

Q. Now, I understood that you returned some time in February, 1903?

A. Well, I couldn't say.

Q. Well, the latter part of January or the first of February?

A. Yes, the latter part of January or the first of February.

Q. And Mr. Steunenberg told you before you went up there in January that Mr. Barber would be here shortly, with the view of buying some land up there?

A. Well, I don't know whether he told me he would be here or whether he was already here at that time; I couldn't say as to that, but I think perhaps that he told me that Mr. Barber was already here, but I am not certain as to that; but he told me anyway that he was very anxious to get the report as

(Deposition of William H. Taylor.)

soon as he could, because Mr. Barber would wait here until I made my report.

Q. And you made the statement that either Steunenberg or Barber said that they could get other lands if they could get that that they had you estimating on?

A. I think they said that they could get other lands, or get those lands; at least, they wanted to get a certain amount of land in a body, or else they didn't care to purchase.

Q. Now, do you know whether Mr. Steunenberg and Mr. Barber owned any land in that section at that time?

A. I don't know, no; I have no knowledge as to whether they did or not.

Q. And you also made the statement that they didn't want any of it without they could get a certain amount that would justify them in starting a mill, or something to that effect?

A. That is my understanding.

Q. What was the talk relative to that, as well as you can remember it now?

A. Well, as near as I remember, Mr. Steunenberg told me that they had an option on a millsite here, and I think he told me that their option ran out some time in March, and that they wanted to know whether they could purchase a sufficient amount of land to justify them in putting up a mill, before the option would run out on this millsite they had, and if they could, they expected to close the deal here for the millsite, and if they couldn't of course

(Deposition of William H. Taylor.)

they expected to let the option run out.

Q. And that conversation was some time in January, or was it prior to that?

A. It was at that time, the time we had this talk.

Q. And that was the reason he was in a hurry for you to go at that time?

A. Yes, that was my understanding.

Q. That he wanted to get your report before the option ran out, in March?

A. Yes, I think it was in March he said that it ran out.

Q. Did they state how much land they would have to have, or how much timber land they would have to have before it would justify them starting a mill?

A. No, sir, they didn't discuss that with me.

Q. They didn't indicate to you how many acres of land they wanted? A. No, sir.

Q. Do you know how many forties you estimated for them? A. No, sir.

Q. What is your best recollection as to the number?

A. Well, I couldn't hardly say; I didn't keep any memorandum of it, and didn't pay any attention to it.

Q. Well, was it ten or forty?

A. Well, it was probably as many as ten; as near as I recollect, I didn't get over all of the forties they had designated.

Q. Now, this report that you made, was it a written report? A. Yes, sir.

Q. And was it in the form of a report, or was it

(Deposition of William H. Taylor.)

the estimates, or were the estimates made on these little plats that they have for that purpose?

A. I think the estimates and reports were made separate, and, of course, a good deal of my report, I think, was made verbally, to Mr. Barber; I know we had a meeting the night we came down, and I think most of it was made verbally, and I don't know whether it was taken down by a stenographer or not; but I did hand in the estimates, the estimates I made were turned in to them.

Q. And they were on separate sheets of paper for each forty? Is that right?

A. I think they were, as near as I remember; I wouldn't be positive as to that. Of course each forty was estimated separately.

Mr. BUNDY.—In connection with Mr. Taylor's evidence, it is stipulated that Kempner's ranch is in the northeast quarter of section 1, township 7, range 7 east.

(Witness excused.)

Pursuant to adjournment, court met at 1:00 P. M., Wednesday, March 10, 1909, the Examiner and counsel for the respective parties being present.

[Deposition of L. G. Chapman, on Behalf of the Defendants.]

L. G. CHAPMAN, produced as a witness on behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Chapman, I show you a deed from Horace S. Rand to the Barber Lumber Company, of lots 1

(Deposition of L. G. Chapman.)

and 2, and the northwest quarter of the southeast quarter of section 29, township 3 north of range 3 east, and ask you if that is the property occupied by the mill and lumber-yard of the Barber Lumber Company, near Boise.

A. Yes, that is a portion of the millsite proper.

Q. And that is a deed from Rand and wife to the Barber Lumber Company? A. Yes.

Q. That deed is dated when?

A. The 27th of December, 1904.

Q. And recites what consideration?

A. One dollar and other valuable consideration.

Q. Did Mr. Rand hold that deed the same as he held timber lands of the company?

A. Exactly.

Q. The land was purchased, was it not, from Joseph Perrault and K. D. Perrault, his wife?

A. Yes, sir.

Q. And paid for by the Barber Lumber Company? A. Yes, sir.

Q. And title taken in Mr. Rand's name by deed from Joseph Perrault and wife, dated May 4th, 1904, and quitclaimed by Rand to the company, at your request, later?

