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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Transcript of Record.  
(IN TWO VOLUMES.)

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R. M. COBBAN, E. B. WEIRICK, Individually and  
Also as Trustee, and THE PAYETTE LUMBER  
& MANUFACTURING COMPANY, a Corpora-  
tion,

Appellants,

vs.

MOLLIE CONKLIN,

Appellee.

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VOLUME II.  
(Pages 257 to 552, Inclusive.)

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

~~FILED~~

FEB 4 - 1913



No. 2236

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(Testimony of E. B. Weirick.)

Q. If the Payette Lumber & Manufacturing Company had inquired of you for whom you were acting as trustee, you would have informed them that Mr. Cobban was one of the parties in interest, would you not?

A. R. M. Cobban Realty Company was interested.

Q. And you would have informed them that Mr. Cobban was acting as agent for yourself and associates? A. Yes, sir.

Q. Did they make any inquiry whether or not, in purchasing this lieu scrip, Mr. Cobban was acting as your agent or as the agent for you and your associates?

A. I don't recall that they made any inquiry of that kind.

Q. You had no dealings with the complainant Mollie Conklin, did you, Mr. Weirick?

A. No, sir.

Q. You never have met her? A. No, sir.

Q. And know nothing with regard to what dealings Mr. Cobban had with her? A. No, sir. [233—15]

Q. If any? A. No, sir.

Q. I believe you stated that you had never examined any of the papers that were delivered to Mr. Cobban, in regard to the purchase of this property?

A. No, I never examined them with the idea of passing upon them at all. It was something I knew nothing at all about, and matters of that kind were left with Mr. Cobban, to prove the papers.

Mr. DAVIDSON.—I believe that is all. [234—16]

**[Testimony of R. M. Cobban, for Defendants.]**

R. M. COBBAN, called and sworn as a witness, testified as follows:

## Direct Examination.

(By Mr. BLAKE.)

Q. You may state your name, place of residence and occupation.

A. R. M. Cobban; Missoula, Montana; occupation, real estate dealer.

Q. State whether or not you were acquainted with one John A. Benson in the year 1900, or prior to that time.

A. I had never heard of him at that time.

Q. In 1901?

A. I had business dealings with him.

Q. Had you met him personally at that time?

A. No, sir.

Q. Had you ever met the defendant Campbell?

A. Not until lately I never met him.

Q. Before 1901?      A. No, sir.

Q. You may state, Mr. Cobban, the manner in which you acquired the rights to select the lieu lands described in the amended bill of complaint in this suit.

A. I had been acquiring scrip for a year or two prior to 1901.

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not pertaining—

Mr. BLAKE.—That isn't the question I am asking.

(Testimony of R. M. Cobban.)

Mr. DAVIDSON.—No, it is not responsive to the question at all.

Mr. BLAKE.—Just with reference to the rights involved here.

A. I purchased in the usual manner from—  
[235—17]

Mr. DAVIDSON.—We now move to strike that out as a conclusion and not a fact.

Mr. BLAKE.—Let him answer the question and then you can make all the objections you want to.

A. From John A. Benson, lieu lands and the right to make selection of the lands that are involved in this action.

Mr. DAVIDSON.—We move to strike out all of the last answer of the witness, on the ground that the same is a conclusion of the witness, and does not contain any fact appertaining to any of the questions involved in this case, and as incompetent, irrelevant and immaterial.

Mr. BLAKE.—Go ahead.

WITNESS.—Do you wish me to describe the manner in which I purchased them?

Mr. BLAKE.—That is what I asked you.

A. Well, I learned of John A. Benson as a dealer in scrip, and I corresponded with the various dealers, and I learned that John A. Benson had so-called scrip for sale. I got his quotations on the lands, and ordered from time to time various amounts as I needed it, and among the lots that were furnished to me were the lots that are enumerated in this bill of complaint. The papers in each case were sent

(Testimony of R. M. Cobban.)

through one of the banks, either the First National Bank of Butte or one of the banks of Boise, and contained an abstract of title of the lands, together with the various papers, which was an application to select, and powers of attorney, and various other papers, and a draft for the amount of the purchase. In the cases of these lands I believe in every case it was \$4.00 an acre. The papers were delivered to me for examination by the bank, and after examination the draft was paid and the papers delivered to me as mine. [236—18]

Q. Were you familiar with the market value of scrip at that time?     A. Yes, sir.

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any of the material issues in this case.

Mr. BLAKE.—Q. State whether or not you paid the market value for this scrip purchased and used in the selection of the lieu lands involved here.

Mr. DAVIDSON.—We object to it as incompetent, irrelevant and immaterial, and not tending to prove any of the material issues in this case.

Mr. BLAKE.—Q. Did you ever have any business relations or transactions with the complainant Mollie Conklin?     A. I did not.

Q. Did you ever meet her or know her?

A. I did not. I never saw her.

Q. Among the papers which you had received for this so-called scrip were included, I believe you stated, a deed of relinquishment from the United States and an abstract of title.

(Testimony of R. M. Cobban.)

Mr. DAVIDSON.—He didn't state that there was a deed, judge. Pardon me for interrupting you.

Mr. BLAKE.—I will ask him.

Q. State fully what papers would be received with this so-called scrip, or rather, the right to select lieu lands.

A. An abstract of title, a deed from the parties holding title to the United States Government, showing the certificate of the recorder of the county in which the lands were situated that it had been properly recorded.

Mr. DAVIDSON.—We want to object to that as to the contents [237—19] of any deed, as the deed would be the best evidence, and he was going ahead to state what the deeds would show.

Mr. BLAKE.—We never undertook to establish title by those deeds, you understand.

Q. Go ahead.

A. An application to select lands, signed by the parties purporting to have deeded the lands to the Government, the same parties, the parties to the deed to the Government; a power of attorney to sell and convey the lands, and usually a power of attorney to do other acts necessary in the cases, and oftentimes there were several other papers,—not in all cases. There were new rules developed by the department all the time which called for some papers which were not of any particular consequence, but those were the principal papers.

Q. I believe you stated that you bought scrip or lieu land selection rights from other parties besides

(Testimony of R. M. Cobban.)

Mr. Benson?      A. I did.

Q. And you were engaged in the business of buying lieu land rights, were you?

A. I purchased a very large amount of land at that time.

Q. Now, as to these powers of attorney that would be included in the papers received, would the name of the attorney in fact appear in those powers of attorney?      A. No, sir.

Q. State whether or not that would be inserted after the papers were received.

A. It would, together with the description of the land to be selected, and the land office at which the selection would be made.

Q. State, from your experience, and having been engaged in that business at that time, as to what the custom was in regard [238—20] to the insertion of the name of the attorney in fact after these papers would be received.

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, as not pertinent to any issue in this case, and an improper way of showing title to real estate.

Mr. BLAKE.—We are not attempting to show any title to real estate.

A. It is the usual custom, and was the case in every selection, covering some two hundred selections which I handled at that time. And I will further state that not only myself, but I was familiar with the methods being pursued by all of the larger companies at that time acquiring lands in that vicinity.

(Testimony of R. M. Cobban.)

Mr. BLAKE.—Q. State when you first heard of Mollie Conklin, directly, or state whether or not you received any communication or any notice from her with reference to the base lands which had been relinquished by her and by the estate of Patrick Reddy, deceased.

A. The first notice I ever received from her, I believe, was in October or November, 1903.

Q. Have you that notice?      A. I have.

Q. I will ask you whether you received that notice in due course of mail?      A. I did.

Q. At about what time?

A. Some time in November, 1903, I should think.

Mr. BLAKE.—I will ask to have this marked as an exhibit.

The above paper was thereupon marked as Defendant P. L. Mfg. Co. & Cobban & Weirick Exhibit "B."

Mr. BLAKE.—We offer it in evidence. [239—21]

Mr. DAVIDSON.—We object to the introduction of the paper marked Defendants' Exhibit "B," on the ground that it is not properly identified.

Mr. BLAKE.—Q. I will ask you, Mr. Cobban, whether you at any time ever entered into any agreement with the defendants Benson or Campbell, or anyone else, whereby it was intended to acquire lands from Mollie Conklin, or the estate of Patrick Reddy, deceased, or to acquire the right from either of those parties to select lieu lands in lieu of the base lands which had been surrendered to the United States or relinquished to the United States by Mollie Conklin

(Testimony of R. M. Cobban.)

or the estate of Patrick Reddy, deceased.

Mr. DAVIDSON.—We object to that on the ground that it calls for an agreement which, under the statute of frauds, should be in writing, and that it would not be the best evidence.

A. I did not know Mr. Campbell or Mr. Metson, and the only dealings I ever had with John A. Benson was in the way of the purchase of scrip, as heretofore stated.

Mr. DAVIDSON.—We move to strike out the answer as not responsive to the question.

Mr. BLAKE.—Q. Were you acquainted, during the years 1900, 1901, or 1902, with any of the stockholders or officers or agents or representatives of the defendant Payette Lumber & Manufacturing Company? A. Yes, sir.

Q. Whom? A. During what time?

Q. The years 1900, 1901 and 1902.

A. No, sir, I was not, up until 1903. I will qualify that. I met some of the gentlemen connected with that company in the [240—22] latter part of 1902, but I believe there was no such company in existence at that time, but some of the gentlemen who afterwards composed that company.

Q. Which ones?

A. William Deary and William Musser, and I am not certain whether I met any others at that time or not.

Q. Did you have any dealings with them with regard to the acquisition of this lieu land scrip, of these lieu land rights which you have referred to?

(Testimony of R. M. Cobban.)

A. Not as the Payette Lumber & Manufacturing Company, but individually to William Musser an option was given for the purchase of all the timber lands which we had.

Q. I don't think you understand the question.

The last question was thereupon read by the stenographer.

A. I did not, in any way, shape or manner, except they got the lieu lands that I had.

Q. That is what I want.

A. We had simply—

Q. What I refer to, Mr. Cobban, as the right to select the lieu lands described in the bill of complaint.

A. The selections had been long since made, and generally approved by the general land office before ever I met any of these people.

Q. Did you have any information or knowledge other than what you have related with reference to the manner in which these lieu land rights were acquired from Mollie Conklin and the personal representatives of Patrick Reddy, deceased?

A. I knew nothing whatever except what was contained in the papers themselves that were sent to me, which were seemingly in regular order, and the communications of Mr. Benson to sell me lieu lands at the agreed price.

Mr. DAVIDSON.—We move to strike out the answer of the witness on the ground that he is attempting to state what is shown by [241—23] written instruments, and upon the ground that it is not the best evidence, in that it has not accounted for the

(Testimony of R. M. Cobban.)

nonproduction of the instruments themselves.

Mr. BLAKE.—I think that is all.

Cross-examination.

(By Mr. DAVIDSON.)

Q. Mr. Cobban, you say that in each individual case where you got selections of the lands involved here, that you received a power of attorney to sell the land? A. Yes, sir.

Q. Now, those powers of attorney were acknowledged, were they, at the time they were delivered to you? A. I believe they were.

Q. Mr. Cobban, I will call your attention to an instrument marked Complainant's Exhibit "C" for identification, purporting to be a power of attorney from Mollie Conklin to R. M. Cobban. You may examine that and state whether or not that is one of the powers of attorney which you received.

A. I would say it was.

Q. Now, Mr. Cobban, when the power of attorney, Complainant's Exhibit "C," was delivered to you, did it contain the name of R. M. Cobban, of Missoula, Missoula County, State of Montana?

A. It did not.

Q. Who filled in that part?

A. It was filled in by my office.

Q. And that was filled in by you or by your instructions after it was delivered to you by the bank?

A. It was.

Q. I will ask you who filled in the typewritten part, nineteenth, September, We, Mollie Conklin (a widow), Bakersfield, Kern, California, including the

(Testimony of R. M. Cobban.)

description of certain lands in California. [242—24]

A. That was all filled in when it came to me.

Q. That was all complete?      A. Yes.

Q. Then, after you received the instrument though you inserted your name as the person constituted the attorney in fact, with your residence and address. Is that correct?      A. I did, or had it done.

Q. Now, to save time, Mr. Cobban, you received a power of attorney for each of the several tracts of land involved herein, did you not, the same as the power of attorney shown you marked Complainant's Exhibit "C"?

A. Not necessarily for each subdivision, but for each selection.

Q. Now, Mr. Cobban, I have here the exhibits, Complainant's Exhibits "D" to "M," inclusive, each being a power of attorney in substance the same as the power of attorney shown you, Complainant's Exhibit "C," and I will ask you whether or not the name of R. M. Cobban, as attorney in fact, was inserted by you or by your instructions in each of those instruments after their delivery to you. Those were furnished by Judge Blake at the time of the other hearing. I don't want to take up each one individually.

Mr. BLAKE.—We will admit that.

Mr. DAVIDSON.—Very well. If counsel desires to admit that in the various powers of attorney—

WITNESS.—I would like to look through these a moment; it won't take but a moment.

(Testimony of R. M. Cobban.)

Mr. DAVIDSON.—Very well.

WITNESS.—As far as these are concerned, they—

Mr. DAVIDSON.—Then as far as the ones marked Complainant's Exhibit "D" to "L" inclusive, they were all in blank as far as the name of the attorney in fact were concerned at the time they [243—25] were delivered to you? A. Yes, sir.

Q. And the description of the land was in blank?

A. Not the description of the base land,—the description of the selected land.

Q. Now, Mr. Cobban, referring to the paper marked Complainant's Exhibit "M," being a certified copy of a power of attorney purporting to be a power of attorney from Mollie Conklin and Emily M. Reddy and Edwin A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased, to R. M. Cobban, I will ask you whether or not your recollection is that you filled in the name of R. M. Cobban as the attorney in fact on the original of that after it was delivered.

A. I cannot say, because I believe there were some received in which the name was filled in.

Q. Did you receive any other powers of attorney from Mollie Conklin affecting any lands involved in this controversy other than those that have been shown you? A. I think so.

Q. Have you those in your possession?

A. No, I think they were forwarded to the Department in Washington, together with the abstracts.

Q. I mean powers of attorney to sell.

(Testimony of R. M. Cobban.)

A. I couldn't tell without seeing what descriptions are covered by those.

Q. Now, you say in each case there was delivered to you also an application,—just withdraw that question. Now, Mr. Cobban, at the time these various powers of attorney to sell the lands selected were delivered to you, you may state whether or not they showed upon their face that they had been acknowledged before a notary public previous to their delivery. A. They did.

Q. And you filled in the name of R. M. Cobban after the [244—26] instruments had been acknowledged by the parties executing them?

A. I did.

Q. Now, Mr. Cobban, I understand you to say that in each case there was delivered to you for each selection also an application to select lands in lieu of the base lands surrendered. A. Yes, sir.

Q. That purported to be signed by the persons who had relinquished the base lands to the Government? A. It was.

Q. And purported to be signed by Mollie Conklin and Emily M. Reddy and Edwin A. Reddy, representatives of the estate of Patrick Reddy, deceased?

A. I think there was a little difference in the way some of those were signed; but that is practically the fact.

Q. We are just trying to get at the general condition. Now, Mr. Cobban, at the time those applications to select were delivered to you, you may state whether or not they contained a description of the

(Testimony of R. M. Cobban.)

land to be selected in lieu of the base lands.

A. They did not.

Q. Who filled in those instruments, selecting the description of the lands to be selected?

A. I did, or had it done.

Q. Now, Mr. Cobban, after you filled those blanks with the descriptions of the lands to be selected, you would file those applications in the land office?

A. I would.

Q. And you filled in, in the powers of attorney to sell, the name of R. M. Cobban as attorney in fact before they were filed for record,—is that true?

A. Yes, sir. [244½—27]

Q. Now, Mr. Cobban, were you ever authorized in writing or otherwise by the complainant Mollie Conklin to insert your name in any power of attorney to sell any of the lands, the lieu lands, described in the bill of complaint herein, or ever authorized to insert your name or the name of any other person?

A. Only in a general way as her agent.

Q. I am not asking you generally; I am asking you specifically.

A. Not from Mollie Conklin personally.

Q. You were not authorized then by Mollie Conklin to insert your name in any of those instruments?

A. I was directed by the party from whom I purchased to do so.

Q. Did Mr. Benson ever show you any authority in writing, or other authority, to authorize you to insert your name in an instrument executed by Mol-

(Testimony of R. M. Cobban.)

lie Conklin involving lands involved herein?

A. He did not.

Q. Did Mollie Conklin ever authorize you, or either of the Reddys authorize you to insert the description of any lands to be selected in the application to select lieu lands?

A. I considered it an authorization.

Q. Did they ever directly authorize you?

A. Only in a general way.

Q. Do you mean by that that you had any communications or other word from them authorizing such insertion?

A. I did not, other than the usual way, and the fact that the papers came for a consideration, and there could be no—

Q. Well, you assumed from the fact that the papers were delivered to you for a consideration that you had a right to make such insertions as you might see fit?

A. The papers could be construed in no other way.

Q. Did you assume from the fact that the papers were delivered to you incomplete that you had a right to insert [245—28] in them such things as you thought necessary? A. I did.

Q. And you acted upon that assumption?

A. I did.

Q. Now, at the time you were purchasing these rights were you acting as agent for yourself and Mr. Weirick and others, Mr. Cobban?

A. I was for the R. M. Cobban Realty Company and others.

(Testimony of R. M. Cobban.)

Q. And you was a partner in that company?

A. I was a stockholder in the corporation.

Q. You filed an answer in this cause, did you not, Mr. Cobban?      A. I think so.

Q. And do you remember whether or not you verified that answer?      A. I presume I did.

Mr. DAVIDSON.—The clerk's office is closed, Mr. Blake, so I will show him a copy that was served upon me. I suppose there will be no objection.

Q. I call your attention, Mr. Cobban, to the first subdivision of the affirmative defense of the answer of R. M. Cobban and E. B. Weirick, individually and as trustee, appearing on page 18 of the separate answer of the defendants filed herein, wherein it is alleged that on or about February 19th you undertook to purchase the lieu lands for the investment purposes of yourself, Mr. Weirick and other associates, and ask you whether or not that answer was verified by you, and whether that was a true statement.

A. In a way it was, but it should have stated the R. M. Cobban Realty Company instead of individually, although I was benefited thereby. [246—29]

Q. Mr. Cobban, in all of your transactions involving the purchase of what you term this lieu scrip, and the selection of the lieu lands involved in this case, you were acting as agent for Mr. E. B. Weirick, trustee and individually, and your associates named by him?      A. Yes, sir.

Q. And you were one of the parties beneficially interested in that contract?

(Testimony of R. M. Cobban.)

A. I was to that extent.

Q. Now, Mr. Cobban, Mr. Weirick and your associates, of which you was a member, furnished the money that was paid for the purchase of this scrip, as you call it?      A. Yes, sir.

Q. And do I understand that you afterwards deeded any of this property to Mr. Weirick?

A. I did.

Q. At the time you deeded it, did he pay you any consideration for the execution of that deed, further than the amount that had been paid at the time of the purchase?

A. None whatever; I was simply a trustee for him.

Q. You was simply a trustee for him?

A. Yes, sir.

Q. Now, this agreement to locate the land for Mr. Weirick and yourself and others was made before you purchased any scrip or the right to select any of the lieu lands involved in this case?      A. It was.

Q. And this deed made afterwards was made pursuant to an agreement between yourself, Mr. Weirick and the other gentlemen for the acquisition of the property?      A. Yes, sir. [247—30]

Q. Now, you say you became acquainted with Mr. Musser along about the year 1902?      A. Yes, sir.

Q. At that time did you enter into any negotiations with Mr. Musser for the sale to him or to any corporation to be organized by him of the lands involved in this case?

A. Those lands and others.

(Testimony of R. M. Cobban.)

Q. When did you give him the option to which you have testified?

A. Either in December, 1902, or January, 1903; I am not certain, about that time.

Q. No part of the purchase price was paid at that time, was it, Mr. Cobban?

A. Yes, sir; simply a dollar.

Q. Just simply one dollar, as a nominal consideration?

A. It was an option, and the dollar given as a part of the purchase price.

Q. And the only part of the purchase price paid until the time of the execution and delivery of the deed marked Defendant's Exhibit "A"?

A. I think there was a payment made prior to that time; I think there was a ten thousand dollar payment made prior to that time.

Q. Were you acquainted with one Mr. Henry Turkish, I believe?     A. Yes, sir.

Q. Was he interested in the negotiations made by you and Mr. Musser?

A. I am not certain whether I knew him at that time, or shortly afterwards.

Q. You did afterwards become acquainted with him?     A. Yes, sir. [248—31]

Q. You became acquainted also about the same time with one Mr. William Deary, I believe you stated?     A. Yes, sir.

Q. And was he interested in the negotiations which took place between yourself and Mr. Musser?

A. He was.

(Testimony of R. M. Cobban.)

Q. These gentlemen, Mr. William Deary and Mr. Musser and Mr. Turrish afterwards became the promoting stockholders of the Payette Lumber & Manufacturing Company, did they not?

A. I believe so, yes, sir.

Q. Now, Mr. Cobban, at the time the land was conveyed, at the time of the delivery of the deed marked Defendants' Exhibit "A," do you know what instruments, if any, was furnished to them, other than the deed itself?

A. An abstract of title in each instance.

Q. An abstract of title?      A. Yes, sir.

Q. Now, then, Mr. Cobban, did you conduct the negotiations for the sale of this land up to the time of the delivery of the deed, with Mr. Musser and their assigns, the Payette Lumber & Manufacturing Company?

A. I did, in conjunction with Mr. Weirick. I did a good deal of the negotiating, and then my negotiations were confirmed by Mr. Weirick and the other members of the syndicate.

Q. Now, Mr. Cobban, did the Payette Lumber & Manufacturing Company, or any of their agents, at the time, or before the closing of the sale of the property at the time stated in the deed marked Defendants' Exhibit "A," make any inquiry of you as to who E. B. Weirick, trustee, was trustee for,—the person appearing as grantor in the deed marked Defendants' Exhibit "A"? [249—32]

A. They required an abstract of the title, to show all instruments that affected the title.

(Testimony of R. M. Cobban.)

Q. I will repeat the question. Did the Payette Lumber & Manufacturing Company, or any of their agents or officers, in any negotiations with you involving the sale of the lands in controversy herein, ask you, or make inquiry from you as to who E. B. Weirick, trustee, was trustee for, affecting the title of this property?

A. I think so; I think they knew who the members of the syndicate were, and the manner in which it had been conducted, the manner of our acquiring the timber.

Q. Did you inform the Payette Lumber & Manufacturing Company or any of their officers that you had acquired the right to select this land for the use and benefit of Mr. Weirick and yourself and other parties, and that you had conveyed it to Mr. Weirick for the purpose of carrying out an agreement under which you had secured these rights?

A. I am not certain whether I told them that or not.

Q. Did you inform Mr. Musser, at the time you gave him the option, that you and Mr. Weirick had acquired this property by purchase of the selections, and that it had been conveyed to Mr. Weirick as trustee for yourself and your associates?

A. Well, in a general way, yes; the manner of acquiring the lands was gone into.

Q. Now, who represented the Payette Lumber & Manufacturing Company in the final consummation of the sale of the property involved in this case?

A. William Musser, I think, and Mr. Deary.

(Testimony of R. M. Cobban.)

Q. Now, your best recollection has it, Mr. Cobban, that before the delivery of the deed marked Defendants' Exhibit "A," you fully informed Mr. Musser and Mr. Deary as to the exact manner in which you had acquired the rights to select the lieu [250—33] land and had selected the lieu land involved in this case?

A. I don't know that I went explicitly into each case, the general manner that they were taken under lieu selections, these lands in controversy being only a small portion of the lands conveyed to them. They required an abstract which set forth the essential,—everything that was necessary.

Q. Did that abstract of title show the contract under and by which Mr. Weirick held these lands as trustee? A. No, I think not.

Q. Did you inform Mr. Musser and Mr. Deary, as officers of the Payette Lumber & Manufacturing Company, of the agreement between yourself and Mr. Weirick? A. I do not know.

Q. Do you remember whether or not they made any inquiry from you as to who were the persons interested with Mr. Weirick in this property and for whom he held as trustee? A. I couldn't say.

Q. If they had made such inquiry would you have told them the facts as you have told them here?

A. Most assuredly.

Redirect Examination.

(By Mr. BLAKE.)

Q. I will ask you, Mr. Cobban, a matter which I overlooked on direct examination, and that is,

(Testimony of R. M. Cobban.)

whether or not you ever received any other powers of attorney from Mr. Benson, signed by Mollie Conklin, other than those which have been introduced in evidence here as defendants' exhibits.

A. Yes, sir.

Q. You may go ahead and state in what connection, and whether it was a power of attorney that related to any steps to be taken in making the lieu selections referred to in the bill of complaint herein.

[251—34]

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not the best evidence, as the instruments speak for themselves.

Mr. BLAKE.—I am trying to find out first whether he received any.

WITNESS.—To the best of my recollection, I did receive others.

Q. You may state in what connection you received those.

Mr. DAVIDSON.—We object to that as not the best evidence; the instruments would speak for themselves.

A. I had prepared and printed a printed form of power of attorney, particularly authorizing me in all of these lieu land selections to post notices that was not specifically contained in some of the other powers of attorney, only in a general way, and these were printed forms, with my name and address printed, and I received a large number of those powers of attorney, and it is my recollection and belief that I received a number of them from Mollie

(Testimony of R. M. Cobban.)

Conklin and the Reddys, through John A. Benson.

Mr. DAVIDSON.—We move to strike out all that part of the answer of the witness last above given relating to any powers of attorney purporting to have been received from Mollie Conklin, on the ground that the evidence is not the best evidence, the instruments speaking for themselves, and for the further reason that it is not shown that the instruments were executed by the plaintiff Mollie Conklin or by the Reddys, or either of them, to the witness.

Mr. BLAKE.—Q. What became of those instruments, if you know, Mr. Cobban?

A. They were forwarded to Washington, together with the applications.

Q. To what particular place in Washington?

A. To the Commissioner of the general land office, through the local land office. [252—35]

Q. State whether or not they were required to be filed in the local land office when the selections were made, or during the course of the making of the lieu selections, as a part of the record.

A. They were; they were called for by the Department.

Q. How long after the receipt of these powers of attorney which have been introduced in evidence as complainant's exhibits did you receive the other powers of attorney referred to?

Mr. DAVIDSON.—We object to it on the ground that it is not shown that the witness ever received any power of attorney from the complainant Mollie Conklin.

(Testimony of R. M. Cobban.)

A. They followed shortly after the purchase of the scrip.

Mr. BLAKE.—Q. Shortly after?

A. Shortly after.

Q. From whom did you receive those powers of attorney, that is, by whom were they mailed to you, if you know? A. John A. Benson.

Q. You received them in the regular course of mail, did you? A. Yes, sir.

Mr. DAVIDSON.—We move to strike out the testimony of the witness relating to any subsequent powers of attorney, on the ground that it is not shown that they were ever delivered to him by her or executed by her, and it is not the best evidence. [253—36]

[**Testimony of E. M. Hoover, for Defendants.**]

E. M. HOOVER, called and sworn as a witness, testified as follows:

Direct Examination.

(By Mr. BLAKE.)

Q. You may state your full name and place of residence and occupation.

A. E. M. Hoover; Boise, Idaho; General Manager of the Payette Lumber & Manufacturing Company.

Q. I will ask you whether or not you are familiar with the lands described in the amended bill of complaint herein, referred to as lieu lands, which lands are located in Boise County, Idaho. A. I am.

Q. I will ask you, Mr. Hoover, whether or not you were familiar with the market value of those lands at the time of the, —on the 19th of May, 1903.

(Testimony of E. M. Hoover.)

A. I was.

Q. You may state clearly what was the market value of lands of that character at that time.

Mr. DAVIDSON.—We object to that on the ground that the witness has not shown himself qualified to testify as to the value of the lands at that time.

A. Lots of the same character in the same district could be had under scrip filings for the market value of scrip at that time, somewhere about five dollars. It could be purchased from individuals at between five and eight dollars an acre.

Q. From your knowledge, then, as to the value of those lands and lands of similar character at that time, what would you say as to eight dollars and fifty-five cents an acre being a fair price for lands of that character?

Mr. DAVIDSON.—We object, on the ground that the witness has not shown that he is qualified to testify. [254—37]

A. I should say the price was a little in excess of the market value at that time.

Mr. BLAKE.—That is all.

Cross-examination.

(By Mr. DAVIDSON.)

Q. Mr. Hoover, were you acquainted with those lands involved in this case at the time of the delivery of the deed marked Defendants' Exhibit "A"?

A. Not those particular lands.

Q. You were not acquainted with them?

A. Generally only in the district.

(Testimony of E. M. Hoover.)

Q. You have been acquainted with the lands since that time?     A. I have been on the lands since.

Q. During most of the time since that time you have been the general manager of the Payette Lumber & Manufacturing Company?

A. Most of the time, yes.

Q. You may state whether or not the lands involved in this case are now in the same condition that they were in at the time of the execution of the deed marked Defendants' Exhibit "A."

A. Practically the same; no timber has been cut.

Q. They are still in a wild, natural state?

A. Yes, sir.

Q. Uncultivated lands?

A. Not cultivated in any way.

Redirect Examination.

(By Mr. BLAKE.)

Q. The general manager of the Payette Lumber & Manufacturing Company, when did you first receive any information with reference to the fact that the complainant Mollie Conklin was claiming that she had been defrauded out of certain base lands upon which the right to select the lieu lands described in the bill of complaint [255—38] was based, and that the parties defrauding her were the defendants Benson, Campbell and others.

A. The first notice we had was on being served with the original bill of complaint, to which we were made, that is, the Payette Lumber & Manufacturing Company were made parties. I don't recall the date.

(Testimony of E. M. Hoover.)

Q. You mean the original bill of complaint filed by the United States in this suit? A. I do.

Q. What you mean, Mr. Hoover, there are two bills of complaint in this suit, one filed by the United States and the other by Mollie Conklin, and the time you refer to was the time when the first of these bills was served upon you, as general manager of the Payette Lumber & Manufacturing Company?

A. The notice was served upon me, and that was the first notice that I or any of our company had that there was any objection to the title.

Recross-examination.

(By Mr. DAVIDSON.)

Q. Mr. William Musser is president of the Payette Lumber & Manufacturing Company? A. Yes, sir.

Q. And has been since the time of its incorporation? A. Yes, sir.

Q. Mr. Deary is an officer and stockholder?

A. He is a stockholder.

Q. He is a stockholder? A. Yes, sir.

Q. Was he ever an officer?

A. Not to my knowledge.

Q. Mr. Henry Turrish was an officer?

A. He is now. [256—39]

Q. And has been since the incorporation of the company? A. I think so.

Q. And Mr. Musser and Mr. Deary and Mr. Turrish have been stockholders at all times since the incorporation of the company? A. They have.

Q. Were you connected with the company at the time the deed, Defendants' Exhibit "A," was de-

(Testimony of E. M. Hoover.)

livered? A. Not as an officer.

Q. Do you know who had charge of the negotiations for the purchase of this land?

A. Mr. William Musser, as president of the company, acting with others of the board of directors, whom I can't mention; I don't know. He was one of them.

Q. Mr. Musser was president at that time?

A. Yes, sir.

Mr. DAVIDSON.—That is all. [257—40]

**Examiner's Certificate to Testimony, etc.**

State of Idaho,

County of Ada,—ss.

I, Robert M. McCracken, Special Examiner appointed by the Court to take evidence in the City of Boise in the above-entitled action, do hereby certify that the witnesses named in the foregoing transcript (consisting of pages 1 to 40 inclusive), attended before me, and that each of such witnesses was duly sworn by me to testify to the truth, the whole truth, and nothing but the truth, and in response to oral interrogatories testified as more fully appears from the foregoing transcript, which transcript, together with the exhibits therein referred to, contains all of the evidence so taken before me on behalf of the defendants, and all of the stipulations made, and objections and other proceedings had and taken before me on the trial of said cause, while taking such evidence.

Dated this 29th day of June, 1910.

R. M. McCracken,  
Special Examiner. [258—41]

[Endorsed]: Filed June 29, 1910. A. L. Richardson, Clerk. [259]

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**[Commission to Notary Public Holton to Take Certain Testimony.]**

*In the Circuit Court of the United States for the District of Idaho.*

The President of the United States of America, to Charles R. Holton, Notary Public, San Francisco, Cal., Greeting:

KNOW YE, That we in confidence of your prudence and fidelity, have appointed you a COMMISSIONER, and by these presents do give you full power and authority diligently to examine Dr. John Snook, R. B. Swayne, Mrs. S. J. Coleman, H. M. Wright and J. F. Lucey, residing at Berkeley, Cal., and in San Francisco, Cal., each, upon his corporal oath, or affirmation, before you to be taken orally, commencing March 21, 1910, at 10 o'clock A. M., as witnesses on the part of the complainant in a certain cause now pending undetermined in the Circuit Court of the United States of America, for the District of Idaho, wherein Mollie Conklin et al. are plaintiffs and R. M. Cobban et al. are defendants; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, and direct it to the Clerk of the above-entitled Court, at Boise City, in the District of Idaho, as soon as may be after the execution of this commission; and that you return the same, when executed as above directed, with the

title of the cause endorsed on the envelope of the commission.

WITNESS, The Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, at Boise City, in said District, this the 11th day of March, A. D. 1910.

[Seal]

A. L. RICHARDSON,  
Clerk. [260]

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*In the Circuit Court of the United States for the District of Idaho, Ninth Judicial Circuit, Central Division.*

IN EQUITY—CONSOLIDATED No. 60.

UNITED STATES OF AMERICA and MOLLIE  
CONKLIN,

Complainants,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and also as Trustee, PAYETTE LUMBER & MANUFACTURING COMPANY, a Corporation, JOHN DOE, MARY DOE, RICHARD ROE and THOMAS ROE,

Defendants.

Depositions of **H. M. Wright, R. B. Swayne and Mrs. Sybil J. Coleman.**

APPEARANCES.

NORMAN E. CONKLIN, of San Francisco, for Complainants;

J. C. CAMPBELL, of San Francisco, *in Propria Persona* and as Attorney for John A. Benson;

CHARLES S. CUSHING, of San Francisco, for Defendants R. M. Cobban, E. B. Weirick and the Payette Lumber & Manufacturing Co., and WM. H. METSON, of San Francisco, as Attorney for Mrs. Sybil J. Coleman. [261]

BE IT REMEMBERED: That, pursuant to the Commission hereunto annexed, and, on Monday, the 21st day of March, 1910, at the hour of 10 o'clock A. M. of said day, at my office in room No. 519 on the Fifth Floor of the Metropolis Bank Building, at the southeast corner of Market and New Montgomery Streets, in the City and County of San Francisco, State of California, before me, CHARLES R. HOLTMAN, a Commissioner duly appointed by the Circuit Court of the United States for the District of Idaho, Ninth Judicial Circuit, Central Division, and a Notary Public in and for said City and County of San Francisco, personally appeared H. M. WRIGHT, R. B. SWAYNE and Mrs. SYBIL J. COLEMAN, witnesses produced on behalf of the complainants in the above-entitled action, now pending in said court, who, being each first by me duly sworn, were then and there examined and interrogated by Norman E. Conklin, Esq., of counsel for said complainants, and by J. C. Campbell, appearing *in propria persona* and as counsel for John A. Benson, and by Charles S. Cushing, Esq., of counsel for defendants R. M. Cobban, E. B. Weirick and the Payette Lumber and Manufacturing Company, whereupon said witnesses testified as hereinafter set forth: [262]

[**Deposition of H. M. Wright, for Complainants.**]

H. M. WRIGHT, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Mr. CAMPBELL.—I have an objection to register, for the purpose of making the record straight. We object to the taking of the deposition of this witness, or of any witness under this notice, on the ground that the notice is insufficient; that it does not comply with the Revised Statutes of the United States, or the statute concerning which it is attempted to take the depositions under; and an additional objection that the bill of complaint in this case does not state any facts sufficient to entitle the complainant to the equitable relief therein prayed for, or to any equitable relief whatsoever. That objection is made on behalf of J. C. Campbell and John A. Benson.

Mr. CUSHING.—The defendants, Cobban, Weirick and the Payette Lumber & Manufacturing Company, make the same objection.

Mr. CONKLIN.—Q. What is your name?

A. H. M. Wright.

Q. Are you acquainted with Mr. J. C. Campbell?

A. I am.

Q. Are you acquainted with John A. Benson?

A. Well, I called on him once, but I cannot say that I am acquainted with him.

Q. Were you acquainted with Mrs. Carolyn Reddy in her lifetime? A. Yes.

Q. Were you her attorney? A. Yes.

Q. In the year 1902, on September 5th, or about

(Deposition of H. M. Wright.)

that date, did you have a conversation with Mr. Benson in regard to lands, commonly known as "Monache Lands"?

A. I had one conversation with Mr. Benson—I am not certain of the date—about that time. [263]

Q. Who was present at that conversation?

A. No one besides myself and Mr. Benson.

Q. Will you please state the substance of that conversation?

Mr. CAMPBELL.—I object to that question on the ground that it is incompetent, irrelevant and immaterial, it being shown by the bill that the title to the land has passed out of John A. Benson,—the "Monache Lands," and that any statement made to Mr. Benson will not, in any way, bind any of the defendants in this case, nor affect the subject matter of this suit.

Mr. CUSHING.—We can stipulate that only objections as to the form of the question need be made now; all other objections as to competency may be made at the hearing.