A. Yes.

Q. I notice among the items of disbursements shown by your books to Governor Steunenberg is an item, \$412.50, under date of June 30, 1904, balance due John I. Wells, one title, \$412.50. John I. Wells took a claim himself, did he not?

A. Yes.

(Deposition of L. G. Chapman.)

Q. Did you afterwards buy that claim from him?

A. Yes.

Q. By looking over the transcript of the pine lands account, can you state the date of the purchase from Mr. Wells?

A. October 8, 1906, we bought from John I. Wells the northwest quarter of section 14, township 7 north of range 5 east, for \$1250.00.

Q. Were the negotiations for that purchase carried on by you? A. Yes.

Q. Any payment made by you of that amount?

A. Yes.

Q. Had any prior payment been made by the company upon his claim?

A. Not that I know of.

Q. How many acres of timber land does the Barber Lumber Company own at present, in round numbers, in the Boise Basin and Crooked River country that we have spoken of, and tributary?

A. They own between 66,000 and 67,000 acres.

Q. How many acres approximately have been procured by the use of scrip?

A. Between, I think, between 10,000 and 11,000 acres, between 10,000 and 12,000 acres at least.

Q. And the balance is based upon what kind of entries principally?

A. With the exception of three or four or five entries, they were based upon timber and stone claims.

Q. Now, Mr. Chapman, during the time that you have been at Boise as general manager of the com-

(Deposition of L. G. Chapman.)

pany, have you had, as such general manager, general charge and control of all its business, books, accounts, records, and so forth? A. Yes.

Q. Has any employee of the company had any books, accounts, or records for his private use which were not subject to your inspection, supervision, and direction? A. No.

Q. I show you book marked Plaintiff's Exhibit No. 141A, being the plat-book referred to by Mr. G. D. Hoseley in his evidence, and ask you if any portion of the markings or checkings or plattings in that book were made by you, and if so, kindly go through it and say what.

A. All of the colored shading, the blue to indicate lands selected by the State of Idaho, and the yellow to indicate unsurveyed townships or portions of townships, on pages 6, 7, 8, 12, 31, 42, 46, and 47, were made by me. The black lines indicating roads, in township 7-5, as shown on page 13, with the words "Placerville road" in the upper left-hand corner, were made by me. The red check marks in the plat of township 8-7, on page 31; the plat of township 8-8, on page 42; the plat of township 6-9, on page 46, and the plat of township 7-9, on page 47, were made by me.

Q. Now, referring to the plat of township 6-4, is there anything on that page made by you?

A. Well, there are some marks on page 7 of the plat of township 6-4 that I think I made, but I wouldn't say absolutely.

Q. What marks are those that you refer to?

(Deposition of L. G. Chapman.)

A. Well, they are both the straight red marks and some of the lands marked S, in lead pencil.

Mr. GORDON.—May I ask if the ones you refer to as straight marks are straight marks in red ink?

A. Yes, the straight marks in red ink.

Mr. BUNDY.—You are not certain whether you made those or not?

A. I am not absolutely certain.

Q. What is your belief about it?

A. I believe that they were.

Q. Can you tell, Mr. Chapman, if anyone other than yourself and Mr. Hoseley had access to this book, generally how it was used?

A. While the book was Mr. Hoseley's field-book it was left in the office from time to time for correction and checking up, as these field-books are; they are simply for memoranda of lands owned by the company, and would be left with me, or with Mr. Lyon Cobb, or possibly at times would have been left with Mr. Davis, or anyone in the office who could, from the plat-book, make the corrections necessary to bring this book up to date.

Q. Then Mr. Hoseley didn't have access to your office plats, generally speaking; that is, he didn't keep it up himself?

A. No, that was kept in the office.

Q. State what was your custom, Mr. Chapman, during that time, with reference to keeping track of the notices of final proofs of timber and stone claims.

A. It was the custom, from the time the office was opened, to obtain from the newspapers publishing

(Deposition of L. G. Chapman.)

them, and as soon as they were published, the advertisement of all timber and stone claims which were taken, and memorandas were made from those on our plat-books, with the name of the entryman and the lands entered; and from time to time we would go into the land office and check up from the plats, to see that we hadn't missed anything, and count the homestead entries, or any other segregations that had been made.