A. I haven't any clear recollection as to it, Mr. Conklin.

Q. Don't you remember any of the conversation that occurred between you and Mr. Benson at that time?

A. I remember the purpose of my visit, and the substance of our talk was with respect to the situation of the lands belonging to the estate of Patrick Reddy, known as the "Monache Lands," and my purpose was to try and find out the status of those

(Deposition of H. M. Wright.)

lands, and the situation of the estate with respect to them.

Q. What did Mr. Benson state with reference to the status of those lands?

Mr. CUSHING.—I object to the question on the ground that it is incompetent, calls for hearsay, and is not binding on any of these defendants.

Mr. CAMPBELL.—I make the same objections, and the further objection that the record is the best evidence as to the status of the lands.

A. When I spoke of the status of the lands, I referred to the condition of the case in the land office, and I think also the question came up as to how Benson was handling the lands. Now, as to the condition of the case in the land office at that time, [264] I am sorry to say that my memory doesn't serve me.

Q. How did Mr. Benson say that he was handling the lands?

Mr. CAMPBELL.—I make the same objection to that question on all the grounds heretofore made.

Mr. CUSHING.—I make the same objection.

A. It has been so long since I have thought of this case that I find myself very much at loss. The best I can do, Mr. Conklin, is to say that he either claimed that he had a contract of sale on them, or that he had bought them. But I can't remember which.

Q. Did he state to you at that time that he had any powers of attorney from the parties in interest, or any of them, in regard to these lands?

Mr. CUSHING.—We make the same objections

(Deposition of H. M. Wright.)

to this question, and also on the ground that it is leading.

Mr. CAMPBELL.—Same objection. Let it be understood that we join in these objections.

A. I believe he stated—

Q. Did what?

A. (Continuing.) Stated that he had powers of attorney from the owners.

Q. Now, Mr. Wright, at this time, or about this time, did you have any conversation with Mr. J. C. Campbell in regard to this property? A. Yes.

Q. Was anyone present at the time this conversation took place? A. I think not.

Q. Where did it take place?

A. I called on Mr. Campbell at his office in the Crocker Building, in this city.

Q. What did he state to you in regard to this property?

Mr. CUSHING.—We make the same objections that we have already interposed in regard to Benson.

Mr. CAMPBELL.—There is no allegation in the bill that would bind any person by any statement made by Campbell. [265]

A. To the best of my recollection, Mr. Campbell said that Benson had had contracts to dispose of these lands; that he had not paid for them; and that the estate was going to sell the lands at probate sale—going to try and wind up the whole business as quickly as he could.

Q. Did he at that time say that he had been so long making these payments that he wasn't going to have

(Deposition of H. M. Wright.)  
anything more to do with them?

Mr. CUSHING.—I object to the question on the ground that it is leading.

A. I haven't any independent recollection on that matter; but, if you find that I have so stated in my letter—

Q. Did he also say at that time that he, Mr. Campbell, was going to get immediately an order for the sale of the lands in this suit, or rather the "Monache Lands"?

Mr. CUSHING.—Subject to the same objection.

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

Q. Did Mr. Campbell state to you at that time that there were any powers of attorney in existence regarding these lands?

Mr. CUSHING.—I make the same objection.

A. I have no present recollection about it, Mr. Conklin. You are asking me questions from the letter that I wrote them.

Q. Had your client, Mrs. Carolyn Reddy, an interest in this property? A. Yes.

Q. Had she, to your knowledge, given a power of attorney to anyone to handle these lands, or her interest in these lands, at that time?

A. To the best of my knowledge, she had not.

Q. From your conversation with either of these parties, did you gain any information that any powers of attorney were in existence? [266]

Mr. CUSHING.—I object to the question as being indefinite, and as not showing which of the parties are referred to.

(Deposition of H. M. Wright.)

Mr. CONKLIN.—Both of them are referred to.

A. I think so.

Q. They stated that there were?

A. I think I have already testified that I understood from Mr. Benson that there were powers of attorney in existence.

Q. Your recollection being so poor, I am going to ask you if this is your signature to this letter, dated September 3, 1902? (Mr. Conklin shows letter to witness.) A. Yes, sir.

Q. (Continuing.) Addressed to N. E. Conklin, Esq., Bakersfield, Cal.? A. Yes, sir.

Q. And also, is that letter, dated, September 17, 1902, addressed to N. E. Conklin? A. Yes, sir.

Q. I will ask you to state whether or not the contents of them are true.

Mr. CUSHING.—I object to the question on the ground that it is incompetent, irrelevant and immaterial, and not binding on the defendants.

A. The contents of them are true.

Q. I will ask you to look the letter over, and to state whether or not it isn't a fact that they did not inform you that any powers of attorney were in existence?

Mr. CUSHING.—I object to the question on the ground that no proper foundation has been laid for the question, and that the evidence is not binding on the defendants.

Mr. CAMPBELL.—It isn't the proper method of refreshing a man's recollection. And I make the further objection that he is attempting to impeach his own witness by a writing that is not properly

(Deposition of H. M. Wright.)

identified. [267]

A. In my letter of September 17, 1902, I wrote to Mr. Conklin as follows: "Nothing further has been done by Mr. Campbell with respect to the sale of the interest of the Reddy estate in lieu lands, or, to be more accurate, to authorize powers of attorney to be given by the administratrix to make selections and sales, or to confirm such as may have already been given. I have been able to get no satisfaction, as yet, from either Campbell or Benson on the question whether or not Benson has a power of attorney from Mrs. Reddy." I judge from that letter that the fact was that Benson did not say anything to me in regard to the power of attorney. I haven't at present any clear recollection about the matter.

Q. Did you have any knowledge at that time in regard to any power of attorney being in existence in regard to these lands?

Mr. CUSHING.—I object to the question on the ground that it is incompetent, irrelevant and immaterial, and not binding on these defendants.

A. I don't think so.

Q. What are your relations with Mr. J. C. Campbell, friendly or unfriendly?      A. Friendly.

Q. And with Mr. Metson?      A. Friendly.

Q. Were you, at one time, associated with them in the practice of law, or in their office?

A. I was not.

Q. Were you associated with them in Alaska, or with Mr. Metson?

A. Yes, Mr. Metson was chief counsel for a com-

(Deposition of H. M. Wright.)

pany for which I was also attorney.

Q. What was the name of the firm in Alaska with which you were practicing?

A. I think it was Reddy, Campbell & Metson, which was afterwards changed to Campbell & Metson. I did not practice with them, [268] but independently.

Q. That is, after you returned, or while you were up there? A. I can't remember, Mr. Conklin.

Q. You remember, Mr. Wright, that, at one time, two of your clients, Mr. M. H. Reddy and Johnny Reddy, were interested in the Reddy estate, do you not? A. Yes.

Q. They were your clients, were they not?

A. Michael George Reddy was; John was not.

Q. What became of the interest of Michael George, if you know?

Mr. CAMPBELL.—I object to that question on the ground that it is incompetent, irrelevant and immaterial. The record will be the best evidence.

Mr. CONKLIN.—I will submit that the records do not show the true status of the interest. That is the purpose of this testimony.

Mr. CAMPBELL.—The answer to that is that this is not an action in equity to set aside a record. You cannot contradict collaterally a proceeding or judgment, or anything of that kind collaterally.

A. The interest of Michael George Reddy, with that of all the other heirs at law of Carolyn S. Reddy, deceased, was sold by them to a Scandinavian banker of Seattle. I think his name was Chilberg.

(Deposition of H. M. Wright.)

Mr. CUSHING.—I object to that on the ground that the witness was not asked about John Reddy.

Q. And regarding John Reddy's interest?

Mr. CUSHING.—I make the same objection to that question that was interposed by Mr. Campbell to the preceding question.

A. John Reddy's interest was transferred by him to W. H. Metson, who either transferred it to the other Reddy children, or paid over the proceeds of it to them—I don't remember which. My recollection is that he deeded it in turn to Michael George Reddy and Catherine Maher, born Reddy. [269]

Q. Who continued the negotiations for the sale of this interest of Michael George Reddy, if you know?

A. I did.

Q. With whom?

A. Mr. Metson. I asked him if he could find a purchaser.

Q. Is it not a fact that, prior to this time, you had drafted a deed conveying the interests of Michael George Reddy to his wife, and which Michael George Reddy had executed?

Mr. CAMPBELL.—Subject to the same objection heretofore made. We cannot try any of the questions that might exist between the heirs, in this proceeding. It is an attempt to attack collaterally certain records which are not the subject matter of this action, this being a suit by the United States to set aside a United States patent to certain lands in the State of Idaho.

A. I remember drafting such a deed, and, to the

(Deposition of H. M. Wright.)

best of my recollection, he signed it in my office.

Mr. CONKLIN.—That is all.

Cross-examination.

Mr. CAMPBELL.—Q. Did he ever deliver it to his wife, to your knowledge?

A. I think she was present at the time. I don't know whether it was delivered or not. I presume—I would say it was delivered if I drafted it.

Q. In this conversation which you had with Mr. Benson, you were talking about the Reddy interest in the "Monache Lands," were you not?

A. Yes, sir.

Q. That is the only thing which you had any interest in? A. Yes, sir.

Q. In the conversation which you had with me, Mr. Campbell,—that was the September conversation?  
[270]

A. To the best of my recollection.

Q. Nothing was said about my interest in the Carolyn Reddy estate in any conversation with Mr. Campbell?

A. Well, probably the question of Mrs. Carolyn Reddy's interest was discussed. I don't remember what was said about it.

Q. You don't remember anything about that, do you? A. No.

Q. At any rate, I, Mr. Campbell, didn't pretend to be representing any interest except the Reddy estate?

A. I don't remember definitely, Mr. Campbell.

Q. In representing the interest of Carolyn Reddy,

(Deposition of H. M. Wright.)

after Mr. Reddy's death, you became familiar with the record in the Reddy estate, did you not?

A. Yes.

Q. Do you know whether or not Mrs. Emily M. Reddy, as administratrix of the estate of Patrick Reddy, had filed a petition in the probate court of the City and County of San Francisco, Department No. 9, asking permission of the Court to allow her to transfer these "Monache Lands," prior to any conversation which you had with Mr. Benson?

A. I have no recollection.

Q. Do you know whether or not a petition was filed in the probate court, Department No. 9 of the Superior Court of San Francisco, after this conversation, asking for an order of the Court for a sale of the Reddy interest in the "Monache Lands"?

A. I remember that there was such a petition for sale filed at some time, but whether prior or after our conversation, or when, I cannot now remember, Mr. Campbell.

Q. Were you present in court when that petition came up?     A. I don't remember.

Q. Do you not remember that, when that petition came up, Mr. N. E. Conklin, or this Mr. Conklin who is here, appeared before Judge Coffey, and objected to the petition being granted? [271]

A. I remember that Mr. Conklin appeared at one of the proceedings, and I think that was the occasion.

Q. Do you remember the ground of his objection?

A. No.

Q. Did he not state that the lands had been con-

(Deposition of H. M. Wright.)

veyed by the Reddy estate to the Government of the United States, and that the Court had no jurisdiction to make an order of sale?     A. I don't remember.

Q. You remember that the Court did refuse an order, do you not?

Mr. CONKLIN.—I object to that question on the ground that it is leading.

A. I am sorry to say that I cannot remember.

Redirect Examination.

Mr. CONKLIN.—Q. I will read over your letter of September 5, 1902, addressed to N. E. Conklin, Esq.: "I gather from what —." (Continuing.) I withdraw the question.

Mr. CONKLIN.—That is all.

Mr. CUSHING.—No questions.

H. M. WRIGHT. [272]

WITNESS.—On reading the transcription of the testimony in the foregoing deposition, I desire to make certain changes other than those which appear therein as made with the pen and initialed by me. Upon examining my files and copies of papers in the matter of the estate of Carolyn S. Reddy, deceased, and my correspondence with Michael George Reddy, I wish to change my answer found at page 8, to the question, "What became of the interest of Michael George, if you know," so that the answer will read as follows:

A. By deed dated March 2d, 1907, Michael George Reddy, Katherine Mahar, formerly Katherine Reddy, and B. B. Jackson, heirs at law of Carolyn S. Reddy, deceased, conveyed all the interest of the

(Deposition of H. M. Wright.)

estate of Carolyn S. Reddy and of themselves as her heirs in the estate of Patrick Reddy, deceased, to J. E. Chilberg of Seattle, Wash., subject to administration. The purchase price was paid and the transaction concluded on March 12th, 1907. Mrs. Michael George Reddy joined in the execution of said deed.

WITNESS.—The answer to the question on the same page, “And regarding John Reddy’s interest,” I desire also to change so as to read as follows:

A. John Reddy, by deed dated June 21st, 1905, sold and assigned to W. H. Metson all his interest in the estate of Carolyn S. Reddy, deceased, and in the estate of Patrick Reddy, deceased, and thereafter, by deed dated February 12th, 1907, W. H. Metson transferred and assigned to Michael George Reddy the said interests in said estate so transferred to him by John Reddy as a gift to Michael George Reddy and without further consideration.

H. M. WRIGHT. [273]

**[Deposition of R. B. Swayne, for Complainants.]**

R. B. SWAYNE, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Mr. CAMPBELL.—I have an objection to register, for the purpose of making the record straight. We object to the taking of the deposition of this witness, on the ground that the notice is insufficient, that it does not comply with the Revised Statutes of the United States, or the statute concerning which it is attempted to take the depositions under; and an addi-

(Deposition of R. B. Swayne.)

tional objection that the bill of complaint does not state any facts sufficient to entitle the complainant to the equitable relief therein prayed for, or to any equitable relief whatsoever. That objection is made on behalf of J. C. Campbell and John A. Benson.

Mr. CUSHING.—The defendants, Cobban, Weirick and the Payette Lumber & Manufacturing Company make the same objection.

Mr. CONKLIN.—Q. What is your name?

A. R. B. Swayne.

Q. Where do you reside? A. In Oakland.

Q. Where did you formerly reside?

A. In Bakersfield.

Q. Were you a resident of Bakersfield in the years 1900 and 1901? A. Yes, sir.

Q. Are you acquainted with Mollie Conklin?

A. Yes, sir.

Q. I will ask you if, during the months of December, 1900, and January, February and March, 1901, you resided in Bakersfield? A. I did.

Q. During those months did you see Mollie Conklin in Bakersfield? A. I did.

Q. What approximately was the first time during the year 1900 that you saw her in Bakersfield?

A. I can't remember the date; but it was at a time when your [274] daughter was paralyzed. We were up there at your house. She was there for some time after that.

Q. State whether or not, if you know, she remained there that winter.

A. To the best of my recollection, she stayed there

(Deposition of R. B. Swayne.)

for a number of months, because the little girl was in a precarious condition, and she naturally stayed right there.

Cross-examination.

Mr. CAMPBELL.—Q. From where did she come?

A. From San Francisco.

Q. Did she reside in San Francisco at the time?

A. She spent some of her time here, and some there. Her time was passed between the two places.

Q. You are not able to say that, during that time, she was in San Francisco some of the time?

A. I wouldn't say but what she was during some of that time. She was in Bakersfield most of the time, I am sure.

Mr. CAMPBELL.—That is all.

Mr. CUSHING.—No questions.

R. B. SWAYNE. [275]

[Deposition of Mrs. S. J. Coleman, for  
Complainants.]

Mrs. S. J. COLEMAN, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Mr. CAMPBELL.—I have an objection to register for the purpose of making the record straight. We object to the taking of the deposition of this witness on the ground that the notice is insufficient; that it does not comply with the Revised Statutes of the United States, or the statute concerning which it is attempted to take the deposition under; and an additional objection that the bill of complaint does not state any facts sufficient to entitle the complainant to

(Deposition of Mrs. S. J. Coleman.)

the equitable relief therein prayed for, or to any equitable relief whatsoever. That objection is made on behalf of J. C. Campbell and John A. Benson.

Mr. CUSHING.—The defendants, Cobban, Weirick and the Payette Lumber & Manufacturing Company, make the same objection.

Mr. CONKLIN.—Q. What is your name?

A. Sybil J. Coleman.

Q. Where do you reside?

A. 2717 Pacific Avenue, San Francisco.

Q. Are you acquainted with Mollie Conklin, one of the parties in this action?      A. I am.

Q. Did you know Mrs. E. M. Reddy, in her lifetime?      A. I did.

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

Q. Do you know myself and Mr. J. C. Campbell?

A. I do.

Q. And Mr. Metson?      A. I do.

Q. What relation do you bear towards Mrs. Emily M. Reddy?      A. A daughter.

Q. Did you know Mr. Reddy in his lifetime—Mr. Patrick Reddy?      A. Yes. [276]

Q. I will ask you if you were present at a meeting held in Mr. Campbell's office in the City and County of San Francisco, in the Crocker Building, at a time when negotiations were discussed in regard to selling lands, commonly known as the "Monache Lands"?

A. I was.

Q. Who was present at that meeting?

A. Mr. Campbell, Mrs. E. M. Reddy, Mrs. Mollie Conklin, N. E. Conklin, Mr. Benson and myself.

Q. Do you remember when that meeting was held?

(Deposition of Mrs. S. J. Coleman.)

A. I cannot tell.

Q. Do you remember the year?

A. No, I don't know anything about it.

Q. Will you please state what occurred—what was said at that meeting?

Mr. CUSHING.—We object to that question on the ground that it is incompetent, irrelevant and immaterial, hearsay, and not binding on defendants.

A. I don't remember clearly; the price of the land was what I paid more attention to.

Q. What price was stated?

A. I understood \$4 an acre.

Mr. CUSHING.—All these questions are subject to the same objection.

Q. What was understood to be done in regard to the transaction?

Mr. CAMPBELL.—I object to what was understood. That goes to the form of the question. Let her state what was said.

Mr. CUSHING.—I make the same objection; and also, that it calls for the opinion and conclusion of the witness.

Q. What transpired at that meeting?

A. I paid very little attention. The price of the land and the time for payment—that is the only thing that I remember clearly—I didn't pay much attention.

Q. What was to be drawn up in regard to the lands? [277] A. I don't remember.

Q. Were deeds to be drawn up in regard to the property?

Mr. CUSHING.—I object to the question on the

(Deposition of Mrs. S. J. Coleman.)

ground that it is leading.

A. I don't remember at this time.

Q. Do you remember as to whether it was discussed as to what was to be done with the deeds after they were drawn up?

A. No, I don't remember.

Q. You testified, did you not, Mrs. Coleman,—that is, your deposition was taken in regard to the “Monache Lands” in a case prior to the present one, was it not, Mrs. Coleman?     A. Yes, sir.

Q. And your testimony given at that time was true, was it not?     A. Yes, sir.

Mr. CAMPBELL.—I object to that question on the ground that that is not the proper way of impeaching a witness, nor of refreshing her recollection.

Q. Was anything said at that time in regard to papers being signed in regard to the “Monache Lands”?     A. Yes, at my former deposition.

Q. What was said?

A. Had reference to deeds—what she thought she was signing.

Q. Was it said then that powers of attorney would be prepared?

A. I heard nothing about that at that first meeting in Mr. Campbell's office in the Crocker Building.

Q. Were you present after that, Mrs. Coleman, at the residence of Mrs. Reddy, where Mrs. Conklin and Mrs. Reddy were signing some documents?

A. I was.

Q. Where was it?

A. 2717 Pacific Avenue, my mother's home.

(Deposition of Mrs. S. J. Coleman.)

Q. Do you know how those documents got to the house? [278]

A. Brought by a boy, I don't know who—a messenger, or who—some boy brought them and left them.

Q. Did you see the boy that brought them?

A. No, I did not.

Q. During the time that they were signing those documents, did Mrs. Reddy and Mrs. Conklin and yourself discuss the character of those documents?

A. Yes, in a way.

Q. During that conversation, how did they term those documents?

Mr. CUSHING.—I object to that question on the ground that it is irrelevant, incompetent and immaterial; not the best evidence; hearsay; and not binding on these defendants.

Mr. CAMPBELL.—And not any conversation made in the presence of any of the defendants.

A. They thought they were signing deeds. There was a great many papers—big stack of papers. They read the first, the second, third, fourth and fifth that were on top, and they were all alike; and they thought all those papers were just the same. They said there is no use in reading any more. We will just go right ahead and sign them. I know they laughed about it because there were so many—so much trouble.

Mr. CUSHING.—I ask to have the answer stricken out on the ground that it is hearsay, and the opinion of the witness.

Q. Were you present, Mrs. Coleman, at the time

(Deposition of Mrs. S. J. Coleman.)

your mother, Emily M. Reddy, and myself had a conversation at her rooms on Turk Street, in an apartment house in which you were living—I have forgotten the name—in which I informed Mrs. Reddy that I had discovered powers of attorney to the “Monache Lands”?

Mr. CAMPBELL.—I object to the question on the ground that it is incompetent, irrelevant and immaterial; hearsay; and not binding on these defendants.

A. I don't think so. [279]

Q. You were not in the room at that time?

A. No.

Q. Are you one of the heirs in the Patrick Reddy estate, Mrs. Coleman? A. Yes.

Mr. CAMPBELL.—Mrs. Coleman was the sole heir of Mrs. Emily Reddy, who, by deed, took one-half of the Patrick Reddy estate. Mrs. Reddy got one-half.

Mr. CUSHING.—Not by deed.

Mr. CAMPBELL.—By will.

Mr. CONKLIN.—Q. At the time that you had this meeting in Mr. Campbell's office, who did most of the talking—who was the spokesman at that meeting?

A. I don't remember; I think Mr. Campbell was.

Q. Were you ever present at any other meeting, Mrs. Coleman? A. No.

Q. Who is your attorney, Mrs. Coleman, in the matter of the Reddy estate?

A. Wm. H. Metson.

Q. Were you present, Mrs. Coleman, at the time that I was in the Antlers Apartment on Turk Street, when a petition for the sale of the “Monache Lands” was about to be presented to the Court, and Mrs.

(Deposition of Mrs. S. J. Coleman.)

Reddy and I had a conversation in regard to that petition, and I was going over to Judge Coffey's court that morning?     A. I think I was.

Q. (Continuing.) And Mrs. Reddy told me not to be afraid to speak and oppose that petition?

Mr. CUSHING.—I object to that question as being leading, and not binding on any of the defendants here, the conversation having taken place when none of the defendants were present.

A. My memory is not clear—so long ago.     [280]

Q. Were you present when I disclosed to Mrs. Reddy that I had discovered that some powers of attorney were in existence, and Mrs. Reddy denounced them as forgeries,—saying that she had never signed any of them?

Mr. CUSHING.—I object to that question as leading, not binding on these defendants, and is a self-serving declaration of counsel.

A. I can't say that I was. It is a faint recollection—so faint.

Q. Were you present, Mrs. Coleman, at or about the time that Mr. Reddy was discussing the fact of going to Alaska to practice law?     A. Yes.

Q. What did he say in regard to going to Alaska to practice law?

A. He was sick in bed, and couldn't go.

Q. And being sick in bed, he said he couldn't go, and concluded to send Mr. Metson, did he not?

A. Yes, sir.

Q. I will ask you—you have stated the names of the parties who were present at that meeting—I will ask you if Mr. Bernard was present at that meeting?

(Deposition of Mrs. S. J. Coleman.)

A. I don't think so.

Q. I will further ask you if your counsel has not informed you that none of these "Monache Lands" suits affects your interest in the property?

A. I don't think so; that I remember.

Q. Do you understand now whether or not your interest is affected by these transactions?

A. I don't understand very much about it—too much of it.

Q. Who was Milton Bernard, if you know?

A. He was always in Mr. Metson's office. [281]

Q. He was out in the outer office—the call-boy?

A. Yes.

Mr. CONKLIN.—That is all.

Cross-examination.

Mr. CAMPBELL.—Q. Mr. Edward Reddy was not present at that meeting, was he?

A. No, sir; that was the first meeting that we had at all.

Q. You understand that there was another meeting called after that? A. I wasn't present then.

Q. Do you know how this first meeting came about?

A. I don't know; I went down with my mother.

Q. After Mr. Reddy's death? A. Yes.

Q. You were present at Mr. Reddy's house during his last illness? A. Yes.

Q. You know that Mr. Reddy and Mr. Benson had been negotiating for the sale of the "Monache Lands" before Mr. Reddy's death? A. Yes.

Q. And you saw Mr. Benson at Mr. Reddy's house prior to Mr. Reddy's death, didn't you?

(Deposition of Mrs. S. J. Coleman.)

A. No, I never saw him there.

Q. Do you remember a conversation in the office at the time your mother, and Mrs. Conklin and Mr. Conklin was there, with myself,—and wasn't the discussion mostly as to what was the contract between Mr. Benson and Mr. Reddy?

A. I think I recall some conversation like that.

Q. And Mrs. Reddy, your mother, stated what she understood to have been the contract between Mr. Benson and Mr. Reddy?      A. Yes, sir. [282]

Q. That is, your mother understood, and you and I understood that the price was to be \$4 an acre for the land?      A. Yes.

Q. And Mr. Benson contended that his understanding with Mr. Reddy was \$3.80 an acre?

A. Well, I don't remember everything—much about \$3.80. I remember the \$4.

Q. And the conference between Mrs. Reddy, your mother, and yourself, and Mrs. Conklin and Mr. Conklin, was in relation to carrying out the contract made, or the negotiations made between Mr. Benson and Mr. Reddy, in his lifetime?      A. Yes, sir.

Q. Do you know how Mr. Conklin and Mrs. Mollie Conklin happened to come into those negotiations?

A. Well, they owned half the land.

Q. Do you know who invited them in, or asked them to come in?      A. I do not.

Q. Mr. N. E. Conklin, the gentleman who is here, is a son of Mrs. Mollie Conklin?      A. Yes.

Q. And he is an attorney at law?      A. Yes.

Q. A practicing lawyer?      A. Yes.

Q. And during those negotiations, he represented

(Deposition of Mrs. S. J. Coleman.)

his mother?      A. Yes, sir.

Q. Mrs. Coleman, Mr. Metson is the executor of your mother's will, is he not?      A. Yes, sir.

Q. And Mr. Frisbie acts as his attorney, does he not?      A. I guess so. [283]

Mr. CUSHING.—I think you are wrong about that. The record is the best evidence.

Mr. CAMPBELL.—That is all.

Mr. CONKLIN.—That is all.

SYBIL J. COLEMAN. [284]

**Certificate of Special Examiner to Deposition, etc.**

State of California,

City and County of San Francisco,—ss.

I hereby certify that, on the 21st day of March, A. D. 1910, before me, CHARLES R. HOLTON, a Commissioner duly appointed by the Circuit Court of the United States for the District of Idaho, Ninth Judicial Circuit, Central Division, and a Notary Public in and for said City and County of San Francisco, at my office in Room No. 519 on the Fifth Floor of the Metropolis Bank Building, at the southeast corner of Market and New Montgomery Streets, in said City and County of San Francisco, personally appeared, pursuant to the commission hereto annexed, between the hours of 10 o'clock A. M. and 12 M. of said day, three of the witnesses named in said commission, to wit, H. M. WRIGHT, R. B. SWAYNE and Mrs. SYBIL J. COLEMAN, and Norman E. Conklin, Esq., appeared as counsel for complainants, and Charles S. Cushing, Esq., appeared as counsel for defendants R. M. Cobban, E. B. Weirick, and the Payette Lumber & Manufac-

turing Company; and J. C. Campbell, Esq., *appear in propria persona* and as attorney for John A. Benson; and Wm. H. Metson, Esq., appeared as counsel for Mrs. Sybil J. Coleman, and the said H. M. Wright, R. B. Swayne and Mrs. Sybil J. Coleman, being each by me first duly cautioned and sworn to testify the whole truth, and, being carefully examined, deposed and said, as appears by their depositions hereto annexed.

And I further CERTIFY that the said depositions were then and there taken down in shorthand by me, and thereafter by me reduced to typewriting and were, after they had been reduced to typewriting, corrected and subscribed by said witnesses, in my presence, and that the same have been retained by me for the purpose *and* sealing up and directing the same to the clerk of the court, as required by law.

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And I further CERTIFY that the reason why the said depositions were taken was that the said witnesses reside more than one hundred miles from Boise City, Idaho, the place where this cause is to be tried, to wit, said H. M. Wright resides in Berkeley, California, said R. B. Swayne resides in Oakland, California; and said Mrs. Sybil J. Coleman resides in San Francisco, California.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

And I further CERTIFY that the fees for taking said depositions, to wit, \$16.50, have been paid to me by the complainant, Mollie Conklin, and that the same are just and reasonable.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at the City and County of San Francisco, State of California, this 11th day of April, A. D. 1910.

[Seal] CHARLES R. HOLTON,  
Commissioner and Notary Public in and for the City  
and County of San Francisco, State of Cali-  
fornia.

[Endorsed]: Filed Nov. 4, 1911. A. L. Richard-  
son, Clerk. [286]

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*In the Circuit Court of the United States, Central  
Division of the District of Idaho.*

IN EQUITY—CONSOLIDATED NUMBER 60.

UNITED STATES and MOLLIE CONKLIN,  
Plaintiffs,

vs.

PAYETTE LUMBER AND MANUFACTURING  
COMPANY, JOHN A. BENSON, JOSEPH  
C. CAMPBELL, R. M. COBBAN, E. B.  
WEIRICK, and E. B. WEIRICK, Trustee,  
Defendants.

**Depositions of Joseph C. Campbell, J. A. Benson,  
James H. Lavenson and Clara E. Glover.**

Taken before Flora Hall, Notary Public in and for  
the City and County of San Francisco, State of Cali-  
fornia, on April 28th, 29th, 30th and May 2d, 1910.

Opened by stipulation and filed Oct. 18, 1911.

A. L. RICHARDSON,  
Clerk. [287]

*In the Circuit Court of the United States, Central  
Division of the District of Idaho.*

IN EQUITY—CONSOLIDATED NO. 60.

UNITED STATES and MOLLIE CONKLIN,  
Plaintiffs,

vs.

PAYETTE LUMBER AND MANUFACTUR-  
ING COMPANY, JOHN A. BENSON, JO-  
SEPH C. CAMPBELL, R. M. COBBAN,  
E. B. WEIRICK, and E. B. WEIRICK,  
Trustee,

Defendants.

It is hereby stipulated and agreed by and between counsel for the respective parties that the defendants, J. A. Benson and Joseph C. Campbell may take the depositions and testimony of Joseph C. Campbell, William H. Metson, Milton Bernard, James H. Lavenson, Clara E. Glover and John A. Benson, in the City and County of San Francisco, State of California, on Wednesday, April 27th, 1910, at ten o'clock A. M., of said day at Room 514 Balboa Building, corner of Second and Market Streets, before Flora Hall, a Notary Public in and for said city and county, and the taking of said testimony and depositions may by a Notary Public be continued from day to day until completed, and said depositions may be taken by any disinterested stenographer, and thereafter reduced to writing on a typewriter, and when so reduced to be signed by the several witnesses; said depositions and testimony to be used and read in evidence in the above-entitled

action with the same force and effect as if said depositions and testimony had been taken under commission duly issued in said cause, and said parties hereby waive any other [288] and further notice as to the time, place or manner of the taking of said testimony and depositions.

S. L. TIPTON,

Attorney for Plaintiff, the United States.

N. E. CONKLIN and

WM. B. DAVIDSON,

Attorneys for Plaintiff, Mollie Conklin.

CAVANAUGH & BLAKE,

Attorneys for Payette Lumber Company.

ALFRED A. FRASER,

Attorney for Joseph C. Campbell and John A. Benson.

RICHARDS & HAGA,

Attorneys for R. M. Cobban. [289]

*In the Circuit Court of the United States, Central  
Division of the District of Idaho.*

IN EQUITY—CONSOLIDATED NUMBER 60.

UNITED STATES and MOLLIE CONKLIN,

Plaintiffs,

vs.

PAYETTE LUMBER AND MANUFACTURING

COMPANY, JOHN A. BENSON, JOSEPH

C. CAMPBELL, R. M. COBBAN, E. B.

WEIRICK, and E. B. WEIRICK, Trustee.

Defendants.

BE IT REMEMBERED, That pursuant to stipulation hereunto annexed, and on Thursday, April

28th, commencing at two o'clock P. M. of said day (to which time they have been duly and regularly continued by consent), the depositions of Joseph C. Campbell, John A. Benson, James H. Lavenson and Clara E. Glover, were taken before me, Flora Hall, a Notary Public, in and for the City and County of San Francisco, State of California, at Room No. 514 Balboa Building, corner of Second and Market Streets in the above-entitled action, now pending in the above-entitled court, said witnesses being each duly sworn to tell the truth, the whole truth and nothing but the truth before giving their respective testimony. Said witnesses were interrogated on direct examination by R. G. Hudson, Esq., and J. C. Campbell, Esq., and on cross-examination by Wm. B. Davidson, Esq., and testified as follows, to wit:  
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**[Deposition of J. C. Campbell, for Defendants.]**

J. C. CAMPBELL, being first duly sworn, testified as follows:

Direct Examination.

Mr. HUDSON.—Q. Will you please state your name?     A. Joseph C. Campbell.

Q. And occupation?     A. Practicing law.

Q. Did you know the Reddy's, Mr. Campbell,—Patrick, and the other members of the Reddy family?

A. I did. I knew Patrick Reddy, Emily Reddy, his wife, and E. A. Reddy, his brother, a great many years.

Q. Are you acquainted with Mrs. Mollie Conklin and other members of the Conklin family?

(Deposition of J. C. Campbell.)

A. Yes, I am acquainted with Mrs. Mollie Conklin and Mr. N. E. Conklin, her son ; and I knew Mr. Alvah Conklin, the husband and father, prior to his death.

Q. Have you any knowledge of the Monache lands, the subject matter of the controversy in this action ?

A. I have.

Q. Will you state your knowledge of these lands that are the matter of controversy in this action ?

A. I presume you mean the matter of the contract between Benson and these other people.

Q. In relation to that contract, yes, Mr. Campbell, Just go on and tell it in your own way, if you please.

The WITNESS.—The Monache lands were owned, half and half, by Mr. Reddy and Mrs. Mollie Conklin, I believe, at the time of this contract, and prior to the death of Mr. Reddy. They were lands that were obtained by Alvah Conklin, the husband of Mollie Conklin, through one Broder, whose first name I have [291] forgotten. There was a great deal of litigation about them, and Mr. Reddy had a contract whereby he was to receive the undivided one-half of those lands for litigating the case of Broder vs. Conklin. The case was finally adjudicated in favor of the Conklins, and Mr. Conklin, my recollection is, deeded his share of them, or his undivided one-half of them, to his wife, and Mr. Reddy obtained one-half of the lands,—whether by deed from Alvah Conklin or from Mollie Conklin, I don't know. That is, I have never investigated it to determine. At any rate, prior to the death of Mr. Reddy, he was the owner of the undivided one-half of these so-called

(Deposition of J. C. Campbell.)

Monache lands, which my recollection is, was something like nine thousand acres. Mr. Reddy, prior to his death, entered into negotiations with John A. Benson, who was a client of his, and of the office, for quite a number of years prior to that time, either to sell to or through Benson these Monache lands for a certain price. I am not positive now as to what the price was to be between Mr. Reddy and Benson. The last time I ever saw Mr. Reddy alive was, I think, some week or ten days before his death, when I was at his house; and in my interview with him—

Mr. DAVIDSON.—We will object to the introduction of any evidence as to any conversation between the witness and Mr. Reddy in regard to any contract for the sale of any of this property, unless it is shown that the contract was in writing and relates to the contract afterwards made between Mr. Benson and Mrs. Conklin, as irrelevant, incompetent and immaterial.

The WITNESS.—(Continuing.) Mr. Reddy informed me that he had made a contract with Benson, was expecting to consummate it within a very short time, in relation to the sale of this Monache land, as I said before, either through or to Benson. [292] And I went away to the northern part of the State, and Mr. Reddy died when I was away and I didn't see him any more. After Mr. Reddy's death, there was considerable expense to the estate which had been incurred by Mrs. Reddy in procuring a tombstone and the lot in the cemetery and certain things of that kind; and Mrs. Reddy was informed

(Deposition of J. C. Campbell.)

by myself that there was not money to pay those debts which had been incurred, and then she asked me what was the matter with getting money from Benson for this land. She was present in Mr. Reddy's room at the time that he told me about the negotiations with Benson about this land, and I told her "I didn't know—we might see about it." I called Mr. Benson at the phone and my recollection is now that he came over, and Mr. Benson and Mrs. Reddy and myself had a conversation about it, but nothing of any consequence was arrived at on that day. Within some time after that, I will not be positive as to the dates, Mrs. Reddy, Mrs. Conklin, Mr. N. E. Conklin, her son, came down to the office, and Mr. Benson came over and there the matter was talked over about the sale of these lands, and a controversy arose about the price. There was a good deal of talk about \$3.80, or \$4.00 an acre, which was the offer of Benson; now, I am not positive in my own mind, whether Benson made them an offer of \$4.00 an acre, with five per cent commission, which would be \$3.80, or whether it was a straight \$4.00. I am frank to say that if I had not heard the other people testify in this case that it was \$3.80, my impression would be it was \$4.00.

Mr. N. E. Conklin thought that the price was too small and stated that he thought that he could get a better offer for the lands. That meeting was adjourned for several days, to [293] give him an opportunity to ascertain if he could get a better bid for the Monache lands. As I say, it went on for

(Deposition of J. C. Campbell.)

some time, and finally Mr. N. E. Conklin, his mother, Mrs. Mollie Conklin and Mrs. Reddy, accompanied by her daughter, Mrs. Coleman, and Mr. Edward Reddy and Mr. Benson, met in my office, and they made an agreement with Mr. Benson to take those lands. I would still be of the opinion that he was to take them for \$4.00 an acre, if I hadn't heard the other people testify. But about that, I am not positive.

They discussed the matter. I remember that Benson told them that the lands would have to be deeded to the United States; they were what he called "scrip" lands, and the money for these lands was to be paid upon approval by the Land Department, through the Anglo-Californian Bank. I have no recollection about it being said that the papers were to be deposited in escrow in the Anglo-Californian Bank, but I do remember that the money was to be paid through the Anglo-Californian Bank. Before this last conference broke up, Mr. Holland Smith was called into the office. He was a notary public; and the matter was talked over before Mr. Holland Smith, Mr. Benson and Mr. N. E. Conklin. All of these people, Smith, Conklin and Benson, my recollection is, left the office together, and the Reddys followed them out. Probably we had a little conversation there about some other things. The next I knew anything about it was, there was a large bundle of papers, deeds—well, I will say papers, because I didn't—I have no present recollection of examining what they were,

(Deposition of J. C. Campbell.)

brought up for execution by Mrs. Reddy, Mr. E. A. Reddy, and the other parties. I saw Mr. Holland Smith, Mrs. Conklin and Mrs. Reddy in one of our outer offices there with a lot of papers on the desk. What they were [294] I am not prepared to say, but Mr. Edward Reddy, the brother of Mr. Patrick Reddy, was at that time the Superintendent of the San Francisco Almshouse, and he was ill, and I took Mr. Holland Smith, who had these papers, out to the Almshouse in my carriage; and Mr. Reddy, Mr. Edward Reddy, sat up in his bed and signed a large number of them, and I brought Mr. Smith away. After Mr. Smith's death, his wife presented to me a bill for one hundred dollars for acknowledging the papers in this Reddy-Benson matter.

Mr. DAVIDSON.—I will ask at this time to strike out all the testimony offered with regard to the bill presented for the taking of the acknowledgments, on the ground that it is not the best evidence; the bill itself would be the best evidence as to what it was presented for, and as immaterial, incompetent and irrelevant; no foundation has been laid for secondary evidence.

Mr. CAMPBELL.—The motion to strike out is resisted.

The WITNESS.—I paid Mrs. Mary Smith, widow of Holland Smith, one hundred dollars for having taken those acknowledgments. I paid her \$100 which was charged by her husband for taking those acknowledgments.

After this trip to the Almshouse, for some time—

(Deposition of J. C. Campbell.)

I am not able to say how long—Mrs. Reddy came down to the office and spoke about wanting some money. I called Mr. Benson up, and asked him if he couldn't pay some money on that land deal, and he sent over a check, payable to me, for \$5,000, and I put it in the firm account. A firm check was drawn for Mrs. Mollie Conklin, for one-half of it, and Mrs. Reddy was given the other half of it. There was one payment; after that, some little time, Mrs. Reddy was down again, and I stirred Mr. Benson up again, and he sent me over a check for \$500.00. I [295] immediately turned that in to the firm account, and gave, the firm gave Mrs. Reddy a check for \$250, and a check was drawn to Mrs. Conklin for \$250. That was all of the money that I know of having been paid Mrs. Conklin. That is, \$2,500 and \$250.

Some time after that, how long I can't now remember, Mr. Norman Conklin was in the office, and in talking about this land deal, he complained that Mr. Benson was not paying the money as rapidly as he thought he should, and he also stated that he knew, or had heard of some man down Bakersfield way who would give \$6.00 an acre now for the land. My recollection is that I called Benson up at the phone and asked him what was the matter, and told him that Mr. Conklin said he could get \$6 an acre for the land. I remember that Benson said that if he could do it, he would be glad, because he couldn't get \$6.00 an acre for it, or words to that effect. I told Mr. Conklin to see if he couldn't get it, and if

(Deposition of J. C. Campbell.)

Benson wasn't keeping the contract, that the matter could—they could take it out of his hands or away from him, or something to that effect. He went away and I never heard anything more about any \$6.00 man that I remember of.

Afterwards, in the early part of 1904, after my return from New York, when Mr. Benson had been arrested and charged with conspiracy in the Washington case, for which he was afterwards tried and acquitted, Mr. Conklin came into my office again. Whether he brought Mrs. Reddy in with him the first time or whether he brought her in the second time, I am not positive. But I do remember that he said to me that “now they proposed to make Old Benson pay mighty well for those lands; that the Government was after him now, and that he would have to settle [296] with them and pay them well, or there would be trouble.” I asked him if he meant by that that he proposed to use Benson's trouble as a leverage to make him pay a good price or a bigger price for the lands, or something of that kind; and my recollection is—I got an equivocal answer—that it was neither yes or no, but he repeated that now he was in trouble, that the Government was after him, and he would have to pay mighty well for those lands. I used some pretty strong language to him at that time, and then it is my recollection that he came in with Mrs. Reddy, and Mrs. Reddy asked about that, and I said to her “Mrs. Reddy, this looks to me”—in the presence of Mr. Conklin—“like this young man is trying to use the

(Deposition of J. C. Campbell.)

fact that Benson is in trouble, to get him to pay a larger price for those lands." Mr. Conklin then said, "Do you mean to say that I am trying to blackmail him?" I said, "That is about the way it looks to me," or "That is about the size of it," or something of that kind; and he went out.

I am a little ahead of the story, however. Before this time, before Benson was arrested, and after the \$6.00 episode, Mr. Conklin came in and told me that he either had been to Washington, or had sent someone to Washington with power and that they had cancelled the powers of attorney which his mother had given Benson, and that they would not—my recollection is that they wouldn't take any more money from Benson. I sent for Mrs. Reddy. I told her that and asked her if she knew anything about it, and I think she told me she did; and I asked her if that was her desire, and she said "No"; and after that time, and up to the time that Benson was in trouble, my recollection is, that he paid to Mrs. Reddy something like \$12,000, or twelve thousand five hundred dollars, and she accepted it as the executrix or as the representative [297] of the estate of Patrick Reddy. I don't know whether she was the executrix or administratrix with the will annexed.

Mr. DAVIDSON.—Complainants at this time move to strike out that part of the testimony of the witness relating to the conversation held between himself and Mrs. Reddy as hearsay and not binding upon the complainants, or either of them, in this

(Deposition of J. C. Campbell.)

case, and as incompetent, irrelevant and immaterial and not tending to prove any of the issues in this case.

The WITNESS.—As far as the contract goes, I believe that is all that I now remember. The complaint alleges that I was in the employ and acting as attorney of Mollie Conklin at the time that this contract was made. That is not a fact. In all the negotiations between Mr. Benson, Mrs. Reddy and Mrs. Conklin and Edward Reddy, Mollie Conklin was represented by her son, N. E. Conklin, who is an attorney. The estate of Mr. Conklin was in the office at that time in process of settlement, but during the process of settlement of that estate, Mr. Reddy had a very serious disagreement with Mr. Norman Conklin, the attorney, who is the son of Mollie Conklin and who represented her in this thing, and he absolutely refused to have anything to do with any business of theirs, and at that time so notified the office and so notified me. It grew out of certain rents which had been collected for this pasturage land by Mr. N. E. Conklin, as I understood it, and for which he hadn't accounted to Mr. Reddy for his proportionate share. Mr. Reddy found it out through a man by the name of—well, a man who had the land rented—his name escapes me now; and they had quite a spirited controversy about it. But in none of the proceedings—

Mr. DAVIDSON.—(Interrupting.) Complainant Mollie Conklin moves to strike out all that part of the testimony of the witness [298] referring

(Deposition of J. C. Campbell.)

to any conversations or disagreements between N. E. Conklin and Patrick Reddy in his lifetime, as irrelevant, immaterial and incompetent, and not tending to prove any of the issues in this case and not binding upon the complainant Mollie Conklin.

The WITNESS.—I believe that is all. (To Mr. Benson.) Do you want to ask me any questions, Mr. Benson?

Mr. BENSON.—Q. What month and what year did these transactions to which you have testified occur?

A. It was the year 1900, is my recollection—when did Patrick Reddy die?

Mr. CONKLIN.—April 26, 1900.

The WITNESS.—It was in 1900, then, just a short time after Mr. Reddy's death; by that, I mean, maybe two months, was the first of all these three conversations out of which the final agreement grew.

Mr. BENSON.—Q. Wasn't it fully explained at the meeting about which you have testified between the Conklins and Mrs. Reddy, and between your office, that before these lands could be made available, that they would have to be deeded to the United States?

A. That is my recollection, that they would have to be deeded; and the money was to be paid through the Anglo-Californian Bank when they were accepted or approved, or something of that kind.

Q. Was it by the Commissioner of the General Land Office?

(Deposition of J. C. Campbell.)

Mr. DAVIDSON.—We object to that question as leading.

Mr. BENSON.—Q. Or approved by the authorities?

Mr. DAVIDSON.—Objected to on the same ground. [298½]

The WITNESS.—I wouldn't state that it was said approved by whom; but when the deeds were accepted and approved. I remember that because that was the first time that I ever understood what they called "scrip." I always thought that "scrip" was a kind of certificate issued by the Government of the United States which said: "This entitles the bearer to get a certain number of acres," and he could take that to the land office; and I never understood the minutia of it and I don't know that I do now, but I know that there was talk about the lands, and in talking about the \$4.00 or \$3.80 there was some conversation to the effect that there had to be an abstract of title obtained from the counties in which the lands were situate, and I know Benson said that that would cost considerable money; and he said—he explained that had to go with the deeds.

Q. Wasn't the form of deed discussed in some way, that is, that there was an interest of the devisees and also the interest of the estate?

Mr. DAVIDSON.—That is objected to as leading and suggestive.

A. I have no recollection about that. The formal matters were not taken up in my presence. It was just a general conversation, and general agree-

(Deposition of J. C. Campbell.)  
ment had there in the office.

Q. Did you ever see and pass upon one of the deeds or transfers to the United States, as to whether, in your opinion, it gave all the title to the United States possible?

A. I don't remember ever having seen any of the deeds, for this reason: The man who had charge of our probate department then was Mr. Hugh H. Brown, and immediately after this talk there was an application made (a copy of which I shall produce here) to the Probate Court by our office, Mr. Brown doing it, on behalf [299] of the Reddy estate, by Mrs. Reddy asking the authority of the Probate Court to sell and exchange these lands for other lands. So, I have no recollection of ever having seen a deed.

Cross-examination.

(By Mr. DAVIDSON.)

Q. Now, Mr. Campbell, I understood you to say on your direct examination that the first conference you had in regard to this matter after the death of Mr. Reddy, was between yourself, Mrs. Reddy and Mr. Benson? A. That is my recollection.

Q. Now, about when did that conference take place?

A. Well, that is something that I couldn't be definite about; it was after, some little time after the death of Mr. Reddy; I suppose that I could find out pretty near from the records in the Reddy estate. It was at or about the time that Mrs. Reddy made a contract with some tombstone people here to erect a

(Deposition of J. C. Campbell.)

tombstone for Mr. Reddy at the cost, I think, of \$1,200.00.

Q. Now, how long after the conference between you and Mrs. Reddy and Mr. Benson was it that you first had a conference with Mollie Conklin, the complainant herein?

A. My recollection is that was but a few days, but still, it might have been a week or ten days, or such a matter. I wouldn't be bound by dates. That was in 1900, and that is a long time ago. I have done a whole lot of things since then.

Q. Who was present at that conference, the first conference, with Mollie Conklin, besides yourself, Mr. Benson and Mrs. Reddy and Mollie Conklin?

A. Mr. N. E. Conklin was present at every conference at which his mother was. Whether Mrs. Coleman was at that conference [300] or whether she was at the conference at which Mr. Ned Reddy was, I am not able to tell you.

Q. Then, I understand you to say Mr. Ned Reddy was not present at the first conference—I mean the first one at which Mrs. Mollie Conklin was present?

A. Well, now, I am somewhat hazy in regard to that, but I think not.

Q. That is your present recollection?

A. That is my present recollection now.

Q. Are you acquainted with Mrs. Olcese, the daughter of Mrs. Mollie Conklin?

A. Yes, I know her.

Q. Was she present at the first conference, the

(Deposition of J. C. Campbell.)

conference between Mr. Benson and Mrs. Mollie Conklin?

A. It is my recollection that Mrs. Olcese was not present at any conference I was ever at.

Q. She may have been and you have forgotten it, may she not?

A. I don't believe so. I don't think Mrs. Olcese was ever there.

Q. Then, your recollection is that Mr. Benson, Mrs. Reddy, Mrs. Conklin and yourself were all the persons present at the first conference, and Mr. N. E. Conklin?

A. Yes. You say Mrs. Reddy, Mrs. Mollie Conklin, Mr. Benson, N. E. Conklin and myself?

Q. Yes, sir.

A. That is my recollection; it would be the second conference between Mrs. Reddy and Benson, but the first conference at which Mrs. Mollie Conklin was present.

Q. Now, how long did that conference last, Mr. Campbell? A. I am not able to state. [301]

Q. There was no deal made at that time?

A. No.

Q. How long after that was it that you had the second conference in your office between Mr. Benson and Mrs. Reddy and Mrs. Conklin?

A. I think it was quite a few days; maybe a couple of weeks; maybe more.

Q. Now, who were present at that second conference when Mrs. Conklin was present?

A. Well, my recollection is—and I think it is

(Deposition of J. C. Campbell.)

pretty good, because I have a kind of photograph now in my eye of it—there was Mrs. Conklin and Mrs. Reddy and Mrs. Coleman and Mr. Benson and Ned Reddy, Mr. N. E. Conklin and myself, and a part of the time, Milton Bernard, a young man, a clerk in our office—whether he was there all the time I don't know; but I remember a certain circumstance which happened that impresses it upon my mind that he was there. Mr. Ned Reddy was sitting over like that (showing) in the corner, and he went to lean back, and something got the matter with his chair, and I remember distinctly he fell over in a way, and I remember distinctly Milton helping him up in his chair, and placing it in position. He wasn't well then.

Q. Now, are you positive that Mrs. Coleman was present at the time of the conference you have just related?

A. It seems so to me; I wouldn't swear positively that she was present at that meeting, or which one she was present at, or whether she was there at both meetings, but she was present at one meeting; I can't say whether it was the meeting when Ned Reddy was there, or whether it was just the one that Ned Reddy wasn't there—

Q. Now, Mr. Campbell, was Mrs. Olcese present at this conference [302] you have just testified in reference to?

A. I have no recollection; I would say no.

Q. You have no recollection of seeing her?

A. I would say Mrs. Olcese was not present at any

(Deposition of J. C. Campbell.)

conference that was held in my office in relation to this matter.

Q. Now, about when as near as you can remember, was it that that second conference was held in which Mrs. Conklin was present?

A. Well, that was—well, to be positive, it was within a month between the first, I would think, because at the first conference Mr. N. E. Conklin thought the price was not sufficient, and he was given time to find out if he couldn't get a bigger price for the property; it might have been but two weeks; but as to the time, Mr. Davidson, I can't tell you.

Q. You have no recollection as to what month it would be?

A. No, I wouldn't know what month it was.

Q. Are you positive, Mr. Campbell, that Mr. Conklin and his mother, Mollie Conklin, had two conferences in your office with Mr. Benson and Mrs. Reddy after the death of Mr. Patrick Reddy, and up to the time the contract was made?

A. Quite positive, quite positive.

Q. You are quite positive?      A. Yes, sir.

Q. Would you say your recollection is good as to the matter?

A. Yes, because at the first talk or conference, Mr. N. E. Conklin was not willing to accept the figures of Mr. Benson and was going around to see if he couldn't get a better price.

Q. Now, you say at this conference, the last conference before the deal was consummated, as you

(Deposition of J. C. Campbell.)

say, that the price agreed upon, as your recollection is, was \$4 an acre for the land? [303]

A. That would be my recollection, if I hadn't known of the other people testifying.

Q. Your independent recollection is \$4.00 an acre?

A. I know \$4.00 was the price but whether Benson was to be allowed five per cent of that, now, is something that my mind is hazy about.

Q. Now, Mr. Campbell, was that agreement reduced to writing? A. Not then.

Q. Was it ever reduced to writing?

A. Not to my knowledge.

Q. What, if any steps, were to be taken toward perfecting the deal for the sale of the Monache lands?

A. I understood that Mr. Benson, Mr. N. E. Conklin, and Holland Smith, were to prepare the papers that were necessary to carry out the agreement.

Q. Who was to pay the expenses of the preparation of the necessary papers to carry out the deal?

A. I don't recollect of anything being said about that at all.

Q. Now, you are positive that Mr. Holland Smith was called into your office and participated in part in this second or last conference?

A. I am satisfied of that.

Q. You are satisfied of that? A. Yes, sir.

Q. Was anyone else besides Mr. Conklin, Mr. Benson and Mr. Holland Smith to participate, if you know, or have anything to do with drawing the papers necessary to carry out the contract which you say was made?

(Deposition of J. C. Campbell.)

A. I won't say as to that; I will say that I am only just [304] giving you my understanding now. I don't remember that anything was said positively in regard to that.

Q. Mr. Campbell, you testified, did you not, gave a written deposition in the case of Mollie Conklin, plaintiff, vs. John A. Benson, Thomas B. Walker, Chester L. Hovey and others, in the Superior Court in and for the County of Modoc, State of California?

A. Yes, sir.

Q. I will ask you whether or not in that deposition in that case, in your examination in chief, you were asked this question: "State whether or not you ever made any representation to Mr. Conklin or his mother, the plaintiff, that the papers which had been prepared to be signed by her were of any character or kind?" If you desire, you may examine the record and see whether or not such question was asked you. I call your attention to that question there (indicating). A. Yes, I testified to that.

Q. That question was asked you?

A. Yes, that is right.

Q. Now, I will ask you whether or not in reply to that question you did not state, "I never did; I didn't know what the papers were. I heard Mr. Benson explain to them the method of getting the land into the Government and getting it out, but what papers they were to sign or what papers they were to get up, was left to Holland Smith, Milton Bernard and Benson; the character of the papers, the routine of it, I didn't know." You may state whether or not you

(Deposition of J. C. Campbell.)

made that answer in reply to the question just called to your attention. A. I guess I did.

Q. Was that statement true?

A. I think it was true, as far as it goes, yes, sir.

[305]

Q. Will you now say that the papers were to be prepared by Mr. Milton Bernard, Mr. Benson and Holland Smith?

A. I said that was my understanding of it, that they were to do it. Probably Milton was to help; I don't remember about that now.

Q. I will ask you whether or not your understanding of the matter has changed since the time you testified in the matter just called to your attention, and this time?

A. No, my understanding has not changed, but I now remember that Mr. Conklin went out with Benson and Holland Smith. For the time being I had forgotten Milton. The character of the papers I didn't know. I just was testifying from inference.

Q. There was nothing said in regard to who was to draw up the papers is the way I understand it?

A. There was nothing said about a written contract; there was nothing said, as I remember it now, as to what the papers were to be, or who was to prepare them. Mr. Holland Smith, Mr. Conklin and Mr. Benson and probably Milton went out together and I drew the inference that they were going to straighten the matter up.

Q. So that you say that there was nothing said at that time as to what papers should be prepared to

(Deposition of J. C. Campbell.)

carry out the deal?     A. No details.

Q. Was there anything said at that time in regard to any deeds to be made to the land?

A. That they were—that they agreed to make a deed—no, not to my recollection.

Q. Nothing was said about that?

A. My recollection is that in the explanation as to how the land was to be disposed of, that Mr. Benson explained what was necessary to be done, but that they said, “Now, we will go and [306] make a deed”; “now we will go and make a contract,” “now we will go and make a power of attorney,” I have no recollection of anything like that being said.

Q. Have you any recollection of anything being said at that time with regard to any application being made out by Mollie Conklin and the representatives of the Reddy estate for the selection of lieu lands?

A. My recollection is that there was no specific paper mentioned in my presence.

Q. Nothing was said about any powers of attorney?

A. Mr. Benson simply explained what was necessary to be done, and the main thing that remains in my mind is the fact that they finally had come to a conclusion, and that they left—Holland Smith, and probably Milton—I had forgotten about Milton. I know Mr. Conklin and Mr. Benson and Holland Smith left together and I took it that they were to get up whatever papers there were to be prepared.

Q. Did Mr. Benson say at that time, in the presence of Mr. Conklin and Mr. Ned Reddy and Mrs. Emily Reddy that he would have to prepare the neces-

(Deposition of J. C. Campbell.)

sary papers? A. Perhaps he did.

Q. You may have forgotten about that?

A. I don't recollect what was said about any particular papers or anything of that kind. I didn't charge my memory particularly with that.

Q. Now, Mr. Campbell, what was to be done with these papers under the agreement, after they were prepared?

A. Now, as to that, I can't recollect, Mr. Davidson. All that I remember is that the money was to be paid through the Anglo-Californian Bank when the land was approved—it was [307] talked generally about the land and I didn't charge my memory whether he particularly said selections were approved, but my recollection is that, outside of simply the explanation of what would have to be done, that there was not any particular act agreed upon that they would do, in my presence.

Q. You were the attorney, were you not, your firm was the attorney for the Reddy estate?

A. Yes, sir.

Q. Now, was it agreed at that time that all of this property should be conveyed to the Government and selections or the right to make selections, turned over to Mr. Benson without any security or any payment therefor?

A. The Reddy estate proposition—the application was made to the Probate Court, and I don't understand—I will simply say, that I don't remember any such agreement, or what agreement was made in relation to that.

(Deposition of J. C. Campbell.)

Q. So, you don't remember whether, under the agreement, the lands were to be turned over to Mr. Benson previous to payment or not?

A. The money was to be paid through the Anglo-Californian Bank on the approval of the titles.

Q. On the approval of the titles?

A. That is my recollection of it; there was not—as I remember, there was not any particular thing said about security, or anything of that kind, because that was only—it was a general talk, and I know Mr. Brown went to the Probate Court to get the approval of what was done.

Q. I believe you stated that under the agreement, as you understood it, Mr. Benson was to procure the abstract of titles of this property. [308]

A. He stated that he would do it. Now, wait a moment. He stated that abstracts would have to be prepared and that that would cost a good deal of money—in that conference; whether he did get the abstracts—

Q. (Interrupting.) I was asking you, Mr. Campbell, whether or not Mr. Benson was to procure the abstracts of the property?

A. It seems so to me. I won't say that he agreed to do it; I wouldn't be bound by a statement of that kind, but I know he said, when they were negotiating about the price, the cost of putting this deal through, he stated something about the cost of having to get abstracts, or something of that kind.

Q. Now, it may have been agreed that after these titles were approved, that the papers were to be

(Deposition of J. C. Campbell.)

placed in escrow, may it not?

A. Yes, it may have been. I wouldn't say that it was not. I only have this recollection. That the money was to be paid when the titles were approved, through the Anglo-Californian Bank. Now, that is the only impression that it made on me.

Q. Now, as I remember you stated that some time after this second conference, there was a large bundle of papers came to your office, in connection with this Monache land deal?

A. They were brought by Mr. Holland Smith.

Q. They were brought there by Mr. Holland Smith? A. Yes, sir.

Q. You did not examine those papers? A. No.

Q. Now, how long after the papers were brought there was it before you saw Mr. Holland Smith, Mrs. Mollie Conklin and Mrs. Reddy signing papers, as you testified to?

A. I didn't say I saw them signing papers.

Q. Then I was mistaken. [309]

A. I saw Mr. Holland Smith, Mrs. Reddy and Mrs. Mollie Conklin out in one of the front offices, and there was a bundle of papers there. I didn't see either Mrs. Conklin or Mrs. Reddy sign any of the papers. The only person I ever saw sign any of them was Ned Reddy, the time I took Holland Smith out to the Almshouse.

Q. About how long to your knowledge were Mr. Holland Smith, Mrs. Mollie Conklin and Mrs. Emily Reddy in this outer office at the time you say you saw them with this bundle of papers?

(Deposition of J. C. Campbell.)

A. I don't know; my recollection is I just passed through.

Q. Was that before or after the time that you went with Mr. Smith to see Mr. Ned Reddy, at the time you spoke of, out at the Almshouse?

A. To the best of my recollection, it was—I wouldn't say whether before or after, but it was within a few days one way or the other.

Q. You saw Mr. Ned Reddy sign the papers at the Almshouse?      A. I saw him sign a lot of papers.

Q. Did you examine those papers?      A. No.

Q. Can you state now what those papers consisted of?

A. Not from examining them; only from the talk of Ned Reddy and Holland Smith, and simply from what Holland Smith told me.

Q. Now, Mr. Campbell, what would be your best judgment as to the number of papers that were signed by Mr. Ned Reddy at that time?

A. Well, it would be simply a guess.

Q. I am asking you for your best impression.

A. And I would have to take into consideration the amount of money that we paid Holland Smith. I would say any where between thirty and fifty. He was quite a while at it. I remember [310] I saw them lift him up in bed and he started in; and I went out and sat down on the porch and talked with Mrs. Reddy and smoked a cigar, probably, while they were doing it.

Q. Now, those are the only papers that you ever saw Mr. Reddy sign at one time?

(Deposition of J. C. Campbell.)

A. That is my recollection.

Q. Now, do you remember, Mr. Campbell, when Mr. Holland Smith died?

A. No, but it was a couple of years after this transaction, at least, I think.

Q. Do you remember when Mr. Ned Reddy died?

A. It seems to me that Mr. Ned Reddy died within a year after Mr. Pat, but I can't tell you the dates. I could tell by the records here in the office. We have the records, but from recollection, I can't tell. It seems to me that he died within a year after his brother.

Q. Now, you say that after the death of Holland Smith, his widow presented a bill for a hundred dollars in connection with the acknowledgments taken in this case?

A. She brought a little book into the office in which he had kept his charges, and she said, "Here is Hol's book"—we always called him Hol. "Here is a hundred dollars charge against you for things done in the—for acknowledgments taken in the Reddy estate—it was Reddy contract," and I gave her a hundred dollars, that is, the firm gave her a hundred dollars. Mind you, we keep our account with notaries just like we do—like all offices do; they charge everything to the lawyers. She had in that book items charged to Reddy contracts or deeds—Reddy contracts—something like that, by which we knew it was a charge against the Reddy estate, and we paid it. Now, I think I can give you that from Mr. Jacobs' books, if [311] you want it.

(Deposition of J. C. Campbell.)

Q. I believe you may get the date for us.

A. I will see if I can't get it.

Q. Now, about how long after that trip you made to the Almshouse with Mr. Smith to take Ned Reddy's acknowledgment, was it that you received this \$5,000 payment from Mr. Benson?      A. I can't tell you.

Q. Can you ascertain that date, Mr. Campbell?

A. Well, I don't know; maybe I can. (Sends for account.)

Q. I believe you stated that the \$500 payment was made shortly after that?

A. That is my recollection.

Q. Now, when was it that you received—or had the conversation with Mr. N. E. Conklin, in which he informed you that he had a man who would pay \$6 an acre for the land?

A. It was some time after the \$250 had been given to his mother, and it runs in my head that was just—you know how hazy those things must be—but it was six months or such a matter, or maybe more.

Q. Six months or more after?

A. Yes. Now, I think, Mr. Davidson, if you will look you will find a letter from me, addressed either to Mrs. Mollie Conklin or Mr. N. E. Conklin, about this subject, and about if Benson didn't come through that they would have a right to void the contract or something of that kind.

Mr. DAVIDSON.—I think I have a certified copy of some depositions and I think there is a copy of that letter shown.

The WITNESS.—See if there is not a copy of that

(Deposition of J. C. Campbell.)

letter in there.

Q. Mr. Campbell I will call your attention to a copy of the testimony of Mrs. N. E. Conklin in this case, referring to [312] Complainant's Exhibit "P," and you may examine that and state whether or not that is the letter that you referred to just a moment ago. (Handing transcript to Mr. Campbell.)

The WITNESS.—I will state now that Edward A. Reddy died April 21, 1901.

A. Yes, I wrote that letter.

Q. That is about the time that you say that you had the conversation with Mr. N. E. Conklin in regard to the man whom you say he stated would pay \$6.00 an acre for the land?

A. I am not positive about that; I presume so, but it seems to me that this letter was one which was written afterwards, and my recollection is that (reading), "but I would suggest that after you have been so informed, you do not annoy your aunt Em. by a letter of the character that yours of the 15th is." This letter I wrote for Mrs. Reddy in answer, as I remember, to some letter which they had written to Mrs. Reddy. Now, I don't remember what that letter was.

Q. And you think that the conference then that you refer to in regard to this disagreement between Mrs. and Mr. Conklin and Mr. Benson was previous to the date of this letter?

A. Yes, sir; that was probably a continuation of it, but I don't want to be bound by this statement.

Q. Now, are you positive that that conversation

(Deposition of J. C. Campbell.)

took place in your office between yourself and Mr. N. E. Conklin?

A. Oh, yes; the conversation I spoke about I am satisfied did.

Q. Is it not a fact, Mr. Campbell, that this matter was all carried on between yourself and Mr. Conklin by letter and telegraph, Mr. Conklin being at that time in Bakersfield, Cal.?

A. There was correspondence, but my recollection is that the first time I ever heard of their being able to get \$6 an acre for this land was by word of mouth, from Mr. Conklin, and my recollection is that that time he went back to Bakersfield; it [313] may have been he was just here at the time, but I am quite positive he told me about being able to get \$6 and he may have written to me to the same effect. I don't know.

Q. Now, Mr. Campbell, I will call your attention to a letter in this case, marked Complainant's Exhibit "O," as contained in the deposition of Mr. N. E. Conklin in this case, and ask you to examine that letter and state whether or not you wrote that letter.

A. (After examining.) Yes, sir.

Q. Now, the date of that letter is January 29, 1902, is it not, Mr. Campbell? A. Yes, sir.

Q. You may state whether or not the conversation took place about the time you received that letter, the conversation between yourself and Mr. Conklin.

A. My recollection would be that we had the conversation before.

Q. Before this letter?

(Deposition of J. C. Campbell.)

A. Before this letter, and that this correspondence—my recollection is that he was going down to see about the party and that would be my recollection that this letter, this correspondence, followed our previous talk about being able to get \$6 and it was that Benson was not paying for the land, and was not getting the thing through.

Q. Now, did you have any correspondence with Mr. N. E. Conklin between the time that you have stated that he informed you that he had a man who would pay \$6 an acre for the land, and the time that you had the conversation with him early in 1904?

A. My recollection is yes, but you put some words into my mouth there; if I stated that Mr. Conklin said he had a man that would give \$6 an acre, I didn't mean to convey the idea that [314] he said he had a man who had made an offer of \$6 an acre, but a man to whom he thought he could sell it for \$6 an acre.

Q. Well, I don't know whether you answered the question as to whether there was any conversation between you and Mr. Conklin between the conversation you have just referred to and the one in the early part of 1904?

A. I had this conversation about the man who would give—whom he thought would give \$6 an acre—I don't want to be bound by the exact language—but the impression that he conveyed to me—I can't give you the exact chronology of those conversations. I have a conversation about \$6 an acre; I had a conversation with Mr. Conklin in which he said that he had either gone to Washington himself or someone

(Deposition of J. C. Campbell.)

had gone for him and revoked or looked into revoking the powers of attorney at Washington; and those two conversations were before the conversation which I had sometime in the early part of 1904, because I have never had any conversation with Mr. Conklin in any office except a legal conversation since the conversation in 1904.

Q. So that you are positive that he informed you that he had taken steps to revoke the powers of attorney previous to the time you saw him in 1904.

A. That seems to me to be so. I don't remember ever having any conversation with him of a personal character since then.

Q. Now, was the A. R. Conklin estate matter in your office at the time, unsettled—at the time of the death of Mr. Patrick Reddy?

A. I am inclined to think so.

Q. When you state that there was a serious disagreement between Mr. N. E. Conklin and Mr. Patrick Reddy, how long was that disagreement prior to the time of Mr. Patrick Reddy's death? [315]

A. Well, I would say somewhere along about a year.

Q. Sometime about a year?

A. Yes; I think so; I wouldn't want to be bound by any dates. I remember that they did have—it might have been longer. I think I could fix it—it was sometime—it was probably a year or so after the final decision, as I remember it—no, it might have been after Mr. Conklin's father's death—I don't remember the dates—the final decision in the Conk-

(Deposition of J. C. Campbell.)

lin-Broder case.

Q. You were one of the attorneys for Mr. Conklin in the Conklin-Broder case, were you?

A. No, I was not. I will explain that to you this way; I took some part in the trial of it. I came down and joined the firm, or we made the firm of Reddy, Campbell and Metson in October, 1889. At that time the case was pending; it was Mr. Reddy's case. I went up with Mr. Reddy to Inyo County—for him—and assisted at the trial of the case. That case went to the Supreme Court and was reversed, and then it was tried a second time in Mono County, at which time I took no part, and went to the Supreme Court and was affirmed. I had no lot or part in it. If my name appeared—I don't know that my name appeared in the record—it may have—but I had nothing whatever to do with it, except to assist Mr. Reddy in the trial of one of these old cases.

Q. Now, Mr. Campbell, as I remember your direct examination, you stated that you paid Mrs. Conklin \$2,750 for Mr. Benson.

A. Well, the check was made payable either to myself or the firm, and we divided it between the two.

Q. Those are the only payments that were ever made through your firm to Mrs. Conklin for Mr. Benson? A. Yes.

Q. That is for Mrs. Conklin? [316]

A. Yes, that is the only money that ever was paid to Mrs. Conklin through us for Benson, or for anybody else, that I know of, but there was some ten or twelve thousand dollars paid to Mrs. Reddy on

(Deposition of J. C. Campbell.)

this claim after that time.

Q. Could you tell us, Mr. Campbell, what was the full amount you received from Mr. Benson on this Monache deal for Mrs. Conklin and Mrs. Reddy?

A. I couldn't do it now, but I think I can tell you, because it must be in one of Mrs. Reddy's accounts to the Probate Court. I didn't say—I don't mean to myself, individually. The checks would come to Mrs. Reddy, I think most of the checks came to Mrs. Reddy; probably some came to me and some came to the firm—I suppose whoever telephoned about it. I don't remember that it came payable to me, but I know Mrs. Reddy accounted for some ten or twelve thousand dollars, or something like that. I think the amount of money paid by Benson that I have any knowledge of, I would say, in round numbers, was \$15,000.

Q. Of that amount Mrs. Conklin received only \$2,750?

A. Yes, sir; she refused to receive any more; that was the time when I was notified by Mr. Conklin when this money matter came up.

Q. When were you notified that Mr. Conklin would not receive any more money from Mr. Benson?

A. I don't remember.

Q. Who notified you?

A. I think it was Mr. Conklin, at the time he told me about this Washington business; that is my recollection.

Q. That is your recollection—

The WITNESS.—Now, wait a minute. Maybe I

(Deposition of J. C. Campbell.)

may be mistaken about how the notification came to me. It may be that [317] they notified Benson and Benson notified me, but my present recollection is that it was Mr. Conklin that told me.

Mr. DAVIDSON.—That will be all.

The WITNESS.—There is one thing that I forgot to state, that I want to state now. It was in some of the testimony which I read, which was taken, I think, in Idaho, that certain papers were sent up to the house of Mrs. Reddy, I believe, and representations were made that they came from me or from our office. If such was the fact, it was without any knowledge or direction from me, or any of the office that I can find out. I didn't know anything about any papers ever being sent up to Mrs. Reddy or Mrs. Conklin or anybody else to be signed, except those when I went with Mr. Holland Smith out to get Ned Reddy's acknowledgment.

Q. If any papers were sent to Mrs. Mollie Conklin and Mrs. Emily Reddy in connection with the deal for the Monache lands, they may have been sent by Mr. Bernard, may they not?

A. They may have been sent by Mr. Bernard, but I never sent them.

Q. Mr. Bernard was at that time employed in your office?

A. Oh, yes; he has been ever since he was a little bit of a boy, and he is here yet.

Mr. CAMPBELL.—I want to put in as a part of the deposition the copies, of course, as the originals were all burnt in the Clerk's office, the copies of the

(Deposition of J. C. Campbell.)

petition to the Court for Mrs. Reddy in relation to this matter.

The same is marked by the Notary, Defendants' Exhibit "B," and is attached to this deposition.

At this time Mr. Campbell produces and reads in evidence the following: [318]

"August 25, 1902.

Paid Mrs. Mary Smith \$100 for Notary fees as per agreement in re surrender and exchange Monache lands, Voucher No. 37—Vouchers filed in court and burned."

(The further taking of the depositions in this case was by consent adjourned until April 29, 1910, at 11 o'clock A. M. at the same place.) [319]

The witness J. C. CAMPBELL testified on redirect examination as follows:

The WITNESS.—Since we have been taking this testimony I have examined the record in the case of Mollie Conklin vs. Benson et al., in Modoc County; I also have been shown by counsel certain letters which passed between Mr. Conklin and myself and Mr. Benson and myself, which clear up in my mind and bring back to me particularly the transaction.

I never did represent Mollie Conklin in any of these contracts. I never did have any conference or agreement with Mr. Benson in relation to the sale of the Monache lands except what was had in the presence of Mrs. Reddy, the first time, and Mrs. Conklin and her son, as I have heretofore testified to. The contract which I understood they agreed upon in my office was, as I understand it, fully consummated at

(Deposition of J. C. Campbell.)

the last meeting there, which was after the explanation by Benson that the lands were within the Government reservation, and it was the next thing to an impossibility to sell them by reason of that, for the reason of the fact that there was no particular market value for lands within these reservations. The Government assumed control of them in various ways, the details of which I do not now remember, but the ultimate agreement between the parties was that they would deed the lands to the Government of the United States; that there were to be powers of attorney executed to select the lands in lieu of the Monache lands, but there never was any agreement in my presence that the title was to pass out of either the Reddy estate or Mrs. Conklin until those lands were paid for. I never knew until during the taking of this deposition that there had been a power of attorney [320] executed by Mrs. Reddy or Ed. Reddy giving to anyone the power to convey those lands. My understanding of the agreement was that when the lands came—when the titles were approved, they would be approved in the name of the parties who made the selections, that is, the Reddy estate, or Mrs. Reddy and Ed. Reddy and Mrs. Conklin. When those papers were approved, then they were to make a conveyance of the properties and get their money at the Anglo-Californian Bank.