Q. With the view of possibly purchasing them if they could do so?

A. Yes, to know the ownership and know when and how they had been entered, who owned them.

Q. Do you know what the custom was, to mark in your books lands that were simply segregated by entries, and those that you did not have deeds for, which you hadn't purchased? Did you have any method of indicating that on your plats?

A. Well, in our first plats, in our memorandas, we would make the first stroke of a check mark, and if, at any future time, the lands came into our possession, we took title to them, the check mark was continued.

Q. So that the first mark would be practically a straight mark?

A. There would be a straight mark to indicate the segregation of the lands from the public domain.

Q. Do the straight red ink marks on the plat of 6-4, were they made in that way—what do you refer to as the first marks, the check marks?

A. Yes, those were made in that way.

(Deposition of L. G. Chapman.)

Mr. BUNDY.—Now, there were some deeds which you folks didn't put in, and which I suppose should be put in. Mr. Chapman hasn't brought them; I don't suppose you want anything except the date. There is B. C. Eagleson.

Mr. GORDON.—Benjamin C. Eagleson?

Mr. BUNDY.—I can give you that at any time; he deeded February 16, 1903, to H. S. Rand, who, in turn, deeded to the Barber Lumber Company, July 24, 1905.

Mr. GORDON.—I assume that if we find that deed and if you have made some mistake; you will submit to correcting it on the record; I don't know that there is any.

Mr. BUNDY.—Of course it will correct itself. Then the entry of Evelyn O'Farrell.

Mr. GORDON.—We didn't have that deed.

Mr. BUNDY.—She deeded direct to the Barber Lumber Company on the 1st of August, 1905, recorded on the 4th day of August, 1905.

E. J. Phelps deeded directly to the Barber Lumber Company July 28, 1905, recorded August 2, 1905.

Cleora M. Snow deeded to George S. Long, January 15, 1904.

Dennis Thornton deeded direct to the Barber Lumber Company May 7, 1906.

Q. Now, Mr. Chapman, all of the lands conveyed by entrymen to George S. Long, A. E. Palmer, and Horace S. Rand, have been duly deeded and conveyed by those parties to the Barber Lumber Company, have they not? A. Yes.

(Deposition of L. G. Chapman.)

Q. Have you those deeds or are they in the custody of the Government?

A. I think they are here; I am quite sure they are.

Mr. GORDON.—They were put in the other day by stipulation.

Mr. BUNDY.—I guess they were.

Q. You testified to the purchase of four claims from Frank Martin for, I think you said \$5,400. Can you state the negotiations which led up to that sale, who conducted them, and when they started, with reference to the time you actually bought?

A. We had a record in our office from the published advertisement of the entry of a Mrs. Martin, and the first negotiations we had with Frank Martin came through my stopping him on the street and asking him if he knew who this Mrs. Martin was, and he said, "Yes," that it was one of his relatives—I have forgotten what—and that he had the claim for sale; and he said that he had three others that he also had for sale. He told me that they were the claims entered by Leon Simpson, Mrs. Phelps, Mrs. Weston, and after looking up our estimates on the lands, I went to him for his price, which was considerably more than we were willing to pay, and we talked the matter over at various times for a period of two or three or four weeks, and finally agreed upon the price of \$5400 for the four claims, and at that price we purchased them. Up to that time he had simply given us his assurance that he had title to them, and before paying him, he delivered us the deeds from

(Deposition of L. G. Chapman.)

the various entrymen to himself, and a warranty deed from himself to the Barber Lumber Company.

Q. Mr. Chapman, prior to these negotiations with Mr. Martin that you have spoken about, had you any negotiations with Mr. Martin, or with the entrymen or entrywomen, or anyone else, with reference to the entry or purchase of these lands?

A. No, none at all, nothing.

Q. Did Mr. Martin have, at any time, any connection with the purchase of these or any other lands for the Barber Lumber Company? A. No.

Q. As attorney or otherwise?

A. Not to my knowledge.

Q. Now, you had entire charge of the purchase of lands during the year 1905, and have had since that, haven't you? A. Yes.

Q. Did you know that those lands were going to be entered, or that relinquishments were going to be procured, or have any knowledge of those particular lands entered by Leon Simpson and the other three?

A. Nothing until the publication of the entry.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Chapman, do you know where you were when you consummated the deal with Mr. Martin for the purchase of these four pieces of land?

A. In his office in the Sonna block.

Q. Do you know any other place you ever talked with him about it?

A. Yes, I talked with him before in his office; I had talked with him on the street in Boise, the first

(Deposition of L. G. Chapman.)

time the subject was discussed; and I talked with him quite a long time about them at one time at Nampa, when he was going east or I was going west, or vice versa; while we were waiting for the train there we had quite a conversation with reference to it.

Q. Did you ever go to the theatre with him and talk these matters over with him during the performance? A. No.

Q. Do you remember meeting him at the theater and talking them over?

A. I don't recall it; if I did it was a casual meeting between acts, or something of that sort; we never went together.

Q. Now, I understood you to say that at a certain stage in the acquisition of timber lands there would be certain marks put in your books indicating that, for instance a check mark meant that that was the property of the Barber Lumber Company; did I understand you to say that?

A. That was the system we used in our earlier plats; in our more recent ones, we surround the land with a colored mark and block it in with solid color—that isn't quite right either; we put the line around the land when the title comes to us; we block it when title is issued and title complete.

Q. What was your custom in 1903, as you indicated first here?

A. In our first plats, we put a dot or a line, just something to indicate that it was not vacant public land.

(Deposition of L. G. Chapman.)

Q. That some step had been taken—

A. That the land was not in the public domain, that entry had been made.

Q. And then what had to be done with the land before you made that into a check or a V?

A. Usually when the title came to us; if we took a deed from the entrymen we completed it.

Q. Now, you have referred to red check marks on page 31, township 8, range 7; I understood you to say that the red check marks on that page were put there by you? A. Yes, I put them there.

Q. Do you remember putting them in there, or do you identify the handwriting?

A. I can recognize the check marks, and I remember checking the unsurveyed scrip in this book.

Q. Now, what do those marks indicate?

A. Those marks indicate, in this particular instance, that unsurveyed scrip, under contract with the Northern Pacific Railway Company, had been entered on these lands.

Q. And those marks weren't put in there until after the scrip had been placed for you? Is that right? A. Yes.

Q. Do you know when that book left the possession of Hoseley or the Barber Lumber Company, or did they have it in their joint possession until some time in March or April, 1907?

A. Well, I don't know just when it left Hoseley's possession. He evidently didn't turn it in when he left the employ of the Barber Lumber Company.

Q. When did he leave the employ of the Barber

(Deposition of L. G. Chapman.)

Lumber Company?

A. My recollection is that it was either the fall of 1905 or the spring of 1906; I don't remember exactly.

Q. And hadn't the Barber Lumber Company acquired title to the 6-4 lands, or some of them, at that time?

A. I think they had; oh, yes, they had, a good many of them.

Q. Do you know why the check in that book wasn't completed?

A. Well, only because he had never turned it in; it had never been done is all; there was no particular reason.

Q. The only way you had of notifying him, or your method of notifying him, of the fact that you had acquired lands was by completing the checks. Is that correct?

A. That is all; the book was simply turned in from time to time, and rechecked, made up; in fact this book was not very carefully kept up.

Q. Do you know when you acquired title to the first lands in 6-4? A. I don't recall.

Q. Wasn't it some time in the latter part of 1903, or the first part of 1904?

A. I presume so; I have no recollection as to the dates.

Q. Then Mr. Hoseley had that book in his possession, and was in the employ of the company, for a year or more after you had acquired title to a number of pieces of land in 6-4, had he not?

(Deposition of L. G. Chapman.)

A. Oh, yes.

Q. Now, on page 42 of this book, which is township 8, the marks on that page that you referred to in your testimony, does that indicate scrip too?

A. Yes.

Q. And was the scrip in 8-7, on page 31, and 8-8, on page 42, located at the same time? A. Yes.

Q. And were the marks which you testified that you placed on page 46, township 6-9, put in there to indicate scrip? A. Yes.

Q. And was that scrip located at the same time as the other two pieces were?

A. The same time.

Q. And on page 47, township 7, was that put in at the same time? A. At the same time.

Q. And all by you? A. Yes.

Q. Well, there are no marks in this book in red ink that have ever been made at two different times, as I understand? A. I don't think so.

Q. Now, I notice on page 40, township 6 north of range 8 east, some straight marks in red ink: I will ask you if you put them in there?

A. I couldn't say whether I did or not.

Q. Do you know what those marks indicate?

A. I think they indicate the same as the straight marks in the plat of 6-4, and were made at the time the lands were entered, but had not come to us.

Q. And you couldn't tell whether you put them in there or not? A. No.