There was some talk with Benson that he didn't have the money; that he would probably have to sell, or something of that kind, but the title was never to go out of these people until they were paid for. I notice in my testimony here that there was something

(Deposition of J. C. Campbell.)

said about a power of attorney to sell; that must be a mistake; if I stated that, I was mistaken about it. I never at that time had seen, or if I had seen I had forgotten the correspondence which passed between Mr. Conklin and myself. I am confident about the powers of attorney, because I know if I had known anything about a power of attorney, I never would have permitted Mrs. Reddy, as executrix, or Ned Reddy as executor to execute any power of attorney which was absolutely, in my opinion, without any authority, because an executor or executrix have no power to delegate their trust to any person.

Mr. Cobban's name, nor any person's else name was ever mentioned, that he should receive a power of attorney to convey that land to anybody.

I had a general understanding, of course, that Benson was going to sell the land, but nothing about the title going out of these people until the money was paid to them through the Anglo-Californian Bank. That was the agreement. I never did [321] send any paper of any kind or character, nor did I know of any paper of any kind or character being sent to either Mrs. Reddy's house or the Savoy Hotel. If that was done, it was done without my knowledge. All papers that I knew anything about, after they were prepared—and I didn't read them—were the papers that were taken—I had my carriage—when I took Holland Smith out to Mr. Ned Reddy and he received them. They were in a big bundle.

All the money that was paid to me by Mr. Benson I understood was in advance on the contract. The

(Deposition of J. C. Campbell.)

\$5,500—when Mrs. Reddy came down and wanted some money and he sent me over the check. How the \$500.00 came into my possession, I am not prepared to say, but I have here a list which was furnished to the Reddy estate, which is incorrect in relation to one item. I assume the balance of it is correct; and I now state that the last sum of money—and I am stating it from this statement—that was paid, was paid on November 4, 1901, and it was \$500.

There is another item in this letter which is incorrect, because it was a matter which was involved in some Los Angeles matters not connected with the Reddy estate at all, which is June 4, 1903, of a thousand dollars paid to me, but it was not paid for the Reddy estate. Mr. Benson knows that and I know it.

The way this money was paid: Mrs. Reddy had no particular money, and she would come down to the office and want to know if I couldn't get some money out of Benson, and I would generally, and almost every time, or a great many times through the phone call Mr. Benson, and ask him if he couldn't give Mrs. Reddy some money, and my recollection is that the universal statement I got from him was that the titles had not as yet [322] been approved, but that he would give Mrs. Reddy some money, and he did send over some money. I don't understand how these items come to be in the form in which they are, because I have no recollection of that. The first item that is here in the account rendered to Mr. Oatman, who afterwards became a member of the firm,

(Deposition of J. C. Campbell.)

but who was at all time a clerk in the office and has charge of the probate matters, is as follows:

“Moneys expended by John A. Benson in the matter of certain lands situated in Tulare and Inyo Counties, California, known as the ‘Monache Meadows’—

To Washington attorneys account of	
listing lands . . . . .	\$250.
Taxes . . . . .	305.45
Holland Smith, Notary . . . . .	100.00”

Now, I paid that to Holland Smith. I may have gotten the money from Benson for that purpose.

Then, it appears that there was something about a lease, which I have a vague and indirect idea about, but I can’t remember what that is, whereby he credits the Reddy estate for \$500. There is something about a lease of the property or something of the kind, which leaves a balance of \$155.44. Now, the amounts in checks sent to me for Mrs. Reddy—and I am not positive now whether these amounts, any of them, involve the second \$500.00, or not. I don’t believe they involve the first \$5,000.00, because my recollection is that that came in one check; nor am I able to determine now why the amounts, as I said before, are as they are.

The first amount appears to be September 25, 1900, \$608. Now, September 25, 1900, \$608. Why it is two checks, or why that is, I am not able to determine. [323] October 4th, 1900, is \$200.00; the 12th, \$18.20; the 19th, \$200.00. Then that is all the money that appears to have been paid in the year 1900. Then,

(Deposition of J. C. Campbell.)

January 14, 1901, \$500.00; March 9, 1901, \$1,000.00; March 16, 1901, \$1,432.00; March 29, \$1,000.00; June 18, \$1,000.00; June 29, \$1,000.00; July 5, '01, \$500.00; August 31st of the same year, \$250.00; September 4, \$500.00; September 27, \$1,500.00; November 4, \$500.00. Now, I have no independent recollection of that, but when we came to make up the account. (To Mr. Davidson.) Do you want to look at that? (Hands to Mr. Davidson.) This last item there when we came to make up the account, Mr. Oatman got that.

When these parties left the office, or shortly after that, I understood they were going out together, and that the deeds to the Government of the United States and the papers, that is, that the papers, the only papers that had been the subject of any conversation were to be prepared. Mr. Milton Bernard was there; Holland Smith was there; Mr. Benson was there and Mr. Conklin was there, and they all went out together.

I did say that, in my opinion, Mrs. Reddy nor Ned Reddy could sign nothing unless they got the order of the Probate Court. After that we went to the Probate Court and got [324] an order for Mrs. Reddy which has been introduced in evidence; it was to convey the lands to the Government of the United States and accept lands in lieu thereof, but I had never had any idea where the lands were going to be situated, the lieu lands that were going to be accepted in lieu of the Monache lands, nor anything of that kind. I did get that order and I did notify

(Deposition of J. C. Campbell.)

Benson. I did, however, learn this morning when I went to look at the probate proceedings with Mr. Oatman, that sometime since Mr. Cobban or Mr. Cobban's lawyer, had informed him of these powers of attorney, and that there was some litigation now pending against the Reddy estate in relation to the Monache lands, but Mr. Conklin never told me of a power of attorney to convey these selected lands. Mrs. Reddy never told me, and Mrs. Mollie Conklin never told me, and I never knew anything about that until you produced that one here; and Mr. Conklin, if I recollect correctly, when he spoke about the revocation of powers of attorney in Washington, didn't tell me that they were powers of attorney to convey, but I understood that they were the powers of attorney to select lieu lands and I was very much surprised at the production of that power of attorney here, so much so, that I have had a conference with Mr. Metson, and if he follows my advice, we will see what we can do towards getting those Reddy estate lands in some shape where the Reddy estate can get them.

I think that is all I can remember now.

Mr. DAVIDSON.—Q. Mr. Campbell, as I understood, you did not understand that any powers of attorney to convey the selected land were being discussed at the time of the consummation of the deal?

A. Absolutely not. I am positive there was no discussion of any powers of attorney to pass the title out of the hands of [325] the Reddy estate or Mrs. Conklin until they got their money.

(Deposition of J. C. Campbell.)

Q. You understood they were simply surrendering the base lands and that they were to retain the title to the selected lands until they were paid for?

A. That was the contract absolutely.

Q. Mr. Campbell when all these payments were made as testified by you on account of moneys due the Reddy estate did you understand that any of the Monache land selections had been sold?

A. On the contrary; I understood that Mr. Benson was advancing the money on the contract. The contract was that when the titles were approved the money was to be paid. You will see by the letter which was written me in December, I think, 1901, that it was there stated that none of the approvals had been made, and at the time that I had my correspondence with Mr. Conklin, wherein I said, "We can take this matter away from Benson," it was with the thorough understanding that the title remained in them and that Benson having failed to come through with the money, that all they had to do was to sell to some person else.

Q. And refuse to deliver title to any one to whom he might sell selected lands, if he sold to someone else?

A. That was my understanding. Furthermore, Mr. Davidson, there was not anything, I am confident, said about any escrow. The understanding was that when the lands were approved, they were to take the conveyances to the Anglo-Californian Bank and get their money. There, I suppose, is where the question of escrow came. Neither was there anything said about Mr. Metson or myself preparing the deeds;

(Deposition of J. C. Campbell.)

whoever testified to that, in my opinion, is mistaken about that. The deeds were to be prepared to the Government of the United States. [326]

Q. Now, Mr. Campbell, if the facts in this case show that all of the lands involved in this case, the selected lands, have been transferred to Mr. R. M. Cobban, by delivering to him the applications of Mollie Conklin and the Reddys to select abstracts of the Government, Abstracts of Title showing the conveyance of Monache lands to the United States and pretended powers of attorney to sell the selected lands *prior previous* to the 23d of July, 1901, did you have any knowledge of such transactions?

A. No, sir.

Q. If it is shown that all the lands involved in this case were attempted to be sold, the selected lands, by Mr. Benson, to the defendant R. M. Cobban on or previous to the 23d day of July, 1901, were you ever informed of such sale or attempted sale?

A. No, I never was informed of such sale or attempted sale. I did know that Cobban had—through the Probate Court, through our probate people, I think since the fire, since 1906—I don't remember—maybe I did know that Cobban or somebody else was advancing some claims to these contracts, but I never did know that the lands had been conveyed by a power of attorney, or that any power of attorney to convey had been executed by anybody until you showed me that power of attorney here.

Q. Now, at the time of the consummation of the deal for the surrender of the Monache lands, did Mr.

(Deposition of J. C. Campbell.)

Benson request the owners of the lands to furnish him at the time any powers of attorney to sell the selected lands?

A. No, sir, not that I remember of; but I am satisfied that it wasn't mentioned, because I am satisfied that I wouldn't have consented to that, because they couldn't give any powers of attorney—my people—  
[327]

Q. And you would not have consented for your clients the Reddys, to turn this land over to Benson absolutely until they were paid for the land?

A. No, and Benson didn't ask it.

Q. Now, you heard the testimony of Mr. Benson. Mr. Benson, as I remember it, testified that after the deeds to the Government surrendering the Monache lands were delivered, that he thereafter procured from your office the powers of attorney to make selections of land in lieu of the Monache lands, and powers of attorney to make sales of the lands selected from time to time as they were required in his business to dispose of the lands. Is that true?

A. Not to my knowledge. If he got any such powers of attorney or any such powers of attorney ever passed through my office, it was without my knowledge or without my consent, or without anybody's consent.

Mr. CAMPBELL.—(To Mr. Benson.) Do you want to ask any questions, Mr. Benson?

Mr. BENSON.—I think the questions I was going to ask have been covered by what you have stated. I don't want to make any statement.

Mr. CAMPBELL.—As I understand it, after Mr.

(Deposition of J. C. Campbell.)

Conklin came back from Washington, after some patents had been issued in the name of the Reddy estate, as I understood it that was the time Mr. Conklin appeared in Judge Coffey's court as a friend of the Court, not representing any of the parties, and asked Judge Coffey, after having served notice, as I remember, on our office—asked Judge Coffey to vacate this order which permitted Mrs. Reddy and Ned Reddy to convey lands to the United States, on the ground that they couldn't convey lands [328] outside of the State of California, or something of that kind, and we didn't make any objection to it after we found out exactly the condition. Judge Coffey said he had no jurisdiction out of the State, and we all knew that.

Mr. Conklin and myself having got off wrong about a misunderstanding of this thing—if he had ever told me there was a power of attorney in the matter, I would have understood it and we would never have had any great amount of controversy; but we didn't deny the right of the Judge to cancel this so-called Probate Order.

Mr. DAVIDSON.—I understand that Mr. Benson wants to ask a question.

Mr. BENSON.—(To Mr. Campbell.) Q. Did you or did you not, after the validity of these titles, both from the Reddy estate and from the Conklins, became in controversy, know of any proposition on my part, or any communication made to you, or Mr. Conklin wherein I offered, if the Reddy estate would make a direct deed as to the lands approved joining with the Conklins in such deed that I would pay them a sum sufficient to make up all the amounts that were due

(Deposition of J. C. Campbell.)

on the lands approved by the United States?

A. Well, in substance, I think that was talked over. I know Mr. Conklin and his mother and his sister—I don't know whether you were present or not—we had a conference about that; but in substance I know you have said that any time that the titles would be perfected that you would pay the amount of the money. It always was my understanding from you that the reason that the money had not been forthcoming was that Mr. Conklin in Washington had prevented the approval of the titles, or something of that kind. I know you and Mr. Metson have had frequent conferences about the getting of the title of the Reddy estate by sale, or otherwise. That is where I think now you [329] suggested—you correct me if I am wrong (to Mr. Conklin), is not that where Cobban came in and made some objection to the sale, and didn't we file a petition on the part of the Reddy estate to sell the lands, and is not that the first time Mr. Cobban appeared by some attorney—

Mr. CONKLIN.—Mr. Cushing.

Mr. CAMPBELL.—Yes, Mr. Cushing; that is the first time I ever knew of Mr. Cobban—when was that?

Mr. CONKLIN.—There was a stipulation entered into by Mr. Cobban and Mr. Oatman stating that these powers of attorney when received were in blank; if I knew the date of that stipulation—

Mr. CAMPBELL.—What I want to know is, was it since the fire? It must have been.

Mr. CONKLIN.—No, I think it was before the

(Deposition of J. C. Campbell.)

fire. I got a certified copy before the fire. I know the records were burned in the fire.

Mr. CAMPBELL.—That the powers of attorney were in blank?

Mr. CONKLIN.—Yes.

Mr. CAMPBELL.—That is something I knew nothing about.

Mr. CONKLIN.—Mr. Cobban's attorney stipulated to that effect.

Mr. BENSON.—Q. If such an offer was made, did not both parties owning these lands refuse to consider it as a part and only agree to treat it as a whole; that is to say, the full price must be paid for all the lands before any deeds or ratifications of transfers would be delivered for any portion of it, notwithstanding the money that had been paid or was to be paid.

Mr. CAMPBELL.—A. I know you didn't agree on some details, but I am not prepared to swear about that. I didn't know what the trouble between you and Mr. Conklin was, but I [330] thought the trouble between you and Mr. Metson was in relation to interest. Mr. Metson demanded interest on the payments that had not been made, and was not willing to allow any interest on payments that had been made the Reddy estate. I think that was it, but the details of that I don't remember much about. I do remember that after the fire, and I think it was before this matter, that Mrs. Conklin and her son and daughter were in my office, I think, with Mr. Sam Leake, and there was some talk about you carrying out the contract there, and then I think Mrs. Coleman and Mr. Metson had some conversation with you;

(Deposition of J. C. Campbell.)

but they didn't go through, and just what the details of it was I am not able to say. I know they didn't compromise or didn't settle.

Mr. DAVIDSON.—That is all.

Mr. BENSON.—I would like to ask one more question, but I wouldn't like to do it without consultation.

Mr. DAVIDSON.—Go ahead and consult.

Mr. CAMPBELL.—I will state this: That in the conference between yourself and Mr. Metson and any person else, talking about the difficulties between yourself and the Reddy estate, I have always said, and I say now, that you should get credit for the amount of money which you paid to the Conklins and the amount of money you paid to the Reddy estate.

Mr. BENSON.—The only statement I wish to make is this, that according to the contention of both parties I have yet received no perfect title to any of the selected lands, and without recapitulating, I wish to say that it is my understanding that the questions that I propounded to Mr. Campbell just now should be answered in the affirmative, and I would like to have it considered in making this statement that the [331] affirmative be true in relation thereto, to the best of my understanding in the matter.

Mr. DAVIDSON.—Q. (To Mr. Benson.) So far as you have testified to?

Mr. BENSON.—A. Yes, so far as I have testified to.

Mr. CAMPBELL.—I want to show by Mr. Metson that he never sent any papers up to Mrs. Reddy. The fact is that Mr. Metson left for Nome before Mr.

(Deposition of J. C. Campbell.)

Reddy's death, and he didn't get back here until November of that year, 1900, and he was only here a very short time, and then went from here to Washington and went there for the session.

Mr. DAVIDSON.—As far as that is concerned, we will admit that Mr. Metson being in Nome, and was absent during the period you state.

Mr. CAMPBELL.—Then you will admit he didn't send—

Mr. DAVIDSON.—Yes, we are willing to admit that Mr. W. H. Metson did not send any papers to Mrs. Reddy or Mrs. Conklin relating to the transfer or any transfer or relinquishment of the Monache lands, he being absent from the State of California during the time that such papers purport to have been executed.

Mr. CAMPBELL.—I can't get Bernard. I will rest on what I have got. I won't put him on the stand.

Mr. DAVIDSON.—All right; that will complete the taking here.

Mr. CAMPBELL.—I will say that if you will get the Court to take my testimony orally up at Idaho, I will come.

Mr. DAVIDSON.—I would prefer it.

Mr. CAMPBELL.—I will write to Mr. Frazer today about that and I will also say that I told Mr. Bolton that in the case at Modoc when this deposition of mine was taken, none of the letters were shown to me; and I told Mr. Bolton that if he [332] wanted me up there, and it became necessary, that I would go. I received no telegram. But had they

(Deposition of J. C. Campbell.)

shown me those letters and these things I would have testified to those matters just as I did here, and I did substantially, but there are one or two things here that have been cleared up in my mind, as far as that is concerned.

J. C. CAMPBELL.

Subscribed and sworn to before me this 3d day of June, 1910.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California. [333]

[**Deposition of James H. Lavenson, for Defendants.**]

The witness, JAMES H. LAVENSON, being duly sworn, testified as follows:

Direct Examination.

Mr. CAMPBELL.—Q. How old are you?

A. 35 years.

Q. What is your business?

A. Secretary for John A. Benson.

Q. How long have you been connected with John A. Benson in business?     A. For the past 19 years.

Q. Were you in the office of John A. Benson at the time of this so-called Monache deal?     A. I was.

Q. Did you know generally of it?

A. Yes, I knew generally of it.

Q. Do you know Mr. Norman E. Conklin?

A. I do.

Q. During the time that this matter was in the office of John A. Benson, did you see Mr. Conklin there?     A. I did.

Q. Will you kindly state how many times?

(Deposition of James H. Lavenson.)

A. To the best of my recollection I saw him there two different times.

Q. Do you know what they were doing?

A. I know that Mr. Conklin brought in quite a number of papers, some of them certificates of purchase, and some of them were papers involved in the proceedings connected with the Monache lands, and there was also a large map upon which all of these Monache lands were delineated by certain colors.

[334]

Q. Did you have any conversation with Mr. Conklin yourself?     A. Not that I remember,

Q. Did you know in his lifetime, Holland Smith, the notary public?     A. I did; yes, sir.

Q. Did you at any time go to Holland Smith's office for the purpose of getting any papers?

A. Yes.

Q. Did you obtain from the office of Holland Smith any papers?

A. I did; I obtained a large roll of papers.

Q. Did you examine them?     A. I did.

Q. Do you know what they were?

A. To the best of my recollection they were deeds to the United States, conveying these Monache lands, and while there may have been other papers, my recollection points only to the deeds.

Q. Do you remember the date of that—I mean in what year, or do you just remember generally?

A. I know it was in the year 1900, but as to the specific date, I couldn't state.

(Deposition of James H. Lavenson.)

Cross-examination.

(By Mr. DAVIDSON.)

Q. Do you remember about the dates when you saw Mr. Norman E. Conklin in the office of John A. Benson?

A. No, I couldn't state any more than it was in the year 1900.

Q. Was that before or after the time that you secured the deeds from Mr. Holland Smith that you have testified to? [335]

A. I couldn't place it.

Q. Mr. Lavenson, are you acquainted with the complainant, Mollie Conklin?

A. Not that I know of.

Q. Do you have any recollection of having seen her at any time? A. No specific recollection.

Q. Do you say now to the best of your recollection you have never seen Mollie Conklin?

A. Well, I wouldn't say to the best of my recollection I have not seen her, but I have no recollection of having seen her.

Q. Mr. Lavenson, would you say now that there were any other papers in the roll that you secured from Mr. Holland Smith, the notary, except the deeds for the Monache lands?

A. My specific recollection is of the deeds; but I believe there were also other papers.

Q. What other papers, if you know?

A. Well, my recollection points only to the deeds, so I couldn't state the nature of the other papers.

Q. Did you see Mollie Conklin sign any of the

(Deposition of James H. Lavenson.)

papers which you secured at the office of Holland Smith?

A. I have no recollection of having done so.

Mr. DAVIDSON.—That is all.

Mr. BENSON.—Q. Did you assist, or were you called in consultation in reference to the form of deed that was to be given to the United States, conveying these Monache lands?

A. I have no specific recollection; I know, as a general rule, I was consulted about those things, but I have no specific recollection in this case.

Q. Was it the general custom of the office in dealing with Forest Reserves lands to buy the title outright? [336]

Mr. DAVIDSON.—We object to that as irrelevant, immaterial and incompetent, and not the proper way of proving the custom; and for the further reason that the custom of the office of John A. Benson would not be binding upon the complainants in this case, or either of them, and would not tend to prove any of the material issues in this case.

A. It was never the custom to buy the lands outright.

Mr. BENSON.—That is all.

JAMES H. LAVENSON.

Subscribed and sworn to before me this 28th day of May, 1910.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

(At this time the further taking of the depositions of the witnesses was continued until Monday, May 2, at 10:30 A. M. at the same place.) [337]

**[Deposition of Clara E. Glover, for Defendants.]**

The witness, CLARA E. GLOVER, being first duly sworn, testified as follows:

Direct Examination.

Mr. CAMPBELL.—Q. Will you kindly state your name?      A. Clara E. Glover.

Q. You are over 21 years old, of course?

A. Yes, I am over 21.

Q. You know John A. Benson?      A. Yes, sir.

Q. How long have you been engaged with him in business?

A. Well, it is going on nearly thirty years.

Q. Did you know of this Monache business?

A. Yes, sir.

Q. In what capacity were you engaged in the Benson office at the time of the Monache negotiations?

A. Clerk.

Q. Do you know Mr. Norman E. Conklin?

A. Well, I have seen him; yes, I know him.

Q. During the time the negotiations about this land, the Monache land, did you see Mr. Norman E. Conklin in the office of John A. Benson?

A. Yes, sir.

Q. About how often?

A. Well, quite frequently for, I would say, ten days or two weeks.

Q. Do you know what they were doing?

A. Well, I couldn't say what Mr. Benson and he

(Deposition of Clara E. Glover.)

were doing, but I, myself, I worked with Mr. Conklin some.

Q. And what did you do?

A. We were checking maps; he had a large tracting, and I [338] had little six-inch plats that we were describing the land on.

Q. Describing the Monache land?

A. Yes, the Monache land.

Q. For what purpose?

A. Well, as I understood it, Mr. Benson was to buy it, or had bought it at the time.

Q. Had bought the Monache lands?

A. The Monache lands, yes, sir.

Q. Did you understand from Mr. Conklin any of the terms or conditions of the sale or purchase?

A. No, I did not.

Q. Do you know whether or not there were any deeds prepared in that office at that time?

A. Yes.

Q. What were the deeds?

A. Well, deeds to the United States; in fact, I don't know but what he and I worked on that because it was deeded in 40's, 80's and 240 acre tracts. That is one of the things I was working on.

Q. Were there any powers of attorney to select land in lieu of the Monache lands? A. Yes.

Q. Were there any other powers of attorney made out there at that time?

A. I couldn't say as to that positively.

Q. But what you were working at was the deeds to the United States and powers of attorney to select

(Deposition of Clara E. Glover.)

land in lieu of the Monache lands?      A. Yes, sir.

Q. Do you know what was done with those deeds and powers of attorney to select lands? [339]

A. Well, as I understood, they were to be sent back to the parties, but as far as knowing what was done with them—

Q. You don't know?

A. I don't know, no, sir.

Cross-examination.

(Mr. DAVIDSON.)

Q. Miss Glover, you say you saw Mr. N. E. Conklin for a period of about ten days or two weeks?

A. Yes, sir.

Q. During that period of time, how often was he in Mr. Benson's office?

A. Well, there was a time when I think he was there nearly every day.

Q. For about how many days?

A. Oh, I couldn't say; that was a long time ago.

Q. Are you positive that he was in the office of Mr. John A. Benson about that time oftener than twice?      A. During that time?

Q. Yes.      A. Oh, yes, indeed; yes, sir.

Q. Are you positive that Mr. Conklin worked with you in the preparation of any deeds to the Monache lands?

A. Well, on the land that was to be described in the deeds.

Q. Then, what you and Mr. Conklin were doing was simply checking up the description of the lands as shown in the maps?      A. Yes.

(Deposition of Clara E. Glover.)

Q. He had no part in the preparation of any deeds of the Monache lands, to your knowledge?

A. Not that I know of; but he knew that we were working on them.

Q. Did he assist in the preparation of any powers of attorney to select any lands in lieu of the Monache lands, to [340] your knowledge?

A. Not that I know of.

Q. Had you ever known Mr. Conklin previous to that time?      A. I never had, no.

Q. Are you acquainted with Mollie Conklin?

A. I am not.

Q. Did you ever see Mollie Conklin?

A. Well, I always understood that she came in one day with him, in the office; I couldn't say that it was Mrs. Conklin, but a lady dressed in mourning came in with him—a card was sent in—I know it was Mr. Conklin himself, and Mr. Benson was very busy at the time. She was sitting in the room with me, but didn't speak to me. She was dressed in heavy mourning.

Q. Miss Glover, was that before or after the time that you and Mr. Conklin were working, checking up these descriptions?

A. Well, I think it was about that time, but I couldn't say as to that. I would suppose it was that time.

Q. If the person you saw at that time was not Mollie Conklin did you ever, to your knowledge, see Mollie Conklin?      A. No.

Q. Did Mollie Conklin execute any instruments

(Deposition of Clara E. Glover.)

relating to the Monache lands or any lands selected in lieu of the Monache lands in your presence, or sign any papers?

A. Well, I don't think so; I don't know; I don't remember.

Q. Now, Miss Glover, about when was it that you saw this lady with Mr. Conklin whom you thought was Mollie Conklin, the lady dressed in mourning?

A. Well, I would say that it was at the time that the deeds and papers were being prepared. [341]

Q. Well, now can you fix for us about the time that these papers were being prepared, when you saw Mr. Conklin frequently?

A. Well, I couldn't say, only by hearing it talked over here, that it was in September, 1900.

Q. Then, to the best of your recollection, this took place in September, 1900?      A. I would say so.

Q. Now, Miss Glover, were you present in Mr. Benson's office when Mr. Conklin first came in with this map you have testified in reference to?

A. I have no recollection of the first time.

Q. Do you know when he brought the map into Mr. Benson's office?      A. I couldn't say when; no.

Q. Were you there when Mr. Conklin delivered the maps and papers relating to the Monache lands, do you know?

A. Well, I remember them so well. I remember seeing them in his hands and I remember looking them over with him. There was a big package of papers.

Q. Would you say that was the first time, the first

(Deposition of Clara E. Glover.)

time they were brought to the office, the time you say you remember so distinctly?

A. I couldn't say as to that.

Q. You couldn't say; but you are positive that Mr. Conklin was in the office frequently during the period of about ten days or two weeks?

A. Yes, sir.

Q. Was that from the time you first saw the map in Mr. Benson's office?     A. Yes. [342]

Q. Dating from the time the map was brought into the office by Mr. Conklin?     A. Yes, sir.

Q. Miss Glover, are you positive that the deeds were prepared at the time the maps were brought in there, the time that you and Mr. Conklin, as you say, were checking up the descriptions?

A. I couldn't be positive, but I think so.

Q. Now, then, if the deeds were not prepared at the time that you and Mr. Conklin were checking up the descriptions, then Mr. Conklin would not be present, according to your recollection, at the time the deeds were prepared?

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

Q. Was Mr. Conklin in the office more than during this one period, that is, at any regular intervals?

A. Oh, he was there frequently, Mr. Conklin was, but, of course, I remember that one time particularly; of course, he was there off and on.

Q. Was he there frequently after you had checked up these descriptions?

A. I couldn't say as to that.

Q. Would you say he was there at any time within

(Deposition of Clara E. Glover.)

a year after you had compared these descriptions?

A. I would think so, but I couldn't be positive of that.

Q. Was Mr. Conklin there during the preparation of the deeds at any time?

A. Well, I couldn't say as to that, because they were being prepared—they must have been—while he and I were checking over the lands.

Q. Well, you state that simply because—you presume the deeds were being prepared, because you were checking up the descriptions? [343]

A. Yes, sir.

Q. You have no independent recollection of the preparation of the deeds? A. No.

Q. Miss Glover, I hand you a paper marked Complainant's Exhibit "W" for identification, and ask you to examine that paper, and state whether or not you know whose signature that is to that paper.

A. Well, it seems to be Mr. Benson's signature.

Q. Did you prepare that receipt, if you remember?

A. No, I did not.

Q. Was that a receipt, if you know, prepared in the office of Mr. Benson, at the time that Mr. Conklin brought in the papers, maps and patents?

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

Mr. DAVIDSON.—We offer in evidence the paper marked Complainant's Exhibit "W" for identification.

Mr. CAMPBELL.—Mr. Campbell has no objection.

(Deposition of Clara E. Glover.)

Mr. BENSON.—No objection here.

(The paper is in words and figures as follows:)

**[Complainant's Exhibit "W."]**

(Letter-head John A. Benson, 507 Montgomery Street, San Francisco, Cal.)

“July 11th, 1900.

RECEIVED OF N. E. CONKLIN Swamp Land Patents aggregating 9280. acres, covering lands in what is known as the ‘Menacha Meadows,’ in Tps. 19, 20 and 21 S., Rs. 34 and 35 E., M. D. M., and also received map covering same tract. I receive these Patents for the purpose of examination and comparison to ascertain the tracts for which Patents are not on hand, and also to ascertain what portion, if any, of said lands are not listed and patented by the United States to the State of California.

(Signed) JOHN A. BENSON.” [344]

Mr. DAVIDSON.—Q. Miss Glover, at the time that you say you saw a lady in mourning in the office of John A. Benson with Mr. Norman E. Conklin, were any papers signed at that time by the lady?

A. I couldn't say; she was inside with Mr. Benson.

Q. You did not see her sign any papers at that time?

A. Not that I remember of now; she may have signed papers and I not remember it.

Q. Was this during the time that you were checking up the descriptions of the land with Mr. Conklin?

A. I would say it was about that time, but I couldn't be positive of that.

(Deposition of Clara E. Glover.)

Mr. DAVIDSON.—That is all.

Mr. CAMPBELL.—Q. Did you know Mrs. Reddy, Mrs. Emily Reddy?

A. Was that Patrick Reddy's wife?

Q. Yes. A. Yes, I knew Mrs. Reddy.

Q. Was this lady dressed in black, was that Mrs. Reddy? A. I don't think so.

Q. Mrs. Reddy was rather large and had very white hair.

A. Well, I had known her for quite a time, and I think if it had been she, she would have spoken to me.

CLARA E. GLOVER.

Subscribed and sworn to before me this 28th day of May, 1910.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California. [345]

Friday morning, April 29, 1910, 11 o'clock A. M.

[**Deposition of John A. Benson, for Defendants.**]

JOHN A. BENSON, being first duly sworn, testified as follows:

Direct Examination.

Mr. CAMPBELL.—Q. Kindly state your name.

A. John A. Benson.

Q. Where do you live? A. San Francisco.

Q. How long have you lived in San Francisco?

A. Twenty-five years or more.

Q. Did you know in his lifetime, Patrick Reddy?

A. I did.

(Deposition of John A. Benson.)

Q. What, if any, relations existed between you and Patrick up to the time of his death?

A. Attorney and client.

Q. How long had Patrick Reddy been your attorney prior to his death?

A. I should say fifteen years or more.

Q. Were you cognizant of the formation of the firm of Reddy, Campbell & Metson? A. I was.

Q. Will you kindly state whether Mr. Reddy was your attorney prior to the formation of that firm?

A. He was. I remember that very distinctly.

Q. Do you know Mrs. Mollie Conklin?

A. I do.

Q. Do you know her son, N. E. Conklin?

A. I do.

Q. Did you know in her lifetime, Emily M. Reddy?

A. I did. [346]

Q. Did you know Mr. Edward Reddy?

A. I did.

Q. Did you know a certain tract of land, a portion of which is the subject of this controversy, called the Monache Tract, situate in (to Mr. Davidson) it is in Inyo and Tulare counties, is it not, Mr. Davidson?

Mr. DAVIDSON.—Yes.

The WITNESS.—Yes.

Mr. CAMPBELL.—Q. Did you have any negotiations, contracts or agreements with Patrick Reddy in relation to that land prior to his death?

Mr. DAVIDSON.—We object to that as incompe-

(Deposition of John A. Benson.)

tent, irrelevant and immaterial and not tending to prove any of the issues in this case and that it is not binding upon the complainant, Mollie Conklin.

Mr. CAMPBELL.—The purpose of the testimony is to show the negotiations which led up to the agreement between Mrs. Reddy, Edward Reddy and Mrs. Mollie Conklin.

A. I had quite a number of conferences with Mr. Reddy relating to the subject.

Q. Do you remember the last conference you had prior to Mr. Reddy's death?

A. Only in a general way.

Q. Do you remember the last conference you had with him at his house on Pacific Avenue?

A. I do, yes.

Q. Was Mrs. Emily M. Reddy present at that conference?     A. Yes, sir.

Q. Now, will you kindly state what took place between you and Mr. Patrick Reddy at that time in relation to the Monache lands? [347]

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any of the issues in this case, and for the reason that any transactions between the witness and Patrick Reddy would not be binding upon the complainant, Mollie Conklin.

Mr. CAMPBELL.—It is to show what led up to the final conference between the heirs of Patrick Reddy and Mr. Benson.

Q. Kindly state.

A. He was anxious to dispose of the Monache lands

(Deposition of John A. Benson.)

and knew of the Forest Reserve Act, and wanted to make some arrangement to have the lands put in shape so that they could be transferred, and he stated the price that he wanted those lands to bring, and I told him I would try my best in view of our past relations, to get that price for him, but I couldn't at that time.

Q. What was that price?

A. \$4 an acre; but I could come very near it.

Q. Was there anything said between you and Mr. Patrick Reddy about that time about reducing any agreement between yourself and Mr. Reddy to writing?

Mr. DAVIDSON.—The same objection as to the last question.

Mr. CAMPBELL.—The same purpose.

A. Well, he said that as soon as we could agree on the price he wanted to see me again and see if we couldn't enter into a full contract.

Q. Was there anything said about when he got able to come down to the office?

A. I don't remember whether he was to come down to the office or whether I was to go back there and see him again. He wanted to have another meeting shortly in relation to the matter.

Q. Well, was that the last conference you had with him prior to his death? [348]

A. It was. I left the State then, if I remember correctly, and didn't see him again during his lifetime.

Q. It is a fact, is it not, that Mr. Reddy died quite

(Deposition of John A. Benson.)

suddenly?     A. I understood so.

Q. Now, then, when did you next have anything to do in relation to these Monache lands?

A. My recollection is that some time in the summer of 1900, you called me up on the telephone and wanted to know what could be done in relation to them, and said Mrs. Reddy wanted to realize on them, and wanted me to come up to the office and consult with you.

Q. Did you come?     A. I did.

Q. Who did you meet there the first time you came?

A. Why, I think yourself and Mrs. Reddy and I think Mr. Metson was in and out. I am not sure about that, because I didn't talk with him.

Q. What I want to know is, whether or *not* at the first conference Mrs. Mollie Conklin or Mr. N. E. Conklin was present?     A. I think not.

Q. Well, was there anything accomplished at the time of the first conference, and if so, what?

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any material issues in this case, and not binding upon the complainant, Mollie Conklin.

Mr. CAMPBELL.—Very well; proceed, Mr. Benson.

A. There was an arrangement made, and there was an understanding had that Mrs. Conklin would be sent for, when a meeting was to be had, and the matter was to be further discussed.

Q. Who had that understanding?     Who said any-

(Deposition of John A. Benson.)

thing about that? [349]

A. Well, I don't know as anybody said anything about it, but I knew the condition of the title of the land, she had a half interest in it, and any transaction couldn't be completed without her being consulted, for the full interest.

Q. Did you have a second meeting? A. We did.

Q. Well, who were present at that second meeting?

A. Mrs. Reddy, Mrs. Conklin, yourself, myself and I think another lady, some relative; I don't remember her name.

Q. Was N. E. Conklin there at that second meeting?

A. I think not. My recollection is he was not there until the third meeting. He may have been. The matters were not fully discussed to the best of my recollection, at that time.

Q. Well, what is your recollection of what took place at the second meeting?

A. Why, I think the arrangements were made to meet again in a few days when they all could be present and enter into the subject fully.

Q. Whom do you mean by all?

A. I think Mrs. Conklin said she wanted her son present; that is my recollection. I may have it mixed up.

Q. What did she say about her son being present, for what purpose?

A. Well, I have already testified on this subject and my mind is a little hazy as to the two meetings; that is all.

(Deposition of John A. Benson.)

Q. Well, do you remember whether she said anything about her son, wanting her son to be present?

A. I think she did; that is my recollection.

Q. What is your recollection as to what she said?

A. She said before doing anything, she would like to have him present. [350]

Q. Well, then, was there anything planned, according to your recollection, at this second meeting?

A. I don't think there was, only a general discussion; the ways and means were all to be discussed fully with him, as I understood it. She said she didn't understand the matter fully and wanted me to discuss the whole matter.

Q. Was there a third meeting then?

A. There was; that is, if I am correct about the second and don't get the two segregated in my mind; it is a long time ago.

Q. Well, was there a meeting between yourself and Mrs. Reddy, Mrs. Conklin, Mr. Edward A. Reddy, at which I was present and Norman E. Conklin was present?

A. There was. I am not so sure about Edward A. Reddy being present at that time as later, but there was a meeting, and I am positive about all the persons except Edward A. Reddy.

Q. Was there any meeting at which Edward A. Reddy was present?

A. I met him in your office. I don't remember him being present with the other people.

Q. Well, now, at this last meeting, this meeting at which Mr. Norman Conklin, Mrs. Mollie Conklin,

(Deposition of John A. Benson.)

Mrs. Reddy, yourself and myself were present, what took place?

A. I explained fully the nature of the transaction and what would have to be done to vest the title in the United States in order that the Forest Reserve land or Monache land, so-called, might be used for the purpose of exchange and made available.

Q. Well, you say that you explained fully; what did you say? What did you explain to them? [351]

A. I said that the land would have first to be surrendered to the United States by deed in convenient parcels such as people would probably want to select, 40's, 80's, 160's, etc. That there would have to be an abstract of title furnished the United States following the deeds to the United States, and that there would have to be applications to select land in lieu of the land surrendered to accompany the deed and abstract of title, and those selections and applications would have to be signed, and there would also be needed powers of attorney to select and powers of attorney to transfer the land selected after it had been approved by the United States.

Q. Did you explain that to Mrs. Conklin and Mrs. Reddy and Norman Conklin? A. I did.

Q. Now, then, what else took place at that meeting?

A. I spoke about the price and said that it was not possible at that time for me to pay \$4.00 an acre, because I wasn't getting that, and that I thought at least that I ought to be allowed five per cent commission for selling, or twenty cents, making the price \$3.80, to be paid upon approval of the selected land

(Deposition of John A. Benson.)

by the United States, and I think it was stated by Mr. Campbell that he would like to have the money paid through the Anglo-Californian Bank.

Q. Well, was that agreed upon?

A. That was agreed upon and Mr. Conklin brought his papers to my office.

Q. Well, was there anything said at that time about a written contract being prepared between the parties, or was anything said about what papers were to be prepared, and when, if you know? [352]

A. The papers that were to be prepared were described fully and they were to be prepared immediately, and Mr. Conklin was to call at my office and bring his deed and I was to proceed with the preparation of the papers, and I agreed to furnish the abstract of title, because that was a paper—because the title was considerably mixed up by reason of *lis pendens* in the case of Broder, and I had considerable difficulty in getting certified copies of the papers, by reason of the suit having been in two counties—

Q. Just a minute as to that. Do you remember Holland Smith being present at that last meeting?

A. After we had talked a while you sent for Holland Smith, and he came into one of your little side rooms on Post Street in the Crocker Building.

Q. Did he come into the office there just about the time the people were leaving, or before?

A. Just about the time they were leaving.

Q. What was said to him about the preparation of the papers, and what he should have to do in relation thereto?

(Deposition of John A. Benson.)

A. It was agreed that he should acknowledge their respective signatures to the papers; and I have it in my mind that he called again there at a subsequent time after the papers were prepared, but that I am not positive about.

Q. Now, then, did Mrs. Reddy and Mrs. Mollie Conklin agree to accept the \$3.80 an acre?

A. They did.

Q. Did they agree to the payments to be made through the Anglo-Californian Bank upon the approvals?

A. Upon the approvals of the selected land and the Abstract of Title and deeds which were surrendered to the United States. [353]

Q. Now, then, what, if anything, did you do in relation to obtaining an Abstract of Title to these Monache lands?

A. I first investigated all the preliminary conditions, titles, the suits and everything of that kind, and got certified copies.

Q. Well, did you obtain an Abstract of Title?

A. I did.

Q. Who paid for it?      A. I did.

Q. Now, then, after you left the office, did you see Mr. Norman Conklin any more?

A. I did, several times.

Q. Did Mr. Conklin—did you see him on that day at any place else? What I mean is, did you and Mr. Conklin go to any place in relation to these papers that day?

A. I can't say whether it was that day or shortly

(Deposition of John A. Benson.)

after, but it was about that time, we went to my office 507 Montgomery Street.

Q. Were these papers prepared by you?

A. The papers relating to the transfer of title to the United States were prepared by me, yes, sir.

Q. Well, now, who was present when you were preparing them? Who assisted you, if anyone, in the preparation of these papers?

A. Mr. Conklin and my clerks.

Q. Well, now, what part, if any, did Mr. Conklin take in the preparation of these papers? Just state fully.

A. He furnished a map on which the lands were delineated, and the patents, and I think there were several certificates of purchase for which patent was not issued.

Q. Were patents procured on those, as you remember? A. Yes, sir.

Q. By whom? A. By myself.

Q. How many times was Mr. Conklin in your office during the [354] preparation of the papers?

A. I can't say positively; a number of times, generally in the morning.

Q. More than once?

A. Yes, sir, and we had a great deal of discussion relative to the form of deed that was to be made to the *United, and* by reason of the peculiar situation of title—we talked the matter over and it was thought best to get up a special form of deed for not only the devisees conveying their interests but the administrators as well.

(Deposition of John A. Benson.)

Q. Was there anything said in this conversation by any person—the conversation that you had in my office in relation to what would be necessary to be done before the administrators of the estate of Reddy could sign the deed?

A. Yes, it was thought best, in fact, it was agreed that an order of the Probate Court should be obtained here.

Q. Now, have you the form of the deed that was prepared by you at the time Mr. Conklin was there?

A. I have not only a form but I have one of the deeds that is not yet surrendered.

Q. Will you please produce it?

(The witness does so.)

Mr. CAMPBELL.—I will offer that in evidence in connection with the testimony of Mr. Benson, and ask to have it marked Defendants' Exhibit "A."

Mr. CAMPBELL.—(After discussion between counsel.) I am prepared to prove the signature of Emily M. Reddy and Edward A. Reddy and Caroline S. Reddy. Is that the signature of Mollie Conklin?  
[355]

Mr. DAVIDSON.—We are not prepared to admit that that is the signature of Mollie Conklin, and for the purpose of this deposition we will deny that it is her signature.

Mr. CAMPBELL.—I offer that in evidence.

(It is marked Defendants' Exhibit "A.")

Mr. DAVIDSON.—I object to the introduction of the paper in evidence on the ground that it is incompetent, irrelevant and immaterial, and does not tend

(Deposition of John A. Benson.)

to prove any of the issues in this case, and for the further reason that it does not relate to any of the property in controversy in this action, and for the reason that it is not shown that the paper offered in evidence is the deed of the complainant, Mollie Conklin, or that she ever signed or acknowledged or delivered the same.

Mr. CAMPBELL.—We will prove it.

The WITNESS.—I hadn't finished that answer yet.

This form of deed was discussed very fully between Mr. Conklin and myself, and he agreed that that was in his opinion the only legal way the title of the Reddys could be divested and put in the United States, taking that in connection with his mother's title; and he approved that form of deed.

Mr. CAMPBELL.—In connection with the testimony of this witness, Mr. Davidson, I offer in evidence the order of the Probate Court authorizing the transfer of this property to be made.

(It is marked Defendants' Exhibit "B.")

Mr. DAVIDSON.—The complainant, Mollie Conklin, objects to the offer of Defendants' Exhibit "B" on the ground that the same is incompetent, irrelevant and immaterial and does not prove or tend to prove any of the issues in this case, and would not affect in any manner, and is not binding upon the complainant, Mollie Conklin, and for the further reason that the said paper [356] referred to was an order made by the Probate Court of the City and County of San Francisco, State of California, with-

(Deposition of John A. Benson.)

out any jurisdiction and void on its face and for a purpose not warranted by the law of the State of California.

Mr. CAMPBELL.—It is offered on the question of good faith. I understand this Bill of Complaint, on the part of Mollie Conklin, charges defendant Campbell and defendant Benson with fraud perpetrated on her, and it is offered to show part of the entire transaction, I understand that the allegation in the complaint being that they didn't understand the nature of the proceedings, and as a part of the entire transaction this is offered.

Q. Were all the deeds that were prepared by you and Mr. Conklin of a similar character to Exhibit "A"?

A. They were identical, except in the description of the land.

Q. Now, will you please state, if you know, about how many of these deeds were prepared?

A. As nearly as I can remember, somewhere between thirty and fifty.

Q. Now, in the presence of Mr. Conklin, were any other papers than the deeds prepared, any powers of attorney or anything of that kind or character?

A. They were shown to him, is my recollection, but the form of the application and power of attorney was not so distinctly different from the printed form as to require much discussion as was the case with the deed.

Q. After these papers were prepared, do you know what was done with them?

(Deposition of John A. Benson.)

A. They were given to Mr. Bernard in your office for signature and verification. [357]

Q. Were they sent to Mr. Bernard, or did you give them to him, do you know?

A. I think they came down to the office after them.

Q. Well, then, were they returned to you?

A. They were at different times; not all at once.

Q. The papers that were returned to you were acknowledged by whom?

A. Holland Smith, as I remember. There is something there that I ought to state in relation to these deeds to make it clear.

Q. Well?

A. Why, at the time of my talks with Mr. Reddy, these Forest Reserve lands were exchangeable—

Mr. DAVIDSON.—(Interrupting.) We object to the statement of the witness and move to strike out all that part already given as incompetent, irrelevant and immaterial and not tending to prove any issue of the case and not binding upon the Complainant, Mollie Conklin.

Mr. CAMPBELL.—Proceed.

Mr. DAVIDSON.—We object to the introduction of any testimony along that line.

Mr. CAMPBELL.—Proceed.

The WITNESS.—(After answer being read to him as follows: “Why, at the time of my talks with Mr. Reddy those Forest Reserve lands were exchangeable”)—for any lands of the United States, surveyed, or unsurveyed, open to Homestead entry. The Act of June 6, 1900, becoming operative by its

(Deposition of John A. Benson.)

terms October 1, 1900, prohibited the selection of unsurveyed lands. It was thought advisable, therefore, to surrender these lands [358] to the United States with the Abstracts of Title, as far as possible, because, so far as they could be used in selecting unsurveyed lands, they would, of course, be more valuable; hence, it is my recollection that as soon as that matter was made known to the Conklins at Bakersfield, the deeds were all executed to the United States. That is all I wanted to add here.

Q. Now, then, after the execution of these deeds, and after this order of the Probate Court, which is in September, 1900, did you pay any money?

A. I did.

Q. To whom did you pay the money and how?

A. I paid some checks to you in anticipation of approvals that might come afterwards.

Q. Did you pay any money before any approvals were made?      A. I think I did.

Q. Do you remember how much?

A. I think \$5,500.00.

Q. Have you the checks with which you paid it, or were they destroyed in the fire?

A. No, they were destroyed in the fire.

Q. Have you any records in your office of any papers that were not destroyed in the fire, in relation to this matter?

A. No, except such fragments as I showed you here, and possibly some similar papers.

Q. Now, then, the papers that came back to you signed by these parties and acknowledged as you

(Deposition of John A. Benson.)

have stated, what were they? Enumerate them.

A. Deeds, applications for selection, which were signed, but not acknowledged, powers of attorney to select, which gave authority to make a new application in case the first one proved ineffective, and powers of attorney to sell after the [359] title had been approved by the United States.

Q. During the entire negotiations in this entire matter, who represented Mrs. Mollie Conklin?

A. As far as I know, Mr. Conklin—N. E. Conklin.

Q. Did I, J. C. Campbell, in any conversation that I had at any time with you, or with any of those persons in your presence, purport to represent Mrs. Conklin?

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, not tending to prove any of the issues in this case, and not the proper way of proving the relation of attorney and client.

Mr. CAMPBELL.—Do you say that I am not charged as having acted for her?

Mr. DAVIDSON.—My position is that your declaration would not be admissible.

A. You did not.

Q. With whom did you understand you were dealing when you were dealing with me? For whom was I acting?

Mr. DAVIDSON.—We object to that as calling for the conclusion of the witness.

A. For the Reddy estate.

Q. Now, after these papers were signed, and after you had paid this \$5,500, did you have any conversation with Mr. Norman Conklin in relation to the

(Deposition of John A. Benson.)

powers of attorney being revoked and if so, when was that conversation?

A. That I cannot remember positively, but it was sometime afterwards; perhaps about two years, when I first learned of the powers of attorney being revoked, I learned that objections were made to them by him.

Q. Well, did you have any conversation with him about that?

A. I think he wrote me a formal letter relative to it.

Q. Have you that letter? [360]

A. I have not.

Q. Where is it?

A. It was destroyed in the fire.

Q. Well, can you state the contents of it?

A. I think it is in the testimony here.

Mr. DAVIDSON.—Just a moment. I think we have a copy of it.

Mr. CONKLIN.—I think my letter is in evidence.

Mr. DAVIDSON.—If we have it, I would prefer that he examine it and see if that is the letter.

Mr. DAVIDSON.—(Referring to transcript of testimony.) We will refer to that as Complainant Mollie Conklin's Exhibit U-1, a part of the deposition of Norman E. Conklin in this case. (Hands same to Mr. Campbell.)

Mr. CAMPBELL.—Q. Does that appear to be a copy of the letter which you received?

A. (After examining.) That is a copy of one letter; yes.

(Deposition of John A. Benson.)

Q. Had you been notified before that time of the revocation of the powers of attorney which had been given you by Mrs. Mollie Conklin?

A. Not directly, but indirectly; yes.

Q. How long prior to the receipt of the letter, if you know?      A. Several months.

Q. After that, did you continue to pay any money on these lands to Mrs. Reddy?

Mr. DAVIDSON.—We object to that as irrelevant, incompetent and immaterial, not binding upon the complainant, Mollie Conklin.

A. I did not.

Q. What? [361]

A. My impression is that I did not. That is my recollection.

Q. Had you paid any money to Mrs. Reddy before that time?      A. I had; yes.

Q. Do you know how much?

A. It was in the neighborhood of \$10,000; I think it was \$10,400 and something.

Q. Was that paid as the titles were approved?

A. Generally speaking, it was paid faster—about as they were approved; it was paid as requested.

Q. Were these applications, or any of them, ever suspended by the Government?

A. Yes, I think they were all suspended in 1903.

Q. What month?

A. Why, directly, I think in November, 1903, but indirectly and partially at various times in the different land districts where selections had been made. I wouldn't state more positively offhand. Gener-

(Deposition of John A. Benson.)

ally speaking, however, I understood that much earlier than that the approval of all the selections involving this business had been suspended upon complaint of Mr. Conklin, before the Interior Department.

Q. Do you know how long before?

A. Why, I think at least a year before; perhaps more.

Q. Did you in any of your dealings with Mollie Conklin conceal from her the fact that she was making powers of attorney to make lieu selections?

A. I did not. I fully explained it to Mr. Conklin and to her in his presence.

Q. Did you send to her any blank powers of attorney to be signed, or were they all filled up when they were signed? [362]

A. I think they were generally filled in with the description of the land.

Q. Did you state to Mollie Conklin any fact in relation to the manner or method by which this land would have to be handled that was untrue?

A. Not to my knowledge, no, sir. I explained everything fully as I understood it.

Q. Do you think of anything else that occurred there?

A. Why, no, only that I occupy a double relation here, and something might come out on direct examination—

Mr. CAMPBELL.—(Interrupting.) A double relation; what do you mean by that?

A. I mean that I am a witness on behalf of the

(Deposition of John A. Benson.)

various parties now, and I am a defendant also; that is all that I mean.

Q. Well, have you anything that you desire to state in behalf of any of them?

A. I don't think of anything more, only, were any other persons present at the time of the preparation of these papers?

Mr. CAMPBELL.—Q. Oh, yes, who were present at the time the papers were prepared by yourself and Mr. Conklin, or prepared by you in his presence?

A. My clerk, Miss McGillan, Miss C. E. Glover and a portion of the time, J. H. Lavenson.

At this point the taking of the deposition of the witness John A. Benson adjourned until 2 o'clock P. M. [363]

(Afternoon Session—2 o'clock, P. M.)

(The taking of the deposition of JOHN A. BENSON resumed.)

Cross-examination.

Mr. DAVIDSON.—Q. Mr. Benson, when did you first become acquainted with Mollie Conklin?

A. At Mr. Campbell's office, at the meeting there.

Q. About what time, what year?      A. 1900.

Q. About what time in 1900?

A. I think it was in the early summer or towards the middle of the summer.

Q. You were acquainted with Patrick Reddy?

A. Yes, sir.

Q. How long did this meeting occur when you first met Mrs. Mollie Conklin after the death of Patrick Reddy?

(Deposition of John A. Benson.)

A. I should judge from two to three months.

Q. And that was the first time you had ever met the complainant, Mollie Conklin?

A. To the best of my recollection, yes, sir.

Q. Were you acquainted with Norman E. Conklin previous to this time?      A. I think not.

Q. Now, did you meet Norman E. Conklin the first time that you met Mollie Conklin?

A. I may have, but my impression is that I did not.

Q. Your impression is that he was not present at that first meeting?

A. There was some elderly lady present at the first meeting, it might have been Mrs. Reddy's sister, some elderly lady.

Q. Are you positive that Mollie Conklin was present at the [364] second meeting in Mr. Campbell's office after the death of Patrick Reddy?

A. I am not positive it was she, but it was some elderly lady that came in with Mrs. Reddy.

Q. Then, as I understand, your testimony, after the death of Patrick Reddy, you first had a meeting at which yourself, Mrs. Reddy and Mr. Campbell were present.      A. Yes, sir.

Q. At the next meeting there were present, Mr. Campbell, Mrs. Reddy, yourself and some elderly lady?      A. Yes, sir.

Q. You are not positive that Mrs. Molly Conklin was present at that meeting?      A. I am not.

Q. Was Mrs. Norman E. Conklin present at that second meeting?      A. I think not.

Q. About when did the third meeting occur and

(Deposition of John A. Benson.)

who was present?

A. In about, within a very few days afterwards.

Q. In about what month did that second meeting occur?

A. In the fore part of the summer of 1900, as I remember it.

Q. How long after the death of Patrick Reddy?

A. Somewhere from two to three months.

Q. Is it not a fact that meeting occurred on the 20th of August, 1900?      A. 20th of August, 1900?

Q. Yes, sir.

A. I don't think it was as late as that; it might have been.

Q. Well, would you say that the meeting occurred in the month of August, 1900?

A. I wouldn't go so close as that on dates without having something to refresh my memory, but I will bring it down to the [365] middle of the summer anyway.

Q. Now, at the second meeting—the third meeting, who were present?

A. Mr. Campbell, Mrs. Reddy, Mrs. Conklin, Mrs. Mollie Conklin, and as I remember, N. E. Conklin.

Q. Was Mrs. Coleman present at the third meeting?      A. I rather think she was.

Q. Who informed you of this second meeting, that is, there would be a meeting at the time the second meeting was held?

A. My recollection is Mr. Campbell telephoned me to come up.

Q. Did he tell you at the time he telephoned you

(Deposition of John A. Benson.)

what the purpose of the meeting was?

A. I think not; I think he said, "Come up and talk that matter over"—

Q. (Interrupting.) You understood from his call what matter was to be talked over, did you?

A. That is my impression.

Q. Yes. Now, who notified you of the intended third meeting?

A. I think it was discussed at the second meeting. I think also Mr. Campbell notified me.

Q. If it was discussed at the second meeting, would you say that Mrs. Mollie Conklin was present or took any part in the discussion?

A. I would say not—the second time.

Q. The third meeting, you met at the request of Mr. Campbell? A. All meetings—

Q. (Intg.) All meetings were held at the request of Mr. Campbell? A. At his suggestion. [366]

Q. Yes. Now, was anyone else present at this third meeting besides Mr. Campbell, Mrs. Reddy, Mrs. Conklin, Mrs. Mollie Conklin, N. E. Conklin, Mrs. Coleman and yourself?

A. I think Mr. Bernard was in and out of the room.

Q. What would you say as to whether or not Mr. Bernard was present in the room during the time the negotiations were taking place?

A. I think he was there part of the time.

Q. Now, I understood you to say that at that time you agreed to sell the lands for Mrs. Conklin and Mrs. Reddy at \$4.00 an acre, you to receive a commission of five per cent; is that correct?

(Deposition of John A. Benson.)

A. Yes, sir.

Q. What steps, if any, did you request them to take relative to the placing of the property in condition to be transferred?

A. I suggested to them, as I stated in my main testimony, what was necessary to be done, what papers were necessary to be drawn.

Q. What papers did you tell them they would have to execute?

A. The deed to the United States, the applications to the United States Land Office for land to be selected in lieu of that surrendered; power of attorney to locate and power of attorney to sell the lands selected.

Q. I believe you stated that about between thirty and fifty deeds were prepared for the purpose of conveying this land to the United States Government. Is that correct?

A. That is the best of my recollection.

Q. Who prepared those deeds? [367]

A. I had them prepared. I directed the preparation.

Q. They were prepared in your office, as a matter of fact, were they not, Mr. Benson?

A. They were.

Q. And under your agreement, under the agreement between yourself, Mrs. Reddy and Mollie Conklin, who was to attend to the preparing of the deeds, if any one? A. I was.

Q. You were also to attend to the preparation of such other papers as were necessary to effect this

(Deposition of John A. Benson.)

purpose? A. And also the abstract.

Q. And also the abstract. Now, Mr. Benson, what agreement, if any, did you have at the time of this third meeting as to what should be done with the deeds after they were prepared and executed?

A. I don't remember having any specific agreement, except this, that I was to deliver them to them for execution, and they were to be sent to me as I called for them.

Q. As you called for them? A. Yes, sir.

Q. Was there any agreement at that time as to where the deeds or any papers should be left for execution?

A. It was understood that they were to be taken to Mr. Campbell's office and left with Mr. Bernard. In fact, it was agreed—

Q. (Interrupting.) Was there anything said at the time that the papers should be left with Mr. Bernard? That is, was there any specific person in Mr. Campbell's office mentioned?

A. I think that was the direction from Mr. Campbell or some one to have Mr. Bernard take charge of the papers.

Q. Then, as a matter of fact, at that time, the agreement was that the papers, after being executed, should be returned [368] to Mr. Campbell's office, and Mr. Campbell directed that they should be turned over to Mr. Bernard to look after the details of securing the execution and delivery. Is that correct?

A. I wouldn't go so far as to say what that was,

(Deposition of John A. Benson.)

because that was a matter that didn't concern me.

Q. Then you did understand, did you not, that these papers were to be delivered at Mr. Campbell's office, and that Mr. Bernard was to take charge of the papers, according to the instructions given at that time by Mr. Campbell?

A. I don't know as to that detail, because there was details between them that I didn't know—

Q. Where was Mr. Bernard employed at that time, Mr. Benson?

A. He was in Mr. Campbell's office.

Q. He had been in Mr. Campbell's office, had he not, for a considerable period of time previous to this meeting? A. Ever since he was a small boy.

Q. And he has been continuously in Mr. Campbell's office since that time, has he not?

A. To the best of my knowledge.

Q. Now, you say the deeds were to be delivered to you as you called for them, after their execution? Is that correct?

A. That is my understanding.

Q. Now, with whom were these deeds to be left after their execution and up to the time you called for them? A. That I don't know.

Q. You don't know? A. No.

Q. As a matter of fact, you understood, did you not, that you were to call for those deeds at Mr. Campbell's office as you wanted them?

A. I did, yes. [369]

Q. Yes. Now, what other papers were to be delivered and executed in addition to the deeds?

A. The applications to select and powers of attor-

(Deposition of John A. Benson.)

ney to select and sell.

Q. Now, did I understand that the powers of attorney to select and sell were to be joint or separate instrument?

A. Separate instrument; the power of attorney to select was simply made in case it became necessary that a substitute application should be made.

Q. Now, the applications to select, Mr. Benson, did they contain—I understand that they contained a description of the land, the base land, released, or surrendered to the Government?

A. That is correct, and authority to select other land in lieu.

Q. But those applications for sale didn't have a description of the land to be selected in lieu of the first land surrendered to the Government?

A. I don't think so; my recollection is that they contained a description of the surrendered land and authority to select other lands in lieu of that surrendered.

Q. Now, Mr. Benson, as a matter of fact, was it not necessary that applications such as you say were executed by Mrs. Conklin and the Reddys—was it not necessary for them to also contain, before filing with the United States Land Office, a description of the land sought to be selected in lieu of the land surrendered? A. Certainly.

Q. Is it not a fact that at the time the applications were signed, they were signed in blank—that is, that they were signed and left blank so far as the description of the lieu land [370] was concerned?

A. In some cases it may have been so; not so far as

(Deposition of John A. Benson.)

the lieu land was concerned, a description of the lieu land, no, but the selected land; probably, yes.

Q. Is it not a fact, Mr. Benson, that the lieu lands are the lands that were selected in lieu of the base lands?

A. That depends on the nomenclature of the attorneys in different parts of the country, and the way they considered it.

Q. Is not the term applied to transactions of this kind by the United States Government in which they treat the lands surrendered as base lands, and the lands selected as lieu lands?

A. Sometimes they do and sometimes they consider the land that is surrendered as lieu land; different departments of the Government treat it differently.

Q. Then, I understand you to say—so there may be no misunderstanding upon the matter—that the applications as executed contained, each one of them, a description of a part of the Monache lands and recited that the lands therein described had been surrendered to the Government, and it also was an application to select other lands in lieu of the lands surrendered, but that the selected lands, the descriptions were not included at the time of their execution. Is that correct?

A. I think the printed application itself would be the best evidence.

Q. Have you one of those applications?

A. I have copies of them, but I haven't any here.

Q. Could you procure those copies?

A. I might, or similar ones. If you really want

(Deposition of John A. Benson.)

the information, I can give it to you absolutely.

(At this point the taking of the deposition of the witness was suspended on account of the absence of Mr. Campbell from the [371] room.)

Mr. DAVIDSON.—Q. We had just been going over the meetings, Mr. Campbell.

Mr. CAMPBELL.—Go ahead.

Mr. DAVIDSON.—Q. Now, Mr. Benson, I will call your attention to an instrument appearing on pages 24 and 25 of the separate answer of the defendants R. M. Cobban and E. B. Weirick, individually and as trustee, in this action. You may examine this instrument and state whether or not that is in substantially the same form as the application for the selection of land which you have testified with regards to. (To Mr. Campbell.) We were just trying to get an understanding, Mr. Campbell, as to what the applications contained.

A. (After examining.) I do not think it is in the same form.

Q. You don't think it is in the same form?

A. No, sir.

Q. Now, explain, please, in what different form these applications were from the one to which your attention has just been called.

A. Generally speaking, the applications—

Q. (Interrupting.) Mr. Benson, I want to say that I am asking you now not generally, but I am asking you as to the applications in the particular transactions under consideration.

A. That is what I am talking about. Generally speaking, the applications for land to be selected in

(Deposition of John A. Benson.)

lieu of the so-called Monache lands, were, as I remember, joint applications, and they were made by Mollie Conklin on behalf of her undivided one-half interest, and by Emily M. Reddy and Edward A. Reddy respectively as administratrix and administrator of the estate of Patrick Reddy, deceased; and I am not certain but that the [372] fact of their ownership as devisees was also included, but I am positive of the other.

Q. Now, at the time these applications for the selections were executed and delivered by Mollie Conklin and by Emily M. Reddy and Edward A. Reddy, you may state whether or not they contained a description of the lands which were requested to be selected—I mean now the specific tract—whether or not the specific tract to be selected was inserted in each individual application?

A. I can't state positively as to that but I am positive that the lieu land was described—that is the Monache land.

Q. The Monache land. Then, at the time of execution you are positive that the Monache lands were included—the description—in each separate application? A. Yes, sir.

Q. Now, when,—the way in which you handled the Monache lands, when would you insert the description of the lands requested to be selected?

A. Whenever it became known.

Q. Whenever it became known what land to select? A. Yes, sir.

Q. And that became known after the applications were delivered to you?

(Deposition of John A. Benson.)

A. I can't say as to that; sometimes it might and sometimes it might not.

Q. Now, during what period were these deeds delivered to you, Mr. Benson?

A. The deeds were all delivered to me, I think, prior to October 1, 1900; I am not sure of that, but that is my impression now. [373]

Q. You secured all those deeds at the office of Mr. Campbell or from his office?

A. I think so.

Q. Now, when were the applications to select land in lieu of the Monache lands delivered to you?

A. At divers times.

Q. Well, during what period of time?

A. During the preceding year, or two years.

Q. Then, when were the powers of attorney delivered to you?

A. I think the powers of attorney were delivered the same time as the applications.

Q. Now, where did you secure, or who delivered these applications and powers of attorney to you?

A. Mr. Bernard.

Q. From Mr. Campbell's office?

A. I don't know as to that.

Q. Well, he was working in Mr. Campbell's office at the time? A. Yes, sir.

Q. Well, now, you are positive, are you, that these applications and powers of attorney were not delivered to you at the same time as the deeds to the Government for the Monache lands?

A. I am.

Q. You are positive of that? A. Yes, sir.

(Deposition of John A. Benson.)

Q. Now, have you a form or a copy of any of the powers of attorney to make the selections that you say were executed and delivered to you by Mollie Conklin and Mrs. Reddy and Edward A. Reddy?

A. I don't know; I think I might find a form; if not they were destroyed in the safe in the fire. [374]

Q. You may state whether or not those powers of attorney to select contained a description of the surrendered lands and a description of the lands to be selected at the time they were delivered to you.

A. That I cannot state positively; sometimes they did and sometimes probably they did not.

Q. You think sometimes they did and sometimes they did not contain such a description?

A. They always, to the best of my recollection, had a description of the Monache lands.

Q. And sometimes you say they had a description of the lands to be selected?

A. I think so.

Q. Do you remember the transaction of your selling some of these rights to select to one R. M. Cobban, one of the defendants herein?

A. I think I do.

Q. Well, are you positive that you remember the transaction between yourself and Mr. R. M. Cobban?

A. In a general way, I do.

Q. Now, Mr. Benson, you sold to Mr. Cobban, did you not, certain rights to select lands based upon the Monache lands surrendered to the Government?

A. Yes, sir.

Q. You may state whether or not the applications to select land sold by you to Mr. Cobban contained a

(Deposition of John A. Benson.)

description of the lands to be selected at the time you surrendered them to Mr. Cobban, or delivered them to Mr. Cobban?

A. I can't state positively as to that.

Q. Do you remember whether or not Mr. Cobban when he would make application to you for some of the Monache base land [375] selections—whether he would also send you the description of the land which he sought to select?

A. I can't remember that.

Mr. CAMPBELL.—I desire to object to that; it is not cross-examination of anything the witness testified to in chief.

Mr. DAVIDSON.—The record, as I remember it, shows that he was examined in regard to the powers of attorney and applications.

Mr. CAMPBELL.—But nothing that he had to do with Mr. Cobban.

Mr. DAVIDSON.—We are simply examining him in regard to those powers of attorney and applications, and where they went to and where he got them.

Mr. CAMPBELL.—It is not cross-examination, and I object to it on that ground.

Q. Now, Mr. Benson, when the powers of attorney to sell the land selected were delivered to you, you may state whether or not they were delivered at the same time that the application was delivered to you.

A. I can't state positively as to that, but generally speaking I think they were. I think the three papers were all delivered at one time.

Q. As I understand it, the best of your recollection

(Deposition of John A. Benson.)

is that the deeds were delivered at one time and thereafter the application to select, the power of attorney to select, and a power of attorney to sell the lands selected, were all delivered in series at the same time.

A. That is my recollection, generally speaking. Of course, there were some exceptions.

Q. They were all delivered to you from the hands of Mr. [376] Milton Bernard?

A. Not directly from his hands. I think sometimes he brought them to my office and left them there in my absence.

Q. But they were delivered to you, as I understand, by Mr. Bernard?      A. Yes, sir.

Q. Now, Mr. Benson, I will call your attention particularly to powers of attorney to sell the selected lands, and I will ask you whether or not those powers of attorney at the time they were delivered to you contained a description of the lands selected and which were—purported to be the subject of the power of sale under the powers of attorney?

A. I couldn't tell you without examining one of those powers of attorney, whether it described anything more than the Monache lands or not. I think the authority ran in this way: To sell the lands that may be selected in lieu of such and such lands described in the application.

Q. Now, Mr. Benson, at the time the powers of attorney to sell selected lands were delivered to you, you may state whether or not they contained the name of the person constituted the attorney in fact, appointed the attorney in fact, under the powers of at-

(Deposition of John A. Benson.)

torney, as delivered to you.

Mr. CAMPBELL.—I object to that on the ground it is not cross-examination.

A. I cannot state positively in every instance, probably it did in some instances and perhaps it did not in others.

Q. I will ask you in regard to the powers of attorney delivered by you to Mr. Cobban, R. M. Cobban, for the sale of lands selected in lieu of the Monache lands and ask you whether or not the powers of attorney to sell, delivered to Mr. Cobban contained [377] the name of Mr. Cobban as the attorney in fact at the time they were delivered to you.

Mr. CAMPBELL.—I object to that; the witness should be shown them.

A. I would think the power of attorney would be the best evidence.

Mr. CAMPBELL.—This is not cross-examination. Anything that took place with Mr. Cobban we have nothing to do with nor we haven't asked him anything about.

Mr. DAVIDSON.—I will ask that the question be answered.

Mr. CAMPBELL.—I submit he had no right to answer the question and I object to it on the ground it is not cross-examination. The witness is asked about a large number of papers and the papers are not shown to him and I object on the further ground that the powers of attorney are the best evidence.

Mr. DAVIDSON.—The same objection would be applicable to all deeds he has been testifying to.

Mr. CAMPBELL.—That doesn't make any differ-

(Deposition of John A. Benson.)

ence whether it is applicable or not. This is an objection I am putting to this question.

Mr. DAVIDSON.—This is a matter that will have to be threshed out and I insist that the witness answer.

A. I should prefer to consult some of the papers.

Mr. CAMPBELL.—Q. Well, can you remember until you do? A. Not positively, no, sir.

Mr. DAVIDSON.—Q. I hand you a power of attorney, dated February 13, 1901, purporting to be signed by Mollie Conklin, Edward A. Reddy, administrator of the estate of Patrick Reddy, deceased, Emily M. Reddy, administratrix of the estate of Patrick Reddy, deceased, recorded in Book 2 of Powers of Attorney, at page 353, of the records of Boise County, Idaho, [378] the paper handed you being a certified copy of a power of attorney, and I will ask you whether or not that is one of the powers of attorney delivered to you by Mrs. Mollie Conklin, Emily M. Reddy and Edward A. Reddy, for the sale of lands selected in lieu of Monache lands.

A. It is a copy and not an original, and does not give me the means of determining as to the different facts you requested me to answer. It does, however, give me this: You showed me a power of attorney, or rather an application, taken from the complaint, and ask me if I identify that as a copy. I said I did not, because it was only signed by Mollie Conklin in person, and my recollection was that the powers of attorney, application, and all papers were signed jointly by not only Mrs. Conklin but by the adminis-

(Deposition of John A. Benson.)

tratrix of the estate of Patrick Reddy, as is the case with this.

Q. I will ask you, Mr. Benson, whether or not the copy of the application I show you, contains any signature or not, or whether it is simply a form?

A. It is simply a form, but it is not the form that was used in these cases; and I see the name of Mollie Conklin filled in here, which wouldn't be the case with a blank form. I don't think that this form was used at all in any of the applications with which I had to do.

Q. Now, will you state that the power of attorney shown you is not one of the powers of attorney delivered by Mollie Conklin and the Reddys to you for the sale of selections in lieu of Monache lands?

Mr. CAMPBELL.—I shall object to that on the ground it is incompetent, irrelevant and immaterial, and it is a misnomer so far as the Reddys are concerned. An administratrix and administrator can't give a power of attorney. [379]

Mr. DAVIDSON.—He said they did.

The WITNESS.—I would prefer to have one of the originals before answering the question.

Mr. CAMPBELL.—Q. Have you any recollection that is one or not? If you remember say so, and if you don't remember say so.

A. It appears to be in general form, but there are certainly some irregularities in it that were not in the original, some misspelling. I notice the word "acerage," presumably "acreage" is meant; and some other differences of that kind. Generally

(Deposition of John A. Benson.)

speaking, as I recollect, it is in substantially the same form.

Q. I will ask you whether or not the original of the power of attorney, of which you are shown a certified copy, was one of the powers of attorney delivered to you by Mollie Conklin, Emily M. Reddy and Edward A. Reddy, for the sale of selections made in lieu of the Monache lands?

A. To answer your question I should have to spar with you a little, because none of those people ever delivered any powers of attorney to me, except through Mr. Bernard. This is in substance, as near as I can remember, the form.

Q. I will ask you whether or not the original of the powers of attorney of which you are shown a certified copy was one of the powers of attorney delivered to you by Mr. Milton Bernard from Mollie Conklin, Mrs. Emily M. Reddy and Edward A. Reddy, for the sale of selections made in lieu of Monache lands?

A. To the best of my recollection.

Q. Now, then, was the original of this power of attorney of which you are shown a certified copy, at the time it was delivered to you, complete in the same form in which it now appears [380] to be?

A. I do not know.

Q. I will ask you whether or not at the time that Mr. Milton Bernard delivered the original of this power of attorney shown you, the name "R. M. Cobban" of Missoula, County of Missoula, State of Montana, was inserted therein as the attorney in fact

(Deposition of John A. Benson.)

appointed under the power?     A. I do not know.

Q. I will ask you whether or not you inserted the name of R. M. Cobban, as the attorney in fact in the original of which this is a certified copy, after it was delivered to you by Mr. Bernard?

Mr. CAMPBELL.—I object to the question on the ground it is not proper cross-examination.

A. I don't think so.

Q. Did you insert the name of R. M. Cobban in any of the powers of attorney delivered to you by Mr. Bernard after they had been delivered to you?

Mr. CAMPBELL.—The same objection.

A. I don't think so.

Q. Will you state now whether or not the name of R. M. Cobban was or appeared as the attorney in fact in any of the powers of attorney delivered to you by Mr. Bernard; which were afterwards delivered by you to Mr. Cobban, at the time you delivered them to him?

A. I don't remember as to that.

Q. You say you did not insert Mr. Cobban's name in any powers of attorney yourself?

A. I am confident that I did not. [381]

Q. What would be your best recollection as to whether or not Mr. Cobban's name was in the powers of attorney at the time they were delivered to you by Mr. Bernard?

A. I have no recollection on that subject.

Q. No recollection whatever?     A. No.

Q. Now, I will ask you when you prepared the application for the selection of land in lieu of the

(Deposition of John A. Benson.)

Monache lands with reference to the time the deeds of the Monache lands were prepared?

A. A short time after; probably consecutively.

Q. Were the deeds, the applications for selection of lands, the power of attorney to make selection and power of attorney to sell selections prepared consecutively at the same time?

A. They couldn't be prepared consecutively at the same time.

Q. Well, were they prepared consecutively then?

A. Shortly following. I think the deeds were prepared first.

Q. Which were prepared next after the deeds?

A. I can't say as to that.

Q. Now, after you prepared the deeds where were they left by you prior to the time that they were signed by the plaintiff Mollie Conklin and Mrs. Reddy and Edward A. Reddy?

A. They were sent to Mr. Campbell's office.

Q. What was done with the applications, powers of attorney to select, powers of attorney to sell selections, after they were prepared by you, and previous to their execution?

A. They were sent to Mr. Campbell's office.

Q. As I understand you, the applications and the two powers of attorney were delivered to you then after their execution, as called for by you? [382]

A. That is what I testified to.

Q. Now, did you ever see Mrs. Mollie Conklin at any time after the conference in the office of which you have testified to, relative to the Monache lands?

(Deposition of John A. Benson.)

A. I am not positive as to that; my impression is that I did.

Q. About when did you next see her, if you did see her? A. I can't state as to that.

Q. Did you have any further conversation with Mollie Conklin personally as to the Monache lands?

A. I can't remember any particular conversation.

Q. Were any of the applications to make selections, powers of attorney to make selections and powers of attorney to sell lands selected executed in your office by Mollie Conklin?

A. Not to my knowledge.

Q. Were any of them executed there by either Emily M. Reddy or Edward A. Reddy?

A. Not to my knowledge.

Q. Now, did you ever meet Norman E. Conklin previous to the time of the conference at Mr. Campbell's office when Mollie Conklin and Mrs. Reddy were present?

A. Not that I remember at present.

Q. Now, when did Norman Conklin assist you in the preparation of any deeds to the Monache lands?

A. Immediately following this third meeting.

Q. Immediately following?

A. It might have been a week or ten days.

Q. How long were you and Norman E. Conklin at that time in conversation relative to the deeds to be prepared for the Monache lands?

A. Perhaps a week; perhaps not quite so long.

(Deposition of John A. Benson.)

Q. During that time where did you hold your conference?

A. In my office, 507 Montgomery Street, at a tall desk that was in the alcove, on the corner of Sacramento and Montgomery Streets.

Q. What part, if any, did Mr. Norman E. Conklin take in the preparation of the deeds for the Monache lands?

A. He brought the patents, the certificates of purchase, and a large map that was spread out on my desk, and I showed him the form of deed that I had prepared, and we discussed it particularly as to divesting the various owners of what title they had or might have and giving it to the United States, and he approved of the form.

Q. Was that all the part Mr. Conklin took in the preparation of the deeds?

A. And we discussed the conditions antecedent to the issuing of the title and *lis pendens* and the Broder business—

Q. Did you have more than one conference?

A. Oh, yes, several.

Q. Covering, you say, a week or ten days?

A. I should think a week at least.

Q. Now, are you positive that you saw Mr. Norman E. Conklin at any time within a year after the conference in Mr. Campbell's office?

A. I am emphatically.

Q. You are emphatically. Now, is it not a fact that Mr. Conklin left San Francisco for Bakersfield, California, on the evening of the conference in Mr.

(Deposition of John A. Benson.)

Campbell's office, and did not again visit the city of San Francisco for more than one year?

A. I don't know anything about his movements; I do know that during the pendency of these negotiations Mr. Conklin did [384] repeatedly come to my office and discuss these matters.

Q. You are positive that those discussions took place after the meeting in Mr. Campbell's office?

A. It is my impression that they took place afterwards. They might have been coincident with the various meetings.

Q. And they may have been before?      A. Yes.

Q. If they were before the meetings in Mr. Campbell's office, would you have had a deed prepared, a form of deed for this land?

A. After the first discussion and from the fact that it was contemplated to make it, yes, I would.

Q. What part, if any, did Mr. Norman Conklin take in the preparation of the applications to select and powers of attorney to make selections and to sell selections?

A. No particular part, only I showed him that in so far as an application or power of attorney covering or conveying or dealing with the interests of various people could be included in an application similar in form to that used by the Department, that was done.

Q. Now, at the time of the conference in Mr. Campbell's office, then what agreement, if any, was there as to who should be created the attorney in fact to sell the land selected?

(Deposition of John A. Benson.)

A. No agreement whatever.

Q. Nothing said as to who should be the attorney in fact, was there?     A. No.

Q. And what agreement, was there, if any, as to who should be the attorney in fact to make the selections of land in lieu of Monache lands?

A. That was to be as occasion might require.  
[385]

Q. Nothing was said as to who should act as the attorney in fact for that purpose?

A. I don't think so.

Q. Was the name of R. M. Cobban mentioned as attorney in fact or in any way connected with the sale of the Monache lands at the time of the conference in Mr. Campbell's office?

A. I am confident that it was not.

Q. Do you remember how much land you sold, how much of the selected land or the right to select lands you sold to R. M. Cobban?

Mr. CAMPBELL.—The question is objected to on the ground it is not cross-examination.

A. I do not.

Q. Do you remember how much money, if any, you received from Mr. R. M. Cobban from the sale of lands selected in lieu of the Monache lands?

Mr. CAMPBELL.—I object to that, and instruct the witness that he need not answer, on the ground it is not cross-examination, and has nothing whatever to do with this case.

Mr. DAVIDSON.—We insist the witness answer the question.

(Deposition of John A. Benson.)

The WITNESS.—I will answer, with your permission (to Mr. Campbell).

Mr. CAMPBELL.—All right, if you want to answer, go ahead.

A. I do not remember, because I sold Mr. Cobban various other pieces of scrip at the same time, and how much of the Monache scrip was used I can't remember at present at all.

Q. Mr. Benson, if I remember, you testified in regard to having a conference with Mr. Pat Reddy just previous to his death, and that immediately after having the conference, you left the State. About when did that conference take place and about when did you leave the State after the conference?  
[386]

A. My best impression would be that that conference was in the spring of 1900; I won't say that I left the State, but I left San Francisco, and was absent at the time of his death.

Q. How long were you out of San Francisco at that time?     A. That I can't say.

Q. Now, at the time you had the conference in Mr. Campbell's office, who sent for Holland Smith?

A. I do not know.

Q. What instruction, if any, was given Holland Smith at that time as to his part in this transaction?

A. I do not know.

Q. Was there anything said as to why Holland Smith was sent for at that time?

A. I don't remember in relation to that at all, other than the fact that he was sent for.

(Deposition of John A. Benson.)

Q. You do not recall now who sent for him?

A. No.

Q. If you stated on your direct examination that he was sent for by Mr. Campbell, was that a mistake?

A. If I stated by Mr. Campbell, I meant some one in Mr. Campbell's office. I use the generic term.

Q. Now, did you state on your direct examination that you paid into Mr. Campbell's office during the year 1903 the total sum of \$10,400, the balance on the Monache land deal?

A. I said up to and including that year, that that was my recollection.

Q. Did that amount of \$10,400 include the \$5,500 that you testify to? A. It did not.

Q. So that the total amount that you paid in on the Monache lands would be \$15,900. Is that correct, up to and including the year 1903? [387]

A. According to the best of my recollection.

Q. Do you remember about the date you made the first payment on the Monache lands?

A. I do not.

Q. Have you any way by which you could refresh your memory as to the date of that payment?

A. Only by looking at my check-book.

Q. Have you your check-book?

A. No, it is burned. Or by some papers in the Reddy estate that you have already been shown.

Mr. DAVIDSON.—No, I think that statement is to be furnished by Mr. Campbell later.

Mr. CAMPBELL.—Yes, I will furnish that later.

(Deposition of John A. Benson.)

Mr. DAVIDSON.—Q. Were the powers of attorney to select lieu lands, powers of attorney to sell selected lands, acknowledged by Mollie Conklin at the time they were delivered to you?

A. I think so.

Q. Now, you say that you received notice of the revocation of the power of attorney in the Monache land matter by Mrs. Conklin; when did you receive the first notice, as near as you can remember?

A. A copy of letters here which you have shown is the best evidence as to that.

Q. Was that the first notice you received?

A. The first direct notice that I can remember. I had received information for a year or two previous.

Q. The letter, Complainant's Exhibit "U-1" is a copy of the letter, as I understand, that was received by you from Mr. N. E. Conklin or from Mollie Conklin instead of N. E. Conklin, with reference to the revocation of the powers of attorney. [388]

A. I remember the letter and I remember my impression on receiving it.

Q. That letter is dated April 28th, 1903?

A. Yes, sir. Do you want to know what my impression was?

Q. No, I don't care for your impression. Now, you say for a year or two previous to this time you had information that they were endeavoring to revoke these powers of attorney?

A. I said so, yes. Can I explain?

Q. From whom did you receive such information?

A. From various agents and people from different

(Deposition of John A. Benson.)

land offices, and I think from my attorney in Washington—no, *to particularly* with reference to the revocation of the power of attorneys as with reference to dissatisfaction with the price received and endeavoring to upset the title to the United States.

Q. Now, do I understand you to state now positively that you received all the papers in connection with the Monache land from Mr. Bernard?

A. To the best of my recollection, yes, or through his agency.

Q. Through his agency? By the agency of Mr. Bernard? A. Yes.

Q. Now, Mr. Benson, were you a witness in the case of Mollie Conklin, plaintiff, vs. John A. Benson, Thomas B. Walker, Chester L. Hovey and others, defendants, in the Superior Court of the State of California, in and for the County of Modoc?

A. I was.

Q. I will call your attention to your deposition in that case and ask you whether or not the question was asked you: “State what was said there, or the substance of what was said there”—and to which in reply you answered, “I stated that at the utmost the price at which land was selling was \$4.00 [389] an acre; that I couldn’t make anything out of that; that I should receive the commission that the real estate dealers received, that is to say, five per cent on sales, which would be twenty cents less than \$4.00. The matter was held in abeyance for some time, a week or two, and I was informed by Mr. J. C. Campbell that the offer had been accepted; that is to say

(Deposition of John A. Benson.)

that I explained at the time of the meeting with all those people, the procedure that would have to be entered into, the deed of the land to the United States, the selection by the owners, and application which would have to be made to select the land and power of attorney to sell and convey." Will you state whether or not that question was asked and that answer given by you?

A. To the best of my recollection, yes, but I would rather refer,—

Mr. DAVIDSON.—That is a certified copy, Mr. Benson, I am referring to.

Mr. BENSON.—I would rather take it from the printed copy, because I can find it better.

Mr. DAVIDSON.—Q. I asked you whether or not you made the answer I have just repeated to you, and you stated you preferred to examine the printed copy, and I called your attention to the fact we were showing you a certified copy.

A. (After examining.) I think I did; that is correct, yes, sir.

Q. I will ask you whether or not this question was asked you in the deposition just referred to: "Sell and convey what?" Answer: "The lands selected in lieu of that surrendered. At the subsequent meeting, about a week later, when this sale was confirmed, these matters were recapitulated and it was agreed that I should pay for these lands as fast as the title to the selected land was accepted by the United States. I [390] made my arrangements through Mr. Campbell; received the papers from

(Deposition of John A. Benson.)

him, and paid over whatever money I paid, to him, generally speaking, in checks on the Anglo-Californian Bank." Was that question asked you and was that answer given by you in your deposition?

A. Undoubtedly it was.

Q. Is that answer correct?

A. Substantially so. There is only one difference I note. Here I testify that the papers were given to me by Mr. Bernard; there by Mr. Campbell. By Mr. Bernard I mean Mr. Campbell, and vice versa; one was the agent of the other.

Q. When you say they were delivered to you by Mr. Bernard and Mr. Campbell, you mean the same thing? A. Yes, sir.

Q. I will ask you whether or not in your deposition in the case of Mollie Conklin vs. John A. Benson, Thomas B. Walker, Chester L. Hovey and others, in the Superior Court of Modoc County, State of California, this question was asked you: "Q. State who, if any one, under these negotiations, and afterwards the confirming of the arrangement, was to attend to the execution of these papers, the preparation of them and execution of them," and whether or not in reply to that question you gave the following answer: "I was to prepare them and send them to Mr. Campbell's office for execution." Is that correct? A. I think so.

Q. Was that question asked you and that answer given? A. Undoubtedly.

Q. I will ask you whether or not in your deposition just shown you this question was asked you:

(Deposition of John A. Benson.)

“State any conversation [391] or any act or thing done or said between yourself and Mr. N. E. Conklin about the execution of these papers. That is, did he know that the deeds and powers of attorney were being executed?” Was that question asked you at that time? A. I think so.

Q. I will ask you whether or not in reply to the question just shown you, you gave the following answer: “He knew that they were being prepared; so far as any knowledge of their being executed, I am unable to state. I think he came into my office after some of them had been executed and we discussed the matter of the abstract.” Is that correct? Did you give that answer?

A. To the best of my recollection, yes.

Q. Now, did you ever explain the papers that would be necessary to be executed to Mr. Norman E. Conklin at any time after the meeting in Mr. Campbell’s office? A. I did.

Q. You explained them to him afterwards?

A. Yes.

Q. I will ask you whether or not in your deposition to which your attention has been already called, the following question was asked you: “State whether or not he knew [referring to Norman E. Conklin] “the kind of papers which were being prepared,” to which you answered “They were fully explained by me in his presence.” “Question: Before they were executed or afterwards?” Answer. “Before they were prepared, in Mr. Campbell’s office. That is the time they were fully explained.”

(Deposition of John A. Benson.)

Is that correct, and did you give that answer?

A. Undoubtedly I did.

Q. Is the answer as there given correct?

A. In substance yes; there was talk afterwards and further explanation, but the general explanation was at that time— [392]

Q. You say you afterwards explained the papers fully to him, to Mr. Norman E. Conklin?

A. Yes, but the general, fullest explanation was at the time in Mr. Campbell's office.

Mr. BENSON.—I would like to move that a copy of this testimony be put in evidence here, this deposition.

Mr. DAVIDSON.—We won't resist that.

Mr. BENSON.—And marked Exhibit "C."

Mr. CAMPBELL.—That is a part of the re-examination, Mr. Benson; you have a right to have read into the record any explanatory matters which are put in there.

Mr. DAVIDSON.—Q. Now, Mr. Benson, I will ask you whether or not, in your deposition heretofore referred to, this question was asked you: "State whether or not Mrs. Conklin, the plaintiff, ever made any claim to you that she only understood that she was to execute deeds," and your answer was: "She made no representation at all. My dealings after the transaction was accepted were with Mr. Campbell."

Was that question asked and that answer given by you? A. Yes.

Q. Is that correct?

(Deposition of John A. Benson.)

A. It would be correct if I could explain it.

Mr. CAMPBELL.—You have a right to.

The WITNESS.—Let me look at that. (After examining.) At the meeting when I explained the deeds to the United States, abstracts of title and papers that would be necessary, the whole matter was discussed at that time, and at no subsequent time until after some communications from Mr. Conklin did I understand that there was any claim made regarding the character of the various papers that entered into the transaction other than I have already explained. [393]

Q. Well, is it a fact, as stated in your answer, that after the meeting in Mr. Campbell's office, all of your dealings were with Mr. Campbell?

A. That is right.

Q. Were the negotiations for the Monache land proposition closed at the time you held a meeting with the interested parties in Mr. Campbell's office, or afterwards through Mr. Campbell?

A. Afterwards.

Q. Afterwards through Mr. Campbell?

A. Yes; afterwards I understood through Mr. Campbell that the proposition had been accepted.

Q. Then, as I understand, the proposition was not accepted at the time you had the meeting in the office—Mr. Norman E. Conklin and Mrs. Mollie Conklin?

A. Not finally.

Q. Did you mean the first or last meeting?

A. I meant the last meeting. It was generally understood it was to be accepted, but afterwards I was informed—

(Deposition of John A. Benson.)

Mr. CAMPBELL.—(Interrupting.) Q. By whom?

A. By you; at least that is my former testimony.

I think that is all.

(At this time, the taking of the deposition of the witness John A. Benson, was continued until tomorrow, Saturday morning, at 10 o'clock A. M.)

Saturday, April 30, 1910—10 o'clock A. M.  
Cross-examination of JOHN A. BENSON (Resumed).

Mr. DAVIDSON.—Q. Mr. Benson, I understood you to testify that after the meeting in Mr. Campbell's office, and [394] after you had been informed that the deal would be consummated along the lines suggested that you had taken up the clearing of the titles of the Monache lands?

A. I think, upon reflection, that I have those transactions in inverse order.

Q. Well, when did you do anything towards the straightening up of the titles of the Monache lands preparatory to abstracting the same?

A. Sometime in mid-summer, probably July and continuously, as I was requested by the Department to furnish the certificates as to the fact that no suits were pending.

Q. What, if anything, did you do in order to straighten up the title to the Monache lands?

A. My impression is that I secured patents on some certificates of purchase for which patents had not been issued that I furnished certificates from the County Clerks and County Recorders that there were no actions or conflicting titles pending in their

(Deposition of John A. Benson.)

respective offices; and eventually, as it developed, I took up the matter of suits in re Broder and *lis pendens* that had been filed with the Clerk of the courts in Inyo and Modoc County, the suits having been transferred in one trial from Inyo to Mono County.

Q. Mr. Benson, did you procure the entry of a supplemental decree of distribution in the estate of A. R. Conklin, deceased in relation to the Monache lands, or any part of them? A. I think not.

Q. Was one procured at that time at your suggestion?

A. Well, there was some paper in connection with it procured, but just what that was, I don't remember; there probably was a certified copy of whatever appeared on record in the court of the county—

Q. I will ask you whether or not you have in your possession [395] a certified copy of a supplemental decree of distribution entered in the estate of A. R. Conklin, deceased, on or about the 11th day of July, 1900?

A. I can't tell without examining my papers.

Mr. DAVIDSON.—I wish you would examine them, those you have with you. I think among the papers you showed me the other day, you showed me that paper, Mr. Benson, and I would like to have an opportunity to make another examination of it.

Mr. CAMPBELL.—(After some discussion.) But I don't understand that this land belonged to the estate of Conklin. \* \* \* It was my understanding that A. R. Conklin during his lifetime deeded these lands to Mollie Conklin.

(Deposition of John A. Benson.)

Mr. CONKLIN.—It was deeded back again to my father.

Mr. CAMPBELL.—And that passed through his estate?

Mr. CONKLIN.—Yes.

Mr. CAMPBELL.—I never knew that.

(The witness after some discussion produces paper.)

Mr. CAMPBELL.—Q. What is it? Let me see it.

(The witness hands same to Mr. Campbell, who examines it and passes same to Mr. Davidson.)

Mr. DAVIDSON.—(After examining.) I will ask that this be marked Complainant's Exhibit "V" for identification.

(It is stipulated by and between the parties that a certified copy of the paper referred to and marked by the notary Complainant's Exhibit "V" for identification may be attached to the deposition and made a part thereof.)

Mr. DAVIDSON.—Mr. Benson, I hand you paper marked Complainant's Exhibit "V" for identification, being a certified copy of Amended Decree in the matter of the Estate of Alvah R. Conklin, deceased, in the Superior Court of the City and [396] County of San Francisco, State of California. You may examine the paper and state whether or not that was one of the papers procured by you in the straightening up of the title of the Monache lands.

A. (After examining.) I cannot say in relation to that other than I find it among my papers.

Q. You found it among your papers? A. Yes.

(Deposition of John A. Benson.)

Mr. DAVIDSON.—That is all, Mr. Benson.

Redirect Examination.

Mr. CAMPBELL.—Q. What does that date purport to be?

Mr. DAVIDSON.—July 11, 1901, Mr. Campbell.

Mr. CAMPBELL.—Q. Mr. Benson, did you procure this decree to be made?

A. I did not.

Q. You got a certified copy of a decree that was made ?

A. I find it among my papers, and I simply take it for granted it is what it shows on its face to be.

Q. Now, Mr. Benson, you stated on yesterday that—I believe the language was that all your transactions in relation to this matter were with Mr. Campbell. What do you mean by that?

A. I mean so far as the Reddy interest is concerned and that alone.

Q. The first interview you had was with Mrs. Reddy and Mr. Campbell, was it not?

A. I think so.

Q. The second interview was with Mrs. Reddy and Mrs. Conklin, Norman E. Conklin and Mr. Campbell; there may have been some others present.

A. I know we had a general interview, and I think that was the second interview. [397]

Q. Then, there was a third and last interview at which Mrs. Reddy, Mrs. Conklin, Mr. Norman E. Conklin and Edward A. Reddy at least were present, was there not?

A. To the best of my recollection, yes.

(Deposition of John A. Benson.)

Q. At that interview was it not agreed—were not all the matters which those people were to do, and the price at which you were to convey this land agreed upon?

Mr. DAVIDSON.—We object to that question as leading and suggestive.

A. They were.

Q. Now, was not this the agreement that was made at that time: That the parties were to convey the land to the United States, and execute a power of attorney to select, and when those selections were approved you were to pay for those lands through the Anglo-Californian Bank?

A. That was the agreement; there were also other papers to be executed.

Q. Was there anything said about any other papers to be executed at the time of that agreement? If so, what were they?

A. The application to select—

Q. Was that a power to select?

A. No, the power to select was only to supplement the application to select in case it was lost and also the power to sell.

Q. Was there anything said in any of those conversations about a power of attorney to sell the property before these persons were paid for it?

A. I don't remember that matter being mentioned at all.

Q. Wasn't the agreement that when the titles were approved you were to pay for them? [398]

A. It was.

Q. Was there any agreement that they were to

(Deposition of John A. Benson.)

credit you or give you any credit for any of these titles at all?

A. I don't understand the question as you put it.

Q. Was any title to pass to you for these properties before they were paid for?

A. There was no statement made of that kind and no understanding of that kind that I remember.

Q. Now, then, when you left with Mr. Conklin, Mr. Holland Smith and Milton Bernard, the papers were to be prepared, were they not, the deeds to the United States and the selection papers?

A. That arrangement, I think, was made at the second meeting.

Q. At the second interview?

A. The second interview; and I want to correct my other testimony to this extent. I think all my transactions with Mr. Conklin were before the last interview.

Q. Now, then, was it not—at any rate, at whichever interview it was at which this agreement was made, was not the only thing to be done a petition to be filed by the Reddy interests to procure the permission of the Government of the United States?

A. That was one of the things required; if I can examine Exhibit "A," and take the dates, I can tell you. (After examining.) Yes, sir, I think so.

Q. And when you stated yesterday that you received a telephone from Mr. Campbell that everything was all right, was not that telephone from Mr. Campbell as to the fact that the Court had signed the order permitting the Reddys to sign that deed?

(Deposition of John A. Benson.)

A. Yes, sir. [399]

Q. Now, this money which you paid, the \$5,500 was paid before the approval of any of the titles, was it not? A. I am positive it was.

Q. Was not all the money which you paid to the Reddy estate paid, as you understand it, before there was any title approved? In other words, did not Mrs. Reddy, through myself, request you to put up some money on the contract, and do not the papers in the Reddy estate show moneys received on Benson contract?

A. That is my recollection of it; I can answer you further by referring to a letter.

Q. Go ahead!

A. I see in my letter of December 11, 1901, to you, I said that "Up to the present date there has not been a single location accepted by the Commissioner of the General Land Office." That is in my mind accentuated by the fact that these copies of the proceedings in the *lis pendens* case bear a date still subsequent to this, my impression being then that the Commissioner of the General Land Office had required proof that there were no suits or actions pending in the courts of the different counties in which the land was situated, and therefore, the *lis pendens* proceedings, copies of them had been procured.

Q. You knew at the time you paid the money, other than the \$5,500, that that money was going to the Reddy estate, did you not?

A. I understood so, particularly after Mr. Conklin

(Deposition of John A. Benson.)

has refused to receive any more money on account.

Q. You met Mrs. Reddy in my office after you were informed that Mr. Conklin had refused to take any more money, did you not, and did she not say that she would take the money and go on with the contract in so far as she was concerned? [400]

A. I know she said she would go on with the contract in so far as she was concerned; I couldn't state positively as to all of that unless I examine the dates on which Mr. Conklin notified me.

Q. That is right. Now, then, did you have any other agreement or transaction with Mr. Campbell other than that which took place at the three meetings, or at the meetings in his office at which these various parties were present, and in relation to the contract?

A. I did not save and except this: That Mr. Conklin wanted to recede from the contract; he thought he could get more money, and that matter was discussed at various times.

Q. I am talking about making a contract for the sale of this property to you.

A. Nothing whatever.

Q. The money that was paid was sent over to myself or to the office of Campbell, Metson & Campbell, was it? A. Yes, sir.

Q. And after the first \$5,000.00, it was understood that that money was to go to the Reddy estate. You understood that?

A. The statement was made to that effect, yes, sir.

Q. Now, then, Mr. Benson, are you not mistaken

(Deposition of John A. Benson.)

in stating that you got all the papers from the office of Campbell & Metson; in other words, did you not send one of your clerks down to Holland Smith and get a large bundle of papers from Holland Smith in connection with this Reddy-Conklin matter?

A. Since my attention has been called to it by Mr. Lavenson, yes, I did; but it was a matter of hearsay from my clerks as to Milton's bringing the papers to the office; of my own [401] knowledge, I don't know whether I ever received a single paper individually or personally from Milton or not.

Q. All you know about the matter, then, is that you sent the papers up to the office of Campbell, Metson & Campbell, and they were received at your office again?

A. That is all I know about it.

Q. Save and except what you got from Mr. Lavenson—from what Mr. Lavenson told you?

A. I remember sending him around to Holland Smith after some papers, and judging from the papers that I have just examined and the date which the deed bears, as compared with the date of the order of Judge Coffey, I should infer that after receiving notice from you of the issuance of the order by Judge Coffey, that I immediately sent to Holland Smith for the papers.

Q. Now, is there anything else you want to explain in relation to your testimony? I have been asking you for myself. Now, if you want to make any statement in your own behalf, do so.

A. Nothing further than that this is a matter of

(Deposition of John A. Benson.)

ten years old, and I haven't read the testimony taken in the former cases, or hadn't at the time I testified; and from two or three circumstances I am convinced that I got the cart before the horse in this; that my talks with Mr. Conklin were previous to the final meeting in your office when the contract was ratified. I am inclined to this from thinking the matter over, and from two or three things; one is the fact that papers were presented and discussed and explained to the notary at the meeting at which the agreement was ratified, and the papers could not have been prepared offhand; hence I am satisfied [402] that the discussion with Mr. Conklin was previous to that. I also have, since he called my attention to it, a hazy recollection of his making a statement that he had to get through and go to Bakersfield. Those things all lead me to believe that the two transactions were in inverse order to which I testified as regards time only.

Mr. CAMPBELL.—That is all, I think.

Recross-examination.

Mr. DAVIDSON.—Q. Now, as I understand, Mr. Benson, you now say you had no conversation with Mr. N. E. Conklin in regard to the preparation of any deeds, or any other papers after the final talk, the consummation of the deal, that is the contract.

A. I don't think I did.

Q. And that all your conferences with him were previous to the time that an agreement had been reached?

A. I am inclined to think from these facts in my

(Deposition of John A. Benson.)

mind that I was mistaken about that. There is one thing further I would like to explain.

Mr. CAMPBELL.—Very well; go ahead.

Mr. BENSON.—I was shown in the complaint a copy of an application to select in which Mollie Conklin's name appeared, and asked if that was not a copy of the application sent out from my office to Mr. Cobban. I replied that it was not because all applications and all the papers were signed either three or five fold; that is to say, that the three parties participating, Mrs. Conklin, Emily M. Reddy and Edward A. Reddy generally signed twice, once as devisees and once as administrator or administratrix—administratrix or administrator. From that fact, I [403] testified that that application was not one of those received from the parties owning the land, and when I testified in relation to receiving the papers from Mr. Campbell, I meant that I received the papers from Mr. Campbell on account of the Reddy interest, but they were in Mr. Campbell's custody because the signature of Mollie Conklin was a component part of the respective papers.

Mr. DAVIDSON.—Q. Now, at the time that you drew the deeds and powers of attorney, and applications to select lands in lieu of the Monache lands, I believe you state now that Mr. Conklin was not in conference with you during the preparation of those papers.

A. Not at all; he was in conference with me during the preparation of those papers at my office.

Q. Were the papers prepared before or after the

(Deposition of John A. Benson.)

contract to convey was consummated?

A. Before is my memory.

Q. You say, now, that you were preparing the papers for the transfer of the Monache lands before there had been an agreement to sell them?

A. Before there had been a ratified agreement.

Q. Yes. Did you not state, Mr. Benson, in your examination in chief that at the final meeting at which the deal was ratified, that you explained to the parties fully what papers would have to be prepared?

A. That must have been at the second meeting that I made the full explanation; I also discussed the details fully at the final meeting.

Q. Do you say now that you had two meetings with Mr. N. E. Conklin with reference to this matter in the office of Mr. Campbell? [404]

A. I won't say as to Mr. N. E. Conklin, but I will say that Mr. N. E. Conklin came to my office many times and discussed this matter.

Q. That was all previous to the ratification of the deal? A. That is my recollection.

Q. Do you say now that you had two conferences with Mollie Conklin in the office of Mr. Campbell at or about or up to and including the time the deal was ratified? A. That is my best recollection.

Q. Now, was Mr. Ned Reddy present at either one of those meetings? A. I think he was.

Q. Are you positive?

A. That is to the best of my recollection.

Q. Was Mrs. Coleman present?

A. Some elderly lady wearing black was present, and I think it was Mrs. Coleman.

(Deposition of John A. Benson.)

Q. Was Ned Reddy present at the time in Mr. Campbell's office when Mr. N. E. Conklin was present? A. I think that he was.

Q. If he was present at all during those conferences, was he present at the time Mr. N. E. Conklin was present? A. I think he was.

Q. I will ask you whether or not in your deposition in the case of Mollie Conklin, plaintiff, vs. John A. Benson, Chester L. Hovey, and others, in the Superior Court of Modoc County, in the State of California, you gave the following answer: "There was following that, perhaps a week or more after my conversation with Mrs. Reddy and Mr. Campbell, there was a meeting in Mr. Campbell's office in the Crocker Building at which were present Mr. N. E. Conklin, Mrs. Mollie Conklin, Mrs. Reddy, J. C. Campbell, Milton Bernard, and I think a Mrs. Coleman was present, and myself." Did you give that answer? A. I did. [405]

Q. Is that true?

A. To the best of my recollection.

Q. Now, I will ask you whether or not in the same deposition this question was asked you: "Q. Was Ned Reddy present? A. My impression is that he was not." Was that question asked and that answer given by you at the time that deposition was taken?

A. It was.

Q. Is that true?

A. As I have now testified, I cannot state positively whether he was or not.

Q. Now, Mr. Benson, I will call your attention to a letter marked Complainant's Exhibit "N-1," pur-

(Deposition of John A. Benson.)

porting to be a letter from John A. Benson to the Hon. J. C. Campbell, dated San Francisco, California, December 11, 1901. You may examine that letter and state whether or not that is a letter written by you to Mr. Campbell, relating to the Monache lands.

A. I prefer to see the original letter.

Mr. DAVIDSON.—The original is in evidence and cannot be withdrawn. I will show you a copy and you can compare it; it is the same letter that is there, that you have shown me in the transcript.

Q. Examine Complainant's Exhibit "N-1," and state whether or not that is the letter written by you to Mr. Campbell.

A. The letter itself is the best evidence. It is in the case.

Mr. DAVIDSON.—Well, I insist that the witness answer to the best of his recollection.

Mr. CAMPBELL.—Read it and see.

The WITNESS.—I will answer that on the direction of my attorney, but I still think the letter is the best evidence, and it is in the case. I don't think I should be called upon [406] to confirm or deny any statements made in a typewritten document—

Mr. DAVIDSON.—The letter is certified to; this is certified to by the Examiner.

Mr. CAMPBELL.—I suggest you read the letter, and if you have any recollection in regard to anything about it, Mr. Benson, that you can so state.

The WITNESS.—Very well.

Mr. CAMPBELL.—Now, you are your own at-

(Deposition of John A. Benson.)

torney in this case. I can't direct you one way or the other.

Mr. DAVIDSON.—I understand Mr. Campbell is not appearing, so far as the record is concerned; the record shows that you are appearing for yourself.

Mr. DAVIDSON.—Q. I call your attention, Mr. Benson, to the fact it shows that it is certified to by the Examiner. That is the letter on page 43 (indicating).

A. (After examining.) The copies are not alike; and I must say that I cannot see the purpose of asking a man to testify as to the correctness of a certified copy which disagrees with the original, when the original is in evidence.

Mr. CAMPBELL.—Q. Do you know whether or not that is a copy of the letter which you wrote, is the question?

A. One thing is certain; either one or the other of these letters is not a literal copy, because they do not agree.

Mr. DAVIDSON.—Q. In what respect, Mr. Benson?

A. In the second line, in the Boise City copy, the word "you" does not appear.

Q. That is in the one that is shown you for identification?

A. Yes, sir. On the 5th line 5th folio, the expression "30 Stats. period, comma," parenthesis 36 parenthesis, appears, while in the printed copy there is no terminal "s" in the abbreviation which is apparently

(Deposition of John A. Benson.)

intended to mean Statutes. [407] I wouldn't be this particular, or I wouldn't undertake to split hairs in this way, were it not for the fact that I am called upon to testify as to the identity or correctness of a letter which is already in evidence. I will state, however, that to the best of my recollection, and in general terms, these letters express about what I remember as writing at the time.

Q. Then, as a matter of fact, Mr. Benson, you did write a letter to Mr. J. C. Campbell on the 11th day of December, 1901, purporting to state, in general terms, at least, and in substance, the same things as stated in the letter marked Complainant's Exhibit "N-1," in this case?

A. I won't state as to the time without the letter.

Q. Mr. Benson, I will ask you whether or not, in your deposition in the case in Modoc County, heretofore shown you, this question was asked you: "State whether or not there was ever any arrangement or agreement between you and Mollie Conklin about putting any papers in escrow" to which you answered "No, there was not, because the negotiations were concluded with Mr. Campbell when I was not present." You can examine that, and state whether or not the question was asked you and the answer given.

A. (After examining.) I think I made that answer.

Q. Now, Mr. Benson, at about what date, as near as you can remember, was it that Mr. Conklin notified you that Mollie Conklin would not receive any

(Deposition of John A. Benson.)

more money on the Monache lands?

A. I cannot remember.

Q. Was it before or after the 11th day of December, 1901?      A. I cannot state. [408]

Q. How was that notice given you, Mr. Benson?

A. By letter, is my recollection.

Q. Is it not a fact, Mr. Benson, that the first notice you received that Mrs. Conklin would not receive any more money was the notice of the revocation of the powers of attorney?

Mr. CAMPBELL.—When you say “powers of attorney,” I understand there are two powers of attorney.

Mr. DAVIDSON.—The revocation was to all powers of attorney, I think.

Mr. CAMPBELL.—But there are two powers of attorney, as I understand it, one to select the lieu lands; the other one, which you showed me, to convey, I think.

Mr. DAVIDSON.—There were two sets.

The WITNESS.—I can't answer that without seeing copies of the letter.

Q. I will again show you Complainant's Exhibit “U-1” and ask you whether or not that letter is a copy of the letter you received notice that she would not receive any more moneys on the Monache lands?

A. I think there are other letters previous to this.

Q. Have you those letters with you?

A. I have not.

Q. Have you those letters in your possession?

A. I have not.

(Deposition of John A. Benson.)

Q. What has become of them?

A. They were destroyed in the fire.

Q. In the San Francisco fire?      A. Yes.

Q. How long previous to the letter Complainant's Exhibit "U-1," were you notified that Mrs. Conklin would accept no more money on the Monache lands?

[409]

A. I think there was a letter from Mr. Conklin himself, and there were letters written to—one, I think, to Mr. Metson, and some communications in some way to the office to the effect that Mr. Conklin was dissatisfied with the terms of the sale; he thought he could make more money out of it by selling to someone else, and asking that the papers be taken from me.

Q. Was that before or after the letter shown you Complainant's Exhibit "U-I"?

A. To the best of my recollection it was a considerable time before. In reference to "U-1," I treated it as somewhat of a burlesque. Do you want to know why?

Q. Yes.

A. In that it stated impossibilities. I was asked to restore the title in the condition in which I received it. That was impossible, because there is no law passed by the United States to reconvey lands of this character for which it had received deeds which had been placed on record.

Q. Now, Mr. Benson, I understood you to say that the lands were to be paid for as the selections were approved. Is that correct—the selected lands were to

(Deposition of John A. Benson.)

be paid for as the lands selected were approved? Is that true?

A. That is my understanding of it; yes.

Q. I will ask you whether or not you sold any of the rights to make selections of land in lieu of the Monache lands for which you received pay previous to the time that the selections were approved by the United States Government?

Mr. CAMPBELL.—I object to that on the ground it is irrelevant, immaterial, incompetent and not cross-examination. It has nothing to do whatever with the contract with those people. I make that objection for Mr. Benson, not for myself, because he [410] has not any lawyer here and he is on the witness-stand.

A. Conditioned upon the final ratification of the title by the United States, yes.

Q. Is it not a fact, Mr. Benson, that in all of the rights to make selections in lieu of Monache lands surrendered, as you have testified to, to Mr. R. M. Cobban, a codefendant in this case—did not Mr. Cobban in all cases pay you the full purchase price for the rights to make the selections previous to the time that any application or powers of attorney or other instruments were delivered to him, and previous to the time that any application was made to select the lands involved in this case?

Mr. CAMPBELL.—The same objection made.

A. I think that he did.

Q. Is it not a fact that all papers to make selections delivered to Mr. Cobban were delivered in escrow through different banks in San Francisco and

(Deposition of John A. Benson.)

Boise, Idaho? A. I do not think so.

Q. Had you made any sales to Mr. R. M. Cobban of any of the rights to select lands in lieu of the Monache lands previous to the time that the letter was written by you to Mr. Campbell on December 11, 1901? A. I cannot state as to the time.

Q. Did you not, as a matter of fact, Mr. Benson, deliver to Mr. Cobban, all of the rights to make selections of lands involved in this case previous to December, 1901?

A. I cannot state as to the time.

Q. Would you say that you did not deliver and sell all these rights to select land in lieu of the Monache lands to Mr. Cobban previous to the 11th day of December, 1901? [411]

A. I can answer you more intelligently in relation to that, when I consult some memorandum.

Q. When can you consult that memorandum, Mr. Benson? A. During the recess.

Mr. DAVIDSON.—Very well. I will ask that Mr. Benson consult the memorandum. I will not close my examination until he is prepared to make an answer to the last question. That will be all the cross-examination we will make of Mr. Benson until he is prepared to answer the last question propounded to him.

(At this time, the further hearing of the deposition of John A. Benson was continued until Monday, May 2d, 1910, at 10:30 o'clock, A. M.)

Monday, May 2d, 1910, 10:30 A. M.

Cross-examination of JOHN A. BENSON Resumed.

(Deposition of John A. Benson.)

Mr. DAVIDSON.—Q. Mr. Benson, during the recess have you examined your memorandum so that you are now prepared to answer the question as to whether or not you have sold and delivered all of the rights to select lands in lieu of the Monache lands, to Mr. Cobban previous to December 11, 1901?

A. Basing my answer on the letter to Mr. Campbell, a copy of which was produced here, and from my conversation with my employees, etc., the best information that I can give is that a [412] portion of these selections (so called) was sold before and a portion after that letter was written. Just the dates I can't give nor just the quantity.

Q. Mr. Benson, had you received the pay from Mr. Cobban for the rights to select and deliver to him previous to December 11, 1901?

A. For such as I delivered to him previous to that time.

Mr. DAVIDSON.—I think that is all at present.

Mr. CAMPBELL.—(To Mr. Benson.) You say you want to explain something about that receipt?

Mr. BENSON.—There is one question that wasn't brought out in reference to the perfection of the title that that receipt calls to my mind. Shall I go right ahead and explain it?

Mr. CAMPBELL.—Go ahead.

Mr. BENSON.—One reason why selections couldn't be approved earlier on portions of the land was that the lands themselves were all patented to the State of California and had not been listed by the United States to the State of California, and I pro-

(Deposition of John A. Benson.)

cured that to be done by the employment of an attorney in Washington, and it was a condition prerequisite to the acceptance of the title to the United States; and I also paid the taxes that were due.

Mr. CAMPBELL.—Is that all?

Mr. BENSON.—Yes.

Mr. CAMPBELL.—Q. How much did you pay for listing those lands? A. I paid the attorney \$250.

Q. How much taxes did you pay?

A. About \$350. [413]

Mr. DAVIDSON.—Q. Mr. Benson, do you remember having signed a receipt marked Complainant's Exhibit "W"? (Hands same to witness.)

A. I recognize the receipt and admit that it is in my handwriting.

Q. Well, now, was that receipt given about the time that Mr. Conklin was checking up the descriptions in your office, if you remember?

A. I should say offhand, it was given at the time of the first interview. The descriptions were quite intricate and I think that Mr. Conklin, upon leaving the office was requested to leave the papers in the hands of Miss Glover; and before doing so, I think this receipt was given.

Q. You say that the second interview, at which this talk took place was about ten days or two weeks afterwards, as I remember?

A. I know some interval intervened. I can't say which it was.

Q. I mean the one that was held in Mr. Campbell's office at which you and Mr. Conklin and his mother were present, when you talked over the terms of the

(Deposition of John A. Benson.)

disposal of the Monache lands?

A. It was sometime, I should say, after this and before the final submission of the papers. [414]

City and County of San Francisco,  
State of California,—ss.

I, Flora Hall, a Notary Public in and for the City and County of San Francisco, State of California, do hereby certify that the witnesses in the foregoing depositions named, to wit, Joseph C. Campbell, John A. Benson, James H. Lavenson and Clara E. Glover, were by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that the depositions of said witnesses were taken pursuant to stipulation hereunto annexed, at Room No. 514, Balboa Building, San Francisco, Cal., commencing at 2 o'clock P. M. on Thursday, April 28th, 1910, to which time the taking of said depositions had been duly and regularly continued by consent of the parties.

That the testimony of said witnesses was taken down in shorthand by me, and was afterwards by me reduced to typewriting, and when completed, was carefully read over by the witnesses, Joseph C. Campbell, James H. Lavenson and Clara E. Glover, and by them respectively corrected and subscribed in my presence; the witness John A. Benson having died before his deposition was by him subscribed, his deposition is attached hereto unsigned, and I hereby certify that the same is a full, true and correct copy from my shorthand notes of the testimony given by said John A. Benson on the taking of the said depositions.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, this 9th day of June, 1910.

[Seal] FLORA HALL,  
Notary Public in and for the City and County of San  
Francisco, State of California. [415]

**[Defendants' Exhibit "A."]**

KNOW ALL MEN BY THESE PRESENTS, THAT, WHEREAS, we, the undersigned, are the owners of the land hereinafter described, included within the limits of the Sierra Forest Reservation in the State of California, which land we desire to relinquish to the United States, and select in lieu thereof an equal quantity of vacant land open to settlement, as provided by the Act of Congress of June 4, 1897; (30 Stat. 36).

NOW, THEREFORE, we, Mollie Conklin, a widow, of Bakersfield, County of Kern, State of California and Edward A. Reddy of the City and County of San Francisco, State of California, Devisee under the Last Will and Testament of Patrick Reddy, deceased, also Administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy of the City and County of San Francisco, State of California, surviving wife and devisee under the Last Will and Testament of Patrick Reddy, deceased, also Administratrix of the Estate of Patrick Reddy, deceased, do hereby release, remise, quit-claim, grant and relinquish to the UNITED STATES OF AMERICA, the said land, which is described as follows:

The Northwest quarter of Southwest quarter of Section Fifteen (15) in Township Seventeen (17) South, Range Thirty-five (35) East, Mount Diablo Meridian, situated in the County of Inyo, State of California, and containing Forty (40) acres, and we agree to accept in lieu thereof other land to be hereafter selected by us, our assigns, or legal representatives, equal in area to that herein relinquished.

(Put in Inyo Co.

N. G. (

(Abstract [416]

WITNESS our hands this Nineteenth day of September, 1900.

MOLLIE CONKLIN.

EDWARD A. REDDY,

Devisee Under the Last Will and Testament of Patrick Reddy, Deceased.

EMILY M. REDDY,

Surviving Wife and Devisee Under the Last Will and Testament of Patrick Reddy, Deceased.

EDWARD A. REDDY,

Administrator of the Estate of Patrick Reddy, Deceased.

EMILY M. REDDY,

Administratrix of the Estate of Patrick Reddy, Deceased.

I, Emily M. Reddy, surviving wife of the said Patrick Reddy do hereby consent and join with my late husband's estate in the foregoing conveyance, hereby waiving and releasing my homestead, dower or other right that I have or may hereafter acquire in and to

the land above described.

Witness my hand the Nineteenth day of September, 1900.

EMILY M. REDDY.

I, Caroline S. Reddy, wife of the said Edward A. Reddy, do hereby consent and join with my husband in the foregoing conveyance, hereby waiving and releasing any homestead, dower or other right that I may have or may hereafter acquire in and to the land above described.

Witness my hand the Nineteenth day of September, 1900.

CAROLINE S. REDDY. [417]

State of California,

City and County of San Francisco,—ss.

On this Nineteenth day of September, one thousand nine hundred, before me, Holland Smith, a Notary Public in and for the said City and County of San Francisco, personally appeared Mollie Conklin, a widow, Edward A. Reddy, devisee under the Last Will and Testament of Patrick Reddy, deceased, and Administrator of the Estate of said Patrick Reddy, Caroline S. Reddy, his wife, and Emily M. Reddy, surviving wife, devisee under the last Will and Testament of Patrick Reddy deceased, and Administratrix of the Estate of said Patrick Reddy, personally known to me to be the same persons whose names are subscribed to the within instrument and they duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal the day and year first above written.

[Seal]

HOLLAND SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

Defendants' Exhibit "A." [418]

[Endorsed]: Defendants' Exhibit "A." F. Hall, Notary Public, N. G. Pnt. in Deed to R. M. Cobban, June 28-01. Deed. Mollie Conklin, Edward A. Reddy and Emily M. Reddy to United States of America. Dated Sept. 19, 1900. Relinquishment of Land Within a Forest Reserve. Act June 4, 1897. Recorded at Request of . . . . ., this . . . . day of . . . . ., 190. . . ., at . . . . minutes past . . . . M. in liber . . . . of Deeds, page . . . . ., Recorder. By . . . . ., Deputy. [419]

**[Defendants' Exhibit "B."]**

*In the Superior Court of the City and County of San Francisco, State of California.*

In the Matter of the Estate of PATRICK REDDY,  
Deceased.

On hearing the motion of J. C. Campbell, attorney for Edward A. Reddy and Mrs. Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, made upon the papers on file and of record herein, and it appearing therefrom that an order was made and entered in this court on the 18th day of September, 1900, authorizing the sale of certain lands hereinafter described, belonging to said estate, for the purpose, therein stated; and it further appearing that the sale thereof may be facil-

itated by the surrender of said lands in exchange for lieu lands, as provided for by an act of Congress, therefore,

IT IS ORDERED, ADJUDGED AND DECREED that said administrator and administratrix be and they are hereby, authorized and empowered to surrender to the United States of America the lands, and the title thereto, hereinafter described, now belonging to and constituting a part of the estate of said deceased, as a basis for a selection of other lands, under the Act of June 4th, 1897 (30 U. S. Stat. at Large, p. 36), which provides as follows:

“That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desired to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant [420] land open to settlement not exceeding in area the tract covered by his claim or patent.”

Which said selection or selections they are hereby authorized and empowered to make.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said administrator and administratrix be and they are hereby authorized and empowered to sell the lands which may be so selected in lieu of the lands surrendered, and to give a deed or deeds, good and sufficient in law, to vest the title of the lands so selected, both present and that which may be hereafter acquired, in the grantees who shall become the purchasers under and by virtue of this order of sale.

Said lands hereinabove referred to as now belonging to and constituting a part of the estate of said deceased, are described as follows: [421]

LIST OF PATENTED LANDS  
OWNED BY  
MOLLIE CONKLIN AND THE ESTATE OF  
PATRICK REDDY, DECEASED.

Location No. 2042, for the S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 3; E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 10, T. 21 S., R. 34 E.; N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 10; E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of Sec. 30; T. 21 S., R. 35 E.; S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 32, T. 22 S., R. 35 E.; N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 22, T. 22 S., R. 36 E.; M. D. M. containing 640.00 acres.

Location No. 2043, for the S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 36, T. 19 S., R. 34 E. M. D. M. containing 120.00 acres.

Location No. 2044, for the S.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ ; S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 14; E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of Sec. 22; N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of Sec. 23; N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 26, and N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 27, T. 17 S., R. 34 E., M. D. M. containing 920.00 acres.

Location No. 2045, for the S.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 33; N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 34, T. 17 S., R. 35 E. M. D. M. containing 280.00 acres.

Location No. 2046, for the N. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 11; E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of Sec. 15; N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. 33, T. 19 S., R. 35 E., M. D. M. containing 240.00 acres.

Location No. 2047, for the E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , and S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 13; W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of Sec. 14; N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 15; N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of Sec. 23; N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of Sec. 24, T. 18 S., R. 34 E., N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 18; and N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 19, T. 18 S., R. 35 E., M. D. M. containing 1120.00 acres.

Location No. 2048, for the N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 34, T. 19 S., R. 35 E.; N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 4; W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 3; S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of Sec. 10; S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of Sec. 14; E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 15; E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of Sec. 20; W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 21; S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 22; S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of Sec. 23; W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 26; N. W.  $\frac{1}{4}$  of N. E.

$\frac{1}{4}$  of Sec. 35, T. 20 S., R. 35 E., M. D. M. containing 2680.00 acres.

Location No. 2049, for the S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 6, E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 7, T. 18 S., R. 34 E., M. D. M. containing 200.00 acres.

Location No. 2050, for the N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 28; N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 29; S. E.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 30; W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 31, T. 18 S., R. 35 E.; and N. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 6, T. 19 S., R. 35 E., M. D. M. containing 1160.00 acres. [422]

Location No. 2051, for the N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 31; N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of Sec. 32, T. 17 S., R. 35 E., M. D. M. containing 240.00 acres.

Location No. 2079, for the N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of Sec. 9; S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 15; S. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , N. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 16; N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. 22, T. 17 S., R. 35 E., M. D. M. containing 640.00 acres.

Location No. 2081, for the E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sec. 9, T. 21 S., R. 35 E., M. D. M. containing 80.00 acres.

Location No. 2082, for the S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sec. 4, T. 17 S., R. 34 E., M. D. M. containing 80.00 acres.

Location No. 2083, for the S. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 17, and N.  $\frac{1}{2}$  of N. E.

$\frac{1}{4}$  of Sec. 20, T. 22 S., R. 36 E., M. D. M. containing 160.00 acres.

Location No. 2084, for the E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sec. 16, T. 18 S., R. 34 E., M. D. M. containing 160.00 acres.

Location No. 2085, for the E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sec. 25, T. 19 S., R. 34 E., M. D. M. containing 80.00 acres.

Location No. 2199, for the N.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  and N. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 11, T. 20 S., R. 34 E., M. D. M. containing 280.00 acres.

Location No. 2240, for the S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of Sec. 36, T. 18 S., R. 35 E., M. D. M. containing 200.00 acres. [423]

Done in open court this 19th day of September A. D. 1900.

J. V. COFFEY,  
Judge.

Office of the County Clerk of the City and County of San Francisco.

I, Wm. A. Deane, County Clerk of the City and County of San Francisco, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full, true and correct copy of the Order to Surrender Lands, etc., in the matter of the Estate of Patrick Reddy, (Dec'd) now on file and of record in my office.

Witness my hand and the seal of said court, this 19th day of Sept., A. D. 1900.

[Seal]

WM. A. DEANE,  
Clerk.

By V. F. Northrop,  
Deputy Clerk.

[Endorsed]: Filed Sept. 19, 1900, Wm. A. Deane, Clerk. By V. F. Northrop, Deputy Clerk. [424]

[Endorsed]: No. 23438 Dept. 9, In the Superior Court of the City and County of San Francisco, State of California. In the Matter of the Estate of Patrick Reddy, Deceased. Order. Due service of within ..... admitted this .... day of ....., 1..... .., Attorney for ..... Filed ....., 1..... .., Clerk. By ....., Deputy Clerk. Reddy, Campbell & Metson, Attorneys for ....., Rooms 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, Cal.

2618. Recorded at the Request of Abstract Company, Sept. 20, 1900, at 5 min. past 3 o'clock, P. M. in vol. 100 of Deeds, page 237, Tulare County Records. J. O. Thomas, Recorder. By W. S. Hayes, Deputy Recorder. \$3.10.

Defendants' Exhibit "R." Flora Hall. Notary Public. Recorded at the request of F. E. Densmore, June 18th, 1901, at 31 minutes past 10 o'clock, A. M. in Vol. E. 1 of Deeds, page 271, et seq. Records of Inyo County, Calif. J. E. Meroney, Recorder. By ..... Deputy Recorder. \$3.10. [425]

**Complainants' Exhibit "V."**

*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

In the Matter of the Estate of ALVAH RUSSELL  
CONKLIN,

Deceased.

**Amended Decree.**

The petition of Mollie Conklin, executrix of the last will and testament of Alvah Russell Conklin, deceased, also the surviving wife of said deceased, and also devisee under the said last will and testament, heretofore filed herein, praying for an amended decree correcting descriptions of certain real estate belonging to the estate of said deceased, and also for distribution of the same to her as said sole devisee under the terms of said last will and testament of said deceased coming on regularly for hearing this 11th day of July, 1901, and it appearing to the Court therefrom, that under the original decree an error had been made in the description of the property recited in the petition on file herein, whereby said property was omitted from the decree of distribution heretofore made; and it further appearing that said property described therein is not newly discovered assets belonging to the estate of said decedent, but the same had been heretofore administered upon and erroneously omitted from the said decree; and it further appearing to the Court that the said Mollie Conklin as sole devisee of the last will and testament

of Alvah Russell Conklin, deceased, is entitled to the said property.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the said real estate hereinafter described be, and the same is hereby distributed to Mollie Conklin, surviving wife of said decedent Alvah Russell Conklin—the said property having been [426] erroneously omitted from the decree heretofore made on this 16th day of December, 1900.

An undivided one-half interest in all these certain tract, pieces or parcels of land situate in the County of Tulare, State of California, described as follows, to wit:

The south half of southeast quarter and south half of southwest quarter of Section fourteen (14) in township seventeen (17) south, Range thirty-four (34) east; east half of northwest quarter of Section seven (7); east half of southeast quarter and southwest quarter of southeast quarter of section thirteen (13); north half of northeast quarter of section twenty-three (23); northeast quarter of southwest quarter of section twenty-four (24) in township eighteen (18) South, Range thirty-four (34) east; north half of southwest quarter of section eighteen (18); north half of northwest quarter of section twenty-eight (28) and north half of northeast quarter of section twenty-nine (29) in Township eighteen (18) South, Range thirty-five (35) east; southwest quarter of northeast quarter and south half of northwest quarter of section thirty-six (36), in Township nineteen (19) South, Range thirty-four (34) east,

north half of southeast quarter and north half of southwest quarter of section thirty-four (34) in Township nineteen (19) south, Range thirty-five (35) east; northeast quarter of southwest quarter of section three (3), northeast quarter of southeast quarter of section four (4); east half; southeast quarter of northwest quarter and northeast quarter of southwest quarter of section ten (10); east half of northeast quarter, east half of southeast quarter and southwest [427] quarter of southeast quarter of section fifteen (15); east half of northeast quarter of Section twenty (20); west half of northwest quarter, southeast quarter of northwest quarter of section twenty-one (21); south half of northwest quarter of section twenty-two; northwest quarter; east half of southwest quarter and southwest quarter of southeast quarter of section twenty-three (23) in Township twenty (20) south, Range thirty-five (35) east; north half of northeast quarter of section ten (10) in Township twenty-one (21) south, Range thirty-five (35) East, Mount Diablo Meridian.

Dated July 11th, 1901.

F. H. DUNNE,

Judge of the Superior Court.

Endorsed: No. 19461—Dept. 9. In the Superior Court of the City and County of San Francisco, State of California. In the Matter of the Estate of Alvah R. Conklin, Deceased. Amended Decree. Campbell, Metson & Campbell, Attorneys for Petitioner. Rooms 115, 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, Cal. Filed July 11, 1901. Wm. A. Deane, Clerk. By V. F. North-

rop, Deputy Clerk. Recorded at the request of V. A. Co., Jul. 12, 1901, at 40 min. past 3 o'clock P. M. in Vol. 3 of Dec. of Dist. Page 154 Tulare County Records. J. O. Thomas, Recorder. By W. S. Hayes, Deputy Recorder. 1.50.

I, Flora Hall, Notary Public in and for the City and County of San Francisco, State of California, do hereby certify the above and foregoing to be a full, true and correct copy of original certified copy of Amended Decree in the Matter of Estate of Alvah Russell Conklin, deceased.

Witness my hand and seal this 9th day of June, 1910.

[Seal]

FLORA HALL

Notary Public in and for the City and County of San Francisco, State of California. [428]

**Complainant's Exhibit "W" for Identification.**

July 11th, 1900.

RECEIVED OF N. E. CONKLIN Swamp Land Patents aggregating 9280. acres, covering lands in what is known as the "Menacha Meadows," in Tps. 19, 20, and 21 S., Rs. 34 and 35 E., M. D. M. and also received map covering same tract. I receive these Patents for the purpose of examination and comparison to ascertain the tracts for which Patents are not on hand, and also to ascertain what portion, if any, of said lands are not listed and patented by the United States to the State of California.

JOHN A. BENSON. [429]

## [Complainants' Exhibit "G."]

## COMPLAINANT'S EXHIBIT "B."

Estate of Alvah Russell Conklin, Deceased,  
Mrs. Mollie Conklin, Executrix.

To Reddy, Campbell & Metson, DR.

1900.

Feb. 7. To fee for services as allowed by  
court ..... \$250.00

## DISBURSEMENTS.

1897.

Dec. 15. Clerk's fees filing petition for pro-  
bate will ..... 6.00

1898.

Feb. 1. S. F. Bulletin, publishing notice of  
probate of will..... 8.00

Apr. 18. Notary's fees inventory and ap-  
praisement ..... 1.50

"Star" publishing notice to cred-  
itors ..... 5.00

1899.

Nov. Notary's fees, final account..... .50

Incidental expenses ..... .90

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271.90

## CR.

1897.

Dec. 7. By cash, a/c disbursements  
..... \$10.00

1900.

Feb. 6. By cash from W. K. Miller  
for pasturage.... 5.00 15.00

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\$256.90

Rec'd Payment.

REDDY, CAMPBELL & METSON.

F. U. JACOBS.

June 6th, 1900.

Filed Jan. 17, 1910. A. L. Richardson, Clerk.

[430]

**Complainants' Exhibit "D" [List of Powers of Attorney].**

PLAINTIFF'S EXHIBIT "D."

KNOW ALL MEN BY THESE PRESENTS:

That Whereas, by an act of Congress approved June 4, 1897, (30 Stat. 36), it is provided

“That in cases in which a tract covered by \* \* a patent is included within the limits of a public forest reservation, \* \* the owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement,” etc.,

And, whereas, on the Nineteenth day of September, 1900, We, Mollie Conklin (a widow) of Bakersfield, County of Kern, State of California, and Edward A. Reddy and Emily M. Reddy, Administrator and Administratrix of the Estate of Patrick Reddy, deceased, both of the City and County of San Francisco, said State, were the owners of the following described land: The S. 1/2 of N. E. 1/4, S. 1/2 of N. W. 1/4, N. 1/2 of S. W. 1/4 and N. W. 1/4 of S. E. 1/4 of Section 11, in Township 20 South, Range 34 East, M. D. M.; The NW. 1/4 of NW. 1/4 (or Lot 4) of Section 6, in Township 19 South, Range 35 E., M. D. M., aggregating 323.13 acres, in the County of Tulare, State of California, which said tract prior to said

date, had been included within the limits of the Sierra Forest Reservation.

And, Whereas, on the said last named day we surrendered the said land to the United States by deed of conveyance duly executed, by which we became entitled to select other lands of equal *acorage* in lieu thereof.

Now, therefore, we have made, constituted and appointed, and by these presents do make, constitute and appoint R. M. Cobban of Missoula in the County of Missoula, State of Montana, our true and lawful attorney for us and in our name, place and stead, to enter into and take possession of each and every tract of public land in any State or Territory of the United States that has been or may hereafter be selected by us in lieu of the land surrendered to the United States as aforesaid, or any portion thereof, whether the said selection or selections be made by us personally, or by some one else acting through power of attorney from us.

Our said attorney in fact is also hereby authorized and empowered to GRANT, BARGAIN, SELL AND CONVEY by good and sufficient deed, all of the right, title and interest that we now own, hold or possess, and also all the right, title and interest that we may hereafter acquire of, in and to the land that has been or may hereafter be selected as aforesaid, or any part thereof, for such sum or price as he may deem proper.

And for all or any of the powers and purposes aforesaid, for us and in our name to make, execute, acknowledge and deliver all necessary deeds, con-

veyances, assignments or other instruments of whatever kind or nature.

GIVING AND GRANTING unto our said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and *recovation*, hereby ratifying and confirming all that our said Attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue hereof.

FOR VALUE RECEIVED, the receipt whereof is hereby acknowledged, this Power of Attorney is hereby made and declared to be irrevocable by us or otherwise.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the Twenty-seventh day of September, One thousand nine hundred.

MOLLIE CONKLIN. (Seal)

EDWARD A. REDDY. (Seal)

Administrator of the Estate of Patrick Reddy,  
Deceased.

EMILY M. REDDY,

Administratrix of the Estate of Patrick Reddy, Deceased. [431]

Signed, sealed and delivered in the presence of  
C. E. GLOVER.

J. H. LAVENSON.

State of California,

City and County of San Francisco,—ss.

On this twenty-seventh day of September, one

thousand nine hundred, before me Holland Smith, a Notary Public in and for the said City and County of San Francisco, personally appeared Mollie Conklin and Edward A. Reddy, Administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, Administratrix of the Estate of Patrick Reddy, deceased, personally known to me to be the same persons, whose names are subscribed to the within instrument and severally duly acknowledged to me that they executed the same, and the said Edward A. Reddy and said Emily M. Reddy further acknowledged they executed the said instrument respectively as Administrator and Administratrix.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal]                      HOLLAND SMITH,  
Notary Public in and for the City and County of San  
Francisco, State of California. [432]

Endorsement:

Con'd. No. 60.

Complainant's Ex. D.

Offered in Evidence, C. W. M.

POWER OF ATTORNEY.

Mollie Conklin, et al., of Bakersfield, Cal.

to

R. M. Cobban, of Missoula, Mont.

Dated Sept. 19, 1900.

To Transfer title to land selected in lieu of land relinquished within a Forest Reserve.

Act June 4, 1897.

Recorded at request of ..... this .... day of

....., 190....., at .... minutes past ..... M.  
in liber .... of Deed, page .....

.....,  
Recorder.

State of Idaho,  
County of Boise,—ss.

I hereby certify that this instrument was filed for record at request of Cobban & Casey at 3 minutes past 9 o'clock A. M. this 14th day of March, A. D. 1901, in my office, and duly recorded in Book 2 of Power of Attorneys at page 305.

JOS. PENROD,  
Ex Officio Recorder.

Fees \$2.00.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [433]

Power of Attorney, Plaintiff's Exhibit "C," dated June 28, 1901, signed by Mollie Conklin, and Emily M. Reddy. Acknowledged on the 28th day of June, 1901, before Thomes S. Burnes, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "E," dated Feb. 28, 1901, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 28th day of February, 1901, before Thomas S. Burnes, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "F," dated April 3d, 1901, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 3d day of April, 1901, before Thomas S. Burnes, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "G," dated

Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 1st day of March, 1901, before Geo. S. Young, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "H," dated Feb. 28, 1901, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 28th day of February, 1901, before Thomas S. Burnes, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "I," dated Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 1st day of March, 1901, before George S. Young, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "J," dated Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 12th day of February, 1901, before George A. Young, Notary Public at San Francisco, California. [434]

Power of Attorney, Plaintiff's Exhibit "K," dated Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the twenty-sixth (26) day of September, 1900, before Holland Smith, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "L," dated Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 26th day of September, 1900, before Holland Smith, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "M," dated Sept. 19, 1900, signed by Mollie Conklin and Emily

M. Reddy. Acknowledged on the 16th day of September, 1901, before Thomas S. Burnes, Notary Public at San Francisco, California. [435]

**Complainants' Exhibit "N."**

(Copy)

CAMPBELL, METSON & CAMPBELL,  
Attorneys at Law,  
115 to 122 Crocker Building,  
San Francisco.

December 11, 1901.

Mrs. A. R. Conklin,  
Bakersfield, Cal.

Dear Madam:

Enclosed please find letter which I have just received from Mr. Benson, which explains the situation exactly. I had quite a talk with him over the phone, and he says that if you can get anyone to take this land at \$4.00 an acre in its present situation, and do better than he can, he is willing to give it up. If you or your son think you can handle this land better than it is being handled now, I suggest that you purchase Mrs. Reddy's interest in it and pay for the same, and then you can handle it to suit yourselves, without any interference by the Courts or anyone else. Probably you can work this through the people who are so anxious to buy the land at the present time. At present I can see nothing better than to let Benson work it out, as it seems to have gotten into a snarl. It seems that we cannot get the deeds back from the Government, and have not yet been able to have them approve the selections. This being the

fact, we are willing to do anything we can to facilitate the matter, and as I have said before, if the people whom you have in view will purchase this land in this situation, we would be willing to let them have it at once.

Yours,

J. C. CAMPBELL.

Enc.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [436]

**Complainants' Exhibit "N-1."**

(Copy)

John A. Benson,  
Engineer, Etc.

San Francisco, Cal., December 11th, 1901.

Hon. J. C. Campbell.

Dear Sir:—

Agreeable to your request made to me this morning, I submit you the following statement regarding the Forest Reserve basis which you placed in my hands for disposition belonging to Mollie Conklin and the Reddy Estate.

All of the land, except 400. acres, has been deeded to the United States, and deeds placed upon record, and selections made of other land in accordance with the provisions of the Act of Congress of June 4, 1897 (30 Stats., 36).

This was all, or nearly all, located for parties who were desirous of securing title to unoccupied government lands of the United States, under the provisions of contracts or agreements which in terms provided

that after the land selected in lieu of the land surrendered had been located and said location had been accepted by the Commissioner of the General Land Office, and proper evidence furnished thereof, that the parties in whose interests the locations were made would, upon the delivery of a deed conveying the right of the owners, pay the amounts agreed upon.

Up to the present date there has not been a single location accepted by the Commissioner of the General Land Office. It is my intention just as soon as these acceptances can be had to ask for a confirmation of the sales by the Court so that settlements can be made to both the owners and the parties in whose interests the locations were made. We have been bringing every effort to bear to get the Commissioner of the General Land Office to act upon these matters, and as he has lately added several to the [437] working force in his office it is likely we will not have very much longer to wait.

I can cite a case—a location wherein you are interested—wherein the locations were made long prior to these; that is the locations made for Mr. L. E. Hanchett, lying partly in this State, in the Independence District, and partly in the State of Nevada. Those in the Independence District have recently been approved, while those in Nevada have not yet been reached.

The Commissioner also refuses to allow the withdrawal of selections already made until the present ones are acted upon, giving as a reason in similar instances, that the locator might desire to select more

valuable lands than those selected at present.

At the time these locations were made there was little or no sale for Forest Reserve direct except upon the condition that it were accepted by the Commissioner of the General Land Office. At present if we could only get back the deeds given to the United States there would be little difficulty in disposing of the land.

I have employed counsel specially at Washington to try and secure these approvals and just as soon as obtained, so as to get confirmation of sales will report promptly.

I regret exceedingly these complications, but I had no reason to expect them, as at the time the locations were made approvals were progressing rapidly. I have many times this amount of locations in my own business delayed in a similar manner.

Very respectfully,

JOHN A. BENSON.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [438]

**Complainants' Exhibit "O."**

(Copy)

CAMPBELL, METSON & CAMPBELL,

Attorneys at Law,

115 to 122 Crocker Bldg.,

San Francisco.

January 29, 1902.

Mr. N. E. Conklin,  
Bakersfield, Cal.

Dear Sir:—

Yours of the 28th at hand. I do not exactly under-

stand or comprehend the proposition which you make. Is it that a man wants to step into Benson's shoes and take this property to sell, and pay us the money as fast as he sells it, or what? Will he buy Mrs. Reddy's land outright and take his chances? Who is the man? I want to know all about it before I would be willing to make any proposition pro or con. I wish you would find someone that would buy Mrs. Reddy out of the entire matter, and then let this man and yourselves take it up. I apprehend that more money than \$4.00 an acre might be made out of it by people who could handle it properly, but it is in the Estate and we are not situated to handle it as it ought to be.

Yours very truly,

J. C. CAMPBELL.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [439]

**Complainants' Exhibit "P."**

(Copy)

CAMPBELL, METSON & CAMPBELL,

Attorneys at Law,

115 to 122 Crocker Bldg.,

San Francisco.

October 27, 1902.

Norman Conklin, Esq.,

Bakersfield, Cal.

Dear Sir:—

Your letter of late date to Mrs. Reddy, has been shown me.

You evidently have forgotten that I wrote you some

months since stating to you that the moment that you could do any better with the Monache property than we are doing, you were at liberty to do so. I also wrote to your friend there who said he could dispose of the property and told him that we were willing to let him do so, and that so far as the matter being in the hands of Mr. Benson, it was not in such a way but what it could be taken out at once.

Now, if you can do any better, you are at perfect liberty to do so; and not only that, but we will join with you in the endeavor to get the most for the property and dispose of it at as early a date as possible; but I would suggest that after you have been so informed, you do not annoy your Aunt Em. by a letter of the character that yours of the 15th is.

If you look up your correspondence, you will find what I say to be true.

Very truly yours,

J. C. CAMPBELL.

I do not think it wise that Mr. Conklin should send any written snarls. If he can and will do something it would please me. However, I don't think he should unnecessarily annoy Mrs. Reddy whatever his views.

W. H. METSON.

Filed Jan. 17, 1910. A. L. Richardson, Clerk.  
[440]

**Complainants' Exhibit "Q."**

(Copy)

CAMPBELL, METSON & CAMPBELL,  
Attorneys at Law,  
115 to 122 Crocker Building,  
San Francisco.

San Francisco, November 7, 1902.

N. E. Conklin, Esq.,  
Bakersfield, Cal.

Dear Conklin:—

Replying to your letter of October 15th, 1902, which was delayed in reaching me: The matter that you refer to never was in the office of Campbell, Metson & Campbell, so far as Metson was concerned. I have never taken any part in the matter, except to make some enquiries from time to time and state the matter to Mr. J. C. Campbell, and Mr. J. C. Campbell is anxious to get rid of the affair and reports that advances have been made and costs paid out. The thing for you to do, I take it, is to come to San Francisco, see Mr. Campbell and have the matter straightened out.

Yours truly,

W. H. METSON.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S.  
Circuit Court. [441]

**Complainants' Exhibit "R."**

(Copy)

Bakersfield, Cal. June 13th, 1902.

Bank of California,  
San Francisco, Cal.

Gentlemen:

In regard to the deeds placed in escrow with your bank in connection with sale of lands between my mother Mollie Conklin and John A. Benson, will you please send me a statement of moneys received?

My mother is in the East and I have a general power of attorney, which I will mail for your inspection, if you desire, or you can mail a statement to her address in San Francisco, which is the Hotel Savoy.

Respectfully,

.....

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S.  
Circuit Court. [442]

**Complainants' Exhibit "S."**

Jun. 14, 1902.

Bakersfield, Cal., June 13th, 1902.

Anglo-California Bank,  
San Francisco, Cal.

Gentlemen: Please send me a statement of moneys received on account of deeds placed in escrow with your bank in regard to lands concerned between myself and John A. Benson,

Respectfully,

MOLLIE CONKLIN.

By N. E. CONKLIN.

Please give us more particulars, we cannot locate such escrow on our books.

ANGLO

J. B.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [443]

**Complainants' Exhibit "T."**

**RECOVATION OF POWER OF ATTORNEY.**

(Copy)

KNOW ALL MEN BY THESE PRESENTS, That I, Mollie Conklin, a widow of the City and County of San Francisco, State of California, do hereby wholly revoke, cancel and annul, any, all and every Power of Attorney, and any Authority of Agency of every description, of any kind or any nature, executed by me, or claimed to have been executed by me, and all that show, or claim to be irrevocable on their face, are cancelled and annulled and denounced as fraudulent, particularly one given or in name of C. L. Hevey.

No person whosoever, is authorized to act for me or in my place or stead, excepting N. E. Conklin, of the City of Bakersfield, County of Kern, State of California, who holds a Power of Attorney from me, and which Power is excepted from this revocation.

MOLLIE CONKLIN. [Seal]

State of California,  
County of Kern,—ss.

On this 3d day of January, A. D. 1903, before me, A. C. Maude, a Notary Public in and for said county and state, residing therein, duly commissioned and



tion to me that you have so cleared said titles, and after my investigating the same, by the Canadian Bank of Commerce at San Francisco, Cal.

Respectfully yours,

MOLLIE CONKLIN.

Dated at Bakersfield, Kern County, Calif., this 28th day of April, 1903.

(L. mailed April 30th, 1903, letter addressed as above.)

Filed Jan. 17, 1910. A. L. Richardson. Clerk U. S. Circuit Court. [445]

**Defendants' Exhibit "A."**

THIS INDENTURE, made this 19th day of May, in the year of our Lord, One Thousand Nine Hundred Three, by and between E. B. Weirick, Trustee, of Butte, Montana, the party of the first part, and the Payette Lumber and Manufacturing Company, a corporation duly organized and existing under and by reason of the laws of the State of Minnesota, the party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns, forever, All the following described Real Estate, situate in Boise County, State of Idaho, as follows, to-wit:

“Conveys lands described in the decree and other

lands; description omitted pursuant to stipulation of counsel.”

TOGETHER with all and singular the tenements, hereditements and appurtenances thereunto belonging, or in any wise appurtenant, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law and in equity of the said party of the first part.

TO HAVE AND TO HOLD all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and its successors and assigns, forever. And the said party of the first part, and his heirs, and assigns, and the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant AND BY THESE PRESENTS FOREVER DEFEND.

[446]

IN WITNESS WHEREOF, I, said E. B. Weirick, trustee, being so first authorized, empowered and directed by each and every of the parties for whom said trust is held, have hereunto set my hand and seal the day and year first above written.

E. B. WEIRICK,  
Trustee.

State of Montana,  
County of Silver Bow,—ss.

On this 22d day of May, in the year of 1903, before

me John S. Dutton a notary public in and for said County and State, personally appeared E. B. Weirick, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same by the authority and at the direction and request of the persons for whom said trust was by him held.

IN WITNESS *HEREOF*, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

[Seal] JNO. S. DUTTON,  
Notary Public in and for County of Silver Bow,  
Montana.

My Commission expires December, A. D. 1905.

Filed June 25, 1910. A. L. Richardson, Clerk.

[447]

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*In the United States District Court for the District  
of Idaho, Southern Division.*

IN EQUITY—No. 49.

UNITED STATES,

Complainant,

vs.

PAYETTE LUMBER & MANUFACTURING  
COMPANY, a Corporation, JOHN A. BEN-  
SON, JOSEPH C. CAMPBELL, R. M. COB-  
BAN, E. B. WEIRICK, and E. B. WEIR-  
ICK, Trustee,

Defendants.

## IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually  
and also as Trustee, PAYETTE LUMBER &  
MANUFACTURING COMPANY, a Corpo-  
ration, JOHN DOE, MARY DOE, RICH-  
ARD ROE and THOMAS ROE,

Defendants.

**Opinion.**

(Two Cases Consolidated as No. 60.)

C. H. LINGENFELTER, U. S. Attorney, and S. L.  
TIPTON, Assistant U. S. Attorney, Solicitors  
for United States.

N. E. CONKLIN and W. B. DAVIDSON, Solicitors  
for Complainant, Mollie Conklin.

RICHARDS & HAGA and McBRIDE & McBRIDE,  
Solicitors for Defendants Cobban and Weirick.

CAVANAHA & BLAKE, Solicitors for Defendant  
Payette Lumber and Manufacturing Company.

A. A. FRASER, Solicitor for Defendant, Joseph C.  
Campbell. [448]

DIETRICH, District Judge:

The United States and Mollie Conklin bring separate actions calling into question the same general controversy, and involving the same general state of facts. The suits were consolidated for trial, and have now been submitted together. There is great

similarity in the averments of the two bills, but the prayers are wholly different, the demands being, in the one case, that the United States be adjudged the true owner of 3767 acres of timber lands situate in Boise County, Idaho, and in the other that Mollie Conklin be decreed an undivided half interest in the same land. A similar bill relating to California lands, but involving the same transactions, was exhibited by the Government in the United States Circuit Court for the Northern District of California, which, upon demurrer, was dismissed for want of equity, and, upon appeal to the Circuit Court of Appeals, the judgment of the lower court was affirmed. *United States vs Conklin*, 169 Fed. 177; 177 Fed. 55. The facts here disclosed by the evidence are, to say the least, no more favorable to the Government than were the averments there held to be insufficient, and upon the authority of that case its bill must be dismissed.

The parties defendant in the remaining suit are R. M. Cobban, E. B. Weirick, and the Payette Lumber and Manufacturing Company, a corporation. Title to the lands referred to was conveyed jointly to the plaintiff and the estate of Patrick Reddy, deceased, by the United States, whereupon the defendant Cobban, assuming to act under powers of attorney purporting to have been executed in his favor by the plaintiff and the legal representatives of the Reddy estate, transferred the same to Weirick, as trustee, who, in turn, conveyed them to the defendant corporation. The plaintiff prays that these powers of attorney be held to be void and of no effect, and that

she be adjudged to be the owner of an undivided one-half interest in the lands, and for general relief. The salient facts will now be stated. [449]

Some time prior to the year 1900 Alvah Russell Conklin, the plaintiff's husband, acquired title to lands aggregating approximately 9600 acres, situate in Inyo and Tulare counties, California, and referred to in the record as the "Monache lands." He conveyed an undivided one-half interest therein to Patrick Reddy, his brother-in-law, who was a member of the law firm of Reddy, Campbell & Metson, of San Francisco. Subsequently, and before the year 1900, the lands were included within the Sierra Forest Reserve. Under a general act of Congress, the owners of such lands, by complying with certain conditions, were authorized to exchange them for other public lands subject to settlement. To make such exchange it was requisite that the owner execute a deed conveying the reservation lands, sometimes referred to as the "base," to the United States, and have such deed recorded in the proper county recorder's office, and thereafter file the same, together with an abstract showing a clear and unincumbered title in the United States in the land office, together with an application to select other specifically described land and in lieu thereof, such other land being generally referred to as "lieu" land.

Both Conklin and Reddy died prior to the transactions in 1900 out of which this litigation grows, and their estates were in the process of administration. For some years prior to the death of Reddy, J. C. Campbell was his partner, and upon his death

the firm continued as Campbell, Metson & Campbell, and either he personally or his firm acted as counsel for both the Reddy and the Conklin estates. John A. Benson, residing at San Francisco, appears to have been a land agent or attorney, and to have been engaged on a comparatively large scale in dealing in land scrip, and in securing title to public lands. He had discussed with Reddy the matter of purchasing his (Reddy's) interest in these lands, but the negotiations were cut short by the latter's death. In the early part of the summer of 1900 both the plaintiff, Mollie Conklin, who had in the meantime succeeded to the interest of her deceased husband, and the [450] representatives of the Reddy estate, which was still in process of administration, being desirous of disposing of the Monache lands, a meeting of the several parties with Benson was arranged for at the office of J. C. Campbell. As to the question whether or not there was more than one meeting at which the plaintiff was present, and as to just what occurred, or was finally agreed upon, the evidence is highly conflicting. There seems, however, to be no doubt that at one meeting, at which an understanding was practically arrived at, the plaintiff and her son, who was a young lawyer, Benson, Campbell, and Reddy's widow, who was also one of the representatives of the Reddy estate, were present. Putting aside for the moment the disputed details, the understanding then reached was that the owners were to dispose of the Monache lands for the agreed price of \$3.80 per acre. Plaintiff's version is that this meeting took place in the month of August, 1900, and that the agreement was that Benson should purchase the

lands at the price named, such purchase to be completed and the full amount of the purchase price paid within ninety days. Deeds were to be executed and placed in escrow, with instructions to deliver to Benson upon the payment of the purchase price. Upon the other hand, Benson's testimony is to the effect that it was not understood that he was to purchase the base land outright, but that it was to be exchanged for other land, as provided by law, and that he was to make payment only when the titles were approved by the proper Government officials. The truth probably is that, upon the one side, the plaintiff, not being familiar with the procedure by which base lands are exchanged for lieu lands, gave little attention to, and did not understand, such explanations as may have been made by Benson, and went away with the impression only that Benson was to purchase, and that she was to deed to him directly, her interest in the base lands. Upon the other hand, Benson, being advised of the conditions under which base lands could be handled and [451] exchanged, and being familiar with the procedure, understood that the owners would execute, and, in due time, deliver such papers as were necessary to make the exchange and transfer. The plaintiff wanted to sell the lands and was interested particularly in procuring the desired price. Being concerned only with the ultimate result, she probably gave very little thought to the means by which that result would be reached. In view of the entire record, it is wholly improbable, and I am unable to conclude, that Benson agreed or that he understood, that he would directly purchase the base lands, or that deeds from

the then owners were to convey the title to him personally.

At this point it should also be stated that the record discloses a direct conflict upon the question as to whether or not, in the negotiations leading up to the agreement referred to, and in making the agreement, and in the subsequent transactions still to be related, Campbell was acting in the capacity of attorney for the plaintiff. It is her contention that he was so acting, but by him such relation is emphatically disclaimed. As already stated, he or his firm had been acting for her, as the representative of the Conklin estate, and he was at the time the attorney for the representatives of the Reddy estate, but there is no positive or strong circumstantial evidence tending to support the plaintiff's contention that he or his firm consciously acted in such capacity for her personally in this or any other matter. In view of the fact that Campbell had been associated with her brother-in-law, Reddy, and that her son had studied law in his office, and that he, Campbell, or his firm, had, up to the very time of the meeting, acted as counsel for the estate of her deceased husband, she doubtless entertained great confidence in him, and it is entirely probable that she expected him to protect her interests, without giving any thought to the question whether or not he had been expressly retained for that purpose. Upon the other hand, from the entire record, I have concluded that Campbell himself did not understand that he was, in [452] a technical sense, acting as her attorney. While at times he appeared to render

services to the plaintiff in connection with the matter, it is to be borne in mind that he was all the time attorney for the Reddy estate, and that the Reddy estate owned an undivided one-half interest in the property, and the interests of the estate as against Benson were therefore identical with those of the plaintiff. In other words, in properly caring for and protecting the interests of the Reddy estate, Campbell could not well avoid the appearance of also protecting the interests of the plaintiff.

It seems to have been understood that upon being furnished with the necessary data, Benson would, at his own expense, procure abstracts of title, and draft the necessary instruments to effect the exchange, and, a short time after the meeting referred to, he caused to be sent to Campbell's office numerous papers, with the request that they be executed. At this point the evidence is very fragmentary and very unsatisfactory. Campbell apparently had an extensive practice, and the details of the business were left to assistants and clerks in the office. The papers thus prepared by Benson and delivered at Campbell's office upon two different occasions were apparently taken by one of the clerks or office boys to the plaintiff and Mrs. Reddy for execution. The testimony of the plaintiff is that the first group was brought to the home of Mrs. Reddy, where she, the plaintiff, was temporarily staying. They hastily scanned some of them, and then, concluding that they would not have been sent for signature unless they had Campbell's approval, they signed them and turned them back into the hands of the messenger.

The number of the papers is not disclosed, but there were many of them. Later on another bunch was presented to the plaintiff by someone whom she recognized as being connected with Campbell's office, at a hotel in San Francisco, where she was temporarily staying, and these she signed in the same way and upon the same assumption. Campbell himself testifies that he personally took the notary public to the hospital and there procured the [453] execution of certain of the papers by one of the Reddy representatives, who was ill at the time. Unfortunately, before the evidence was taken in this case, both of the representatives of the Reddy estate and the notary public died.

Subsequently, from time to time, but under just what circumstances, or how often, or when, does not appear, these papers came into Benson's hands, and they now appear to have consisted of a large number of deeds conveying the base lands to the United States, and an equal number of applications, signed by the owners of the base lands, for the selection of lieu lands, a like number of instruments empowering some undesignated person to make selections of lieu lands, and also an equal number conferring upon designated persons irrevocable authority to convey the title or titles of the lieu lands to purchasers thereof. It seems that, under the prevailing rules of the land department, the right to make selections of lieu lands was held to be non-assignable, and therefore patents always issued to the grantors of the base lands. It consequently became necessary either for such grantors to make

a conveyance to the purchasers, or to authorize an attorney in fact to make such conveyance, and the instruments referred to seem to have been such as were sometimes used to make the necessary transfer complete.

All of these deeds and powers of attorney were signed by the plaintiff and the two representatives of the Reddy estate, and, from the notarial certificate attached, appear to have been duly acknowledged before a notary public. The plaintiff testifies that she never appeared before a notary public or acknowledged any one of the instruments, and that in that respect the certificates are all false. In this position she is strongly corroborated by other evidence, and upon the whole record there is left no room for doubt that her testimony is true.

During the years from 1900 to 1903 the defendant Cobban resided at Missoula, in the State of Montana, and was engaged in [454] the real estate business which was being conducted by a corporation bearing his name. In 1900 and 1901 he and a number of other persons in Montana associated themselves together for the purpose of assembling and placing upon the market titles to valuable timber lands, Cobban being put forward as the active agent of the association. Neither Cobban nor his associates personally knew Benson, Campbell, Cenkin, or Reddy, but, in some manner learning of Benson's possession of the Monache scrip, Cobban negotiated for the purchase of several lots thereof, aggregating approximately 3,723.52 acres, by mail, for the purpose of enabling him and his associates

to acquire the title to the lands now in controversy, which were at the time public timber lands of the United States. The scrip was purchased in the ordinary course of business, and at the going price, namely, \$4.00 per acre. From time to time as the scrip was needed, Cobban ordered it from Benson, and the same was sent to a designated bank, either at Butte, Montana, or Boise, Idaho, where the papers were examined by Cobban or his representative, and they being found to be satisfactory, the purchase price was paid into the bank, and the scrip delivered to the purchaser. This scrip, as it will be understood, was made up of substantially the papers executed by the owners of the base lands as hereinbefore detailed. After purchasing the scrip, Cobban inserted in the blank application to select lieu lands a description of the lands by him selected, and also inserted in one of the powers of attorney such description, together with his own name, and thereupon the papers were filed in the proper land office, and if the same were, upon examination, found to be satisfactory by the Land Department, and the exchange was approved, patent issued, conveying title to the selected lands to the plaintiff and the representatives of the Reddy estate. Upon the issuance of such patent, Cobban, exercising the authority which he assumed he had, as holder of the scrip, either wrote, or caused to be written, his own name in the powers of attorney which had been signed in blank by the [455] plaintiff and her co-owners, and thereupon executed a deed in the name and upon behalf of the plaintiff and the rep-

representatives of the Reddy estate, conveying such patented selected land to the defendant Weirick, as trustee, Weirick having been chosen by his associates as their representative, to take the title. Thereafter, Cobban's association having effected a sale of all of the lands thus acquired, Weirick, as such trustee, acting upon behalf of his associates, and with their approbation, for a valuable consideration transferred the title to the purchaser, the defendant, Payette Lumber & Manufacturing Company, in whose name, as has already been stated, the title now stands.

Plaintiff charges that Benson, Campbell, and the defendants, conspired together to defraud her, that she has never been paid the stipulated price, that she unwittingly attached her signature to the papers constituting the scrip, that she never in fact acknowledged the execution of any such papers, that their delivery to Benson was unauthorized and without her knowledge or consent, and that the powers of attorney, when delivered to Cobban, being blank as to the name of the person authorized to exercise the powers, were ineffective for any purpose, and therefore conferred no authority upon Cobban to execute any deed or other conveyance.

We may put aside as being immaterial the fact that the notarial certificates attached to the instruments constituting the so-called "scrip" sold to Cobban were false, in that the plaintiff never appeared before a notary public or made any acknowledgment at all; as between the parties acknowledgment was not essential to their validity.

So also it is thought not to be highly important to determine whether, by the original agreement, it was contemplated that title to the base lands should be conveyed directly to Benson, as is asserted by the plaintiff, or was to be relinquished to the United States substantially in the manner testified to by Benson and Campbell. In either view, the [456] plaintiff must have understood that, for a certain specified price, she was to alienate all of her interest in the lands, and, that being the case, the mere fact that the conveyances ran to the United States, and not to Benson, in itself furnishes no adequate ground for the interposition of a court of equity. *United States vs. Conklin*, 169 Fed. 177; affirmed, 177 Fed. 55. *Conklin vs. Cobban* (Cal.), 116 Pac. 34. Moreover, there is no substantial foundation for the charge, elaborated at great length in the bill, that Benson, Campbell, Weirick, Cobban and others, conspired to defraud the plaintiff. So far as Cobban and Weirick are concerned, together with their associates and the promoters and officers of the defendant, Payette Lumber & Manufacturing Company, it is enough to say that there is no basis for a suspicion even that they purported to defraud, or consciously participated in any scheme or conspiracy to defraud either the United States or the plaintiff. They purchased the scrip by mail in due course of business, were not acquainted with either Benson or Campbell, and had no knowledge of the facts of which the plaintiff now complains. While there is much in the record to support the view that Campbell failed to properly discharge his obligations

to the plaintiff, it cannot be held that he conspired with Benson, or at any time entertained corrupt or improper motives. Such delinquency as in law may be properly charged against him is to be attributed to a want of personal attention upon his part, and either to his neglect to give definite instructions to his subordinates, to whom, in a measure, he intrusted the business, or to their disregard of his instructions, rather than to any design or willingness to wrong the plaintiff; I am satisfied that there was no evil intent. That Campbell owed some duty to the plaintiff cannot be controverted. She intrusted to his keeping the instruments of conveyance which were executed jointly by her and the representatives of the Reddy estate, either because she regarded him as her attorney, or because, recognizing him as the [457] attorney for the Reddy estate, and reposing great confidence in him, she assumed that he would deliver the instruments only in accordance with the agreement, of the terms of which he was fully advised. Whether formally employed as an attorney or not, having, with full knowledge of the conditions upon which they were to be delivered to Benson, received the instruments, it was his duty either to return them to plaintiff or to comply with such conditions. This, however, is not an action to determine Campbell's liability, nor is he made a party defendant, and therefore the precise nature of his relation to the plaintiff is material only insofar as it bears upon the effect upon the plaintiff's rights, of the unauthorized and improper delivery of the instruments through his office

to Benson, and by Benson to the defendants who purchased them for value and without knowledge of any wrongdoing. And in disposing of that issue, we may dismiss from our consideration all those instruments used merely in effecting an exchange of lands with the United States. Such are the deeds executed in favor of the United States, the application to select lands in lieu of those relinquished, and powers of attorney authorizing the making of such selections. This suit is based upon the theory that the plaintiff is entitled to the fruits of the exchange, namely, the lands patented to her by the United States in consideration of her relinquishment of title to the base lands, and therefore it may be held that, by prosecuting the suit, the plaintiff has ratified all proceedings relating to such exchange. There is, however, no evidence to support the theory that the plaintiff ever authorized or ratified the delivery of any power of attorney "to convey," without the prior payment to her of the full purchase price agreed upon. Whether we accept the theory of the plaintiff or that of the defense,—whether the understanding was a transfer directly to Benson of the Monache lands or an exchange thereof with the Government, and thereupon a transfer of the lieu lands to Benson or such person as Benson might [458] designate,—according to all of the testimony, payment of the agreed price was to precede the delivery of the instruments effecting a transfer of the title or the control of the title, from the plaintiff. Such is the testimony of the witnesses for the plaintiff, Campbell, in the most emphatic terms, so

declares, and Benson, in effect, admits that such was the understanding. It is true, I think, that, when she signed the large number of documents sent to her from Campbell's office, the plaintiff acted without fully understanding their legal import, but even if it be held that, having voluntarily attached her signature, she is chargeable with an understanding of their meaning and legal effect, it still remains true that neither expressly nor impliedly did she authorize their delivery to Benson. Campbell testifies that it was not his understanding that such instruments were ever to be executed, and that personally he was wholly unaware of their existence until after this suit was commenced. He never saw them, and did not deliver them to Benson or authorize their delivery. Benson ventures no explanation and advances no theory in justification of their delivery to him. In some way, it does not appear just how, they all reached his office bearing false notarial certificates of acknowledgment, and came from either Campbell's office or directly from the hands of the notary public. The delivery was made either by the notary or a subordinate in Campbell's office, but whether such delivery was the result of fraudulent collusion or only innocent inadvertence, it was not in accordance with the original agreement, and had the authorization or consent of neither Campbell nor the plaintiff.

It may be said generally that there is nothing in the conduct of plaintiff, unless it be her act of signing the powers of attorney and giving them back into the hands of Campbell's clerk, that can be put for-

ward as a substantial reason why she [459] should be denied equitable relief. She did not know, and had no reason to suspect, that the powers of attorney had been delivered to Benson until long after the Cobban sales had been consummated, and, upon learning of the facts, with reasonable diligence, she executed, and caused to be recorded, in Boise County, Idaho, where the lands are situated, a revocation of such power. This revocation was filed January 16, 1903, five months before Cobban and his associates, through Weirick, their trustee, sold to the defendant, Payette Lumber & Manufacturing Company. Neither expressly nor impliedly has she ratified the delivery of the instruments, and since learning of their delivery she has consistently, and with reasonable diligence, proclaimed her unwillingness to be bound thereby, and has asserted her ownership of the selected lands. If estopped at all, therefore, or barred by laches, such estoppel or bar must be found in the act of signing and sending the instruments back to Campbell's office.

The substantial facts with regard to the payments made to the plaintiff are not in controversy. The amounts paid to her credit on account of the entire transaction aggregate only \$2,750. What, if any, part of this amount should be credited to the Cobban sales is not entirely clear, and is left for later consideration. The scrip sold to Cobban alone covered 3,723.52 acres, on account of which, if we credit the plaintiff at the rate of one-half of \$3.80, or \$1.90 per acre, there became due to her the sum of \$7,074.68. These sales were all made, and the money arising

therefrom, received by Benson, between the 1st day of February and the 1st day of July, 1901.

At the hearing, counsel for the defendants, assuming that plaintiff had declined an offer of full payment, earnestly insisted that it would be extremely inequitable to permit her to refuse substantially that for which she had contracted, and now recover title to these lands from the defendants, who have already in good [460] faith made full payment, and I was inclined to regard such a view with much favor. But upon a most careful search of the record I do not find the assumption of tender well founded. At one point the witness Campbell testified that the plaintiff refused further payments, but the statement is immediately qualified in such a way as to leave it practically worthless. Benson evidently seeks to leave the impression that plaintiff was unwilling to receive payment, but he seems studiously to avoid any direct statement to that effect, and clearly all of his testimony upon the point relates to a time long after he consummated the sales to, and received full payment from, Cobban. It is difficult to harmonize Benson's use of the powers of attorney and his conduct generally with the ordinary standards of honesty and fair dealing. In his letter of December 11, 1901, written to Campbell, in response to the latter's request for a report as to the status of the whole matter, he uses the following language: "All of the land, except 400 acres, has been deeded to the United States, and deeds placed upon record, and selections made of other lands in accordance with the provisions of the

Act of Congress of June 4, 1897 (30 Stats. 36).

“This was all, or nearly all, located for parties who were desirous of securing title to unoccupied government lands of the United States, under the provisions of contracts or agreements which in terms provided that after the land selected in lieu of the lands surrendered had been located and said locations had been accepted by the Commissioner of the General Land Office, and proper evidence furnished thereof, that the parties in whose interests the locations were made, would, upon the delivery of a deed conveying the right of the owners, pay the amounts agreed upon.

“Up to the present date there has not been a single location accepted by the Commissioner of the General Land Office. [461] It is my intention just as soon as these acceptances can be had to ask for a confirmation of the sales by the Court so that settlements can be made to both the owners and the parties in whose interests the locations were made. We have been bringing every effort to bear to get the Commissioner of the General Land Office to act upon these matters, and as he has lately added several to the working force in his office it is likely we will not have very much longer to wait.”

Clearly, he thus intended to give the impression that the original owners still controlled the title, and that no money had been paid by the purchasers, and that payment would be made only upon the delivery of proper deeds by the original owners, whereas in truth the fact was that, months prior thereto, he had received, in installments, the full

purchase price for the scrip covering all of the lands described in the bill, and had delivered to Cobban the several powers of attorney purporting to authorize the transfer of title from the plaintiff and the Reddys to unnamed purchasers. By implication the letter recognizes the correctness of the plaintiff's contention, that she was to convey title only upon receiving payment in full, and the fact was concealed that the instruments now under consideration were in existence at all. There were doubtless some negotiations looking to a settlement of the whole controversy, and not improbably Benson conditionally offered to make certain payments, but there never was an unconditional or actual tender to the plaintiff of what was clearly due her upon account of the Cobban sales. From the record the inference is unavoidable that, if Benson had, during the year 1901, or during the larger part, at least, of the year 1902, offered to account for and pay over the moneys arising from the Cobban sales, he would have been met with no hesitation upon the part of the plaintiff in accepting payment, but, as appears from the letter above referred to, he was putting her demands for [462] payment off by evasion and deception. After the plaintiff learned, through inquiries prosecuted by her son, in the year 1902, that her understanding of the agreement was being violated, and especially when it appeared that Benson had come into possession of, and had improperly disposed of, the powers of attorney to convey, not without reason she looked with suspicion upon, and was reluctant to accept, offers of partial payment.

She had a right to know the facts, and this knowledge was denied to her. Benson declined to discuss the matter except through or with Campbell, and Campbell, for some reason, was very difficult of access. It may be conceded that had the plaintiff and her son gone about their investigation in a more direct way, and had they insisted upon getting Benson and Campbell together, and upon having a full and comprehensive report upon the whole transaction, certain unfortunate misunderstandings might have been avoided, and possibly a satisfactory settlement secured, but in passing criticism upon the course pursued we must adjudge the conduct of the plaintiff and her son in the light which they then had rather than in the light of the facts later disclosed. Not without some apparent reason, they doubtless entertained a suspicion that Benson and Campbell were in collusion for some purpose antagonistic to their interests, and that it would be useless, if not perilous, to advise them of such suspicion until certain facts had been learned from disinterested sources. While the course pursued is not free from criticism, it is not thought to be such as should debar the plaintiff from seeking relief in a court of equity. It may be thought that the fact that the Reddys were paid much larger amounts than were paid to the plaintiff tends strongly to corroborate the theory that plaintiff refused to accept payment, but it seems that from time to time Campbell, putting forward the needs of Mrs. Reddy for money, strongly urged Benson to make advances to her. Campbell testified that he understood that [463]

the moneys so paid were not the proceeds of sale, but were advanced from time to time by Benson, in anticipation of such sales, and in view of the statements contained in Benson's letter of December 11th, it is not improbable that from time to time he led Campbell to believe that, under the contract, there was nothing legally due from him, and that the payments which he made were to be understood as advancements only. In that view, Campbell was justified in turning over to Mrs. Reddy alone such sums as he received, for they were by Benson paid to her credit exclusively, whereas it was his duty to distribute equally between her and the plaintiff all proceeds arising from the sales of lands.

We are thus brought to a consideration of what seems to be the controlling issue of the case, namely, to what extent, if at all, is the plaintiff bound by the unauthorized delivery of the blank powers of attorney to convey. The defendant corporation, relying upon the maxim that where one of two innocent persons must bear a loss due to the injurious act of another, he must sustain the loss who has put it within the power of such other person to do the wrong, earnestly insists that, having executed the powers and returned them to Campbell, her agent, the plaintiff must suffer the consequences of their unauthorized delivery. Upon the facts before it, the Supreme Court of California adopted such view in *Conklin vs. Benson*, cited *supra*. It is to be said, however, that while that case involved the same general transactions, the ultimate facts upon which the Court seems to have placed its decision are, in some mate-

rial respects, different from the findings warranted by the present record. In that case it was found that when the powers of attorney were, by Benson, delivered to the purchaser, they were complete, and the inference is drawn that they were in that condition when they left the plaintiff's hands. Here it is conceded that when the plaintiff signed the instruments, and indeed [464] until some time after they were delivered to Cobban, they were blank, at least as to the name of the person authorized to exercise the specified powers. It was further substantially found in that case that all the moneys due on account of the purchase price of the lands had been paid over by Benson to Campbell, and that the delinquency, if any, in making payment to the plaintiff, was with Campbell, the plaintiff's agent, and not with Benson. Here it appears that nothing in excess of \$2,750 on account of the entire transaction was ever paid by Benson to any person, to the credit of the plaintiff. In the third place, in applying the principle of the maxim above referred to, the California court appears to have assumed that Campbell and Benson were the general agents for the plaintiff for the sale of these lands, whereas the record here does not support the theory of such general agency. Again it was there assumed that Campbell, the plaintiff's agent, knowingly delivered the papers to Benson, while here it appears that Benson's possession thereof was without his knowledge or consent.

1. Under all of the circumstances of the case, did the blank powers of attorney operate to confer upon

Cobban power to convey? The answer, it is thought, must be in the negative. The rules by which the validity of a power of attorney to transfer the title to real estate is governed are substantially the same as those which apply to conveyances themselves. If a deed to real estate is executed, with the name of the grantee left blank the deed is inoperative until the name is inserted by some person authorized so to do. Formerly the rule was that such authority must be evidenced in writing, but it is now held in many jurisdictions that parol authority is sufficient. *Devlin on Deeds*, 3d ed., sec. 356. But, as was said by Mr. Justice Field, delivering the opinion of the court, in *Allen vs. Withrow*, 110 [464½] U. S. 119, even where the more liberal rule is recognized, there are still "two conditions essential to make a deed, thus executed in blank, operate as a conveyance of the property described in it; the blank must be filled by the party authorized to fill it, and this must be done before or at the time of the delivery of the deed to the grantee named." Putting aside the question as to the time Cobban inserted his name in the blank instruments, it is sufficient to say that he had no authority at all so to do. If it be conceded that such authority need not be in writing, and that it need not even be expressly conferred, it still remains true that in some manner it must emanate from the grantor. It is not pretended that in the present case the plaintiff, in writing or otherwise, expressly authorized Cobban to act as her agent in this respect, and authority, if any there was, arose by implication alone. But from what

fact or facts can the inference of such authority be legitimately drawn? Where a grantor receives the purchase price agreed upon and delivers a deed, otherwise complete, from these facts alone it may, not improperly, be inferred that he intended to authorize the purchaser to insert the name of the grantee in the blank left for that purpose. Such would be a natural inference. But the plaintiff here did not deliver these papers, nor did she receive the stipulated purchase price. They came into Cobban's possession through the fraud of Benson, either actual or constructive, and without the knowledge or consent of the plaintiff, or of her agent, assuming that Campbell was her agent. She had never heard of Cobban, and, prior to the meeting at Campbell's office, Benson had been a total stranger to her. The payment to, and the receipt by, Benson of the purchase money paid by Cobban gives rise to no implication. It is not the payment of the purchase money by the purchaser, but the receipt by the grantor, that tends to disclose the grantor's intent. Benson had no authority to receive the purchase money for the plaintiff; he was not her agent, and [465] probably never thought of the relation existing between himself and the plaintiff as that of agency. In his transactions with Cobban, he was the vender, and in his relations with the plaintiff he was the vendee or purchaser. Certainly it would be quite as reasonable to hold that he was the agent of Cobban to deliver the purchase money to the plaintiff as to hold that he was the agent of the plaintiff to receive it. My conclusion is that, when Cob-

ban purchased these instruments, he took them at his peril. Upon their face they appeared to be incomplete, and therefore inoperative, and to give them effect it was requisite that the name of a qualified person be inserted by someone authorized so to do. The authority was not conferred by the naked instruments themselves, and Cobban was bound to know that, unless it was evidenced by some writing or express declaration of the plaintiff, he must, if he would rely upon the power which the instruments purported to grant, establish facts from which it could legitimately be inferred. Such facts the record fails to disclose, and the instruments must therefore be held to be inoperative.

2. It is further thought that, aside from the fact that the instruments were in blank, the plaintiff is not bound by their unauthorized delivery. If it be assumed that Campbell directed or consented to such delivery, he acted in violation of his instructions, and transcended his authority. As clearly understood by all parties, Benson was to receive possession of the deeds or other instruments divesting the plaintiff of her title, or putting out of her hands the control thereof, only after he had paid in full the purchase price. I am aware that the line between a general and a special agency is not always well defined, but in no view of the record can it be held that Campbell had the authority of a general agent to bind the plaintiff; his authority was limited to a very narrow scope. The terms of the [466] sale had all been arranged between the principals, in Campbell's presence. Benson was to draft the pa-

pers, and, after their execution, they were to be deposited by Campbell in escrow with the Anglo-Californian Bank, with instructions to deliver to Benson upon receipt of the stipulated amount. While Campbell has no recollection that the papers were so to be placed in escrow, he does remember that it was agreed that payment should be made through the Anglo-Californian Bank. But, if the papers were not to be left with the bank, it is difficult to understand why payment through that particular bank, or, for that matter, through any bank, should have been discussed or considered important. Upon the one side it was doubtless insisted that the conveyances should not be delivered until payment was made, and, upon Benson's side, he doubtless desired assurance of such delivery when he tendered payment, and, altogether, it would seem that a deposit in escrow was a very natural course to pursue, and I am inclined to think that the plaintiff's version of the understanding is correct. Campbell's duties, therefore, were few and simple, and his authority limited; little, if anything, was left to his judgment, and he had no discretion touching the conditions upon which delivery was to be made to Benson. Under the rule of special agency, in dealing with him and accrediting his acts, third persons were bound, at their peril, to take cognizance of the limitations of his authority. "It is believed to be a general rule that an agent with limited powers cannot bind his principal when he transcends his power. It would seem to follow that a person transacting business with him of the credit of his princi-

pal, is bound to know the extent of his authority.” *Schummelpennich vs. Bayard*, 26 U. S. 263; p. op. 290. The power of Campbell was analogous to that of an escrow holder. The understanding was that he should make a deposit of the papers in escrow, and, having failed to comply with that understanding, [467] he must be deemed to have retained them in substantially the capacity of an escrow depository; certainly his authority to deliver was no greater than would have been the authority of the Anglo-Californian Bank if, in accordance with the agreement, it had received them, under the stipulated instructions. The unauthorized delivery of an escrow deed does not operate to effect a transfer of title. “The great weight of authority sustains the view that an unauthorized delivery of the instrument conveys no title or gives no right, even in favor of an innocent sub-vendee, without notice of the conditions or events stipulated in the escrow contract; and the authorities are very strong where the escrow has been obtained or delivered through fraud. The principle on which the doctrine rests is that an instrument delivered in violation of the terms on which it has been placed as an escrow is not, in fact, delivered, and that its possession by the grantee is no more effective to convey title than would be the possession of a forged or stolen instrument. Some authorities proceed on the theory that a depository is a special agent of the depositor, and therefore, his powers being limited to the condition of the deposit, one who claims through him takes the risk of the agent exceeding his powers.” 16 Cyc. 581. “Until

the condition has been performed and the deed delivered over, the title does not pass, but remains in the grantor. If the condition is not performed, the grantee, we have seen, is not entitled to the deed. If the depositary deliver the deed without authority to do so from the grantor, or if the grantee obtain possession of it fraudulently, without performing the condition, the deed is void. The deed thus obtained conveys no title either to the grantee or purchasers under him." *Devlin on Deeds*, 3d ed., sec. 322. While not expressly deciding the precise question, the Supreme Court of the United States, in *Provident Trust Company vs. [468] Mercer County*, 170 U. S. 593, 604, distinguishes between the case of a *bona fide* purchaser of negotiable paper, wrongfully delivered by an escrow holder, and that of a purchaser of real estate under similar conditions, seems to quote with approval the language of Chief Justice Bigelow, in *Fearing vs. Clark*, 16 Gray, 74, 76, as follows: "The rule is different in regard to a deed, bond, or other instrument placed in the hands of a third person as an escrow, to be delivered on the happening of a future event or contingency. In that case no title or interest passes until a delivery is made, in pursuance of the terms and conditions upon which it was placed in the hands of the party to whom it was intrusted." Speaking for the Circuit Court of Appeals of the Ninth Circuit, Judge Gilbert, in *Balfour vs. Hopkins*, 93 Fed. 564, uses the following language: "The authorities are not in entire harmony as to the effect of the delivery of a deed which has been left in es-

crow to be delivered to the grantee upon the performance of a condition, and which has been wrongfully delivered before the condition was performed. The decided weight of authority seems to sustain the view that such a delivery is inoperative to convey title, even in favor of an innocent purchaser, without notice, unless the grantor has, by some act or conduct of his own, estopped himself to deny the delivery." In *County of Calhoun vs. American Emigrant Company*, 93 U. S. 124, it was said: "Beyond doubt, the deed of the lands was delivered to the clerk of the respondents as an escrow, and subject to the condition that it should not be delivered to the grantee until they gave a mortgage to secure the full performance of the agreement under which the deed was executed; but it is equally clear that the condition required to be fulfilled before the delivery could be made was never performed, and the rule is established by repeated decisions that, where a deed is delivered as an escrow, nothing passes by the deed unless the [469] condition is performed." See, also, *Knapp vs. Nelson* (Colo.), 92 Pac. 912; *Tyler vs. Cate* (Ore.), 45 Pac. 800; *Bradford vs. Durham* (Ore.), 101 Pac. 897; *Powers vs. Rude* (Okla.), 79 Pac. 89; *Bowers vs. Cottrell* (Idaho), 96 Pac. 936.

3. In the third place, whatever may have been Campbell's authority, he did not knowingly deliver the instruments. In some unexplained manner, they came into Benson's possession, without Campbell's knowledge or consent. Campbell's positive disclaimer of knowledge is corroborated by the facts

and circumstances of the case. It is wholly improbable that, experienced lawyer that he was, he would, knowingly, authorize or acquiesce in the course pursued in this case, and thus needlessly jeopardize the interests of his clients. Whether Benson procured the papers by deception or through the inadvertence of the clerks in Campbell's office, his acceptance and use of them constituted a fraud upon the plaintiff's rights. There was no legal delivery of the instruments, either by the plaintiff or by her agent. *Bowers vs. Cottrell*, 96 Pac. 936.

It is to be added that, while, as has already been said, the defendants are guilty of no moral wrong, and are wholly exonerated from the charges of fraud preferred in plaintiff's bill, it is doubted whether, in purchasing the scrip, they exercised that measure of care required of those who would claim the protection of the maxim which they invoke. To some extent, as testified to by Cobban, the custom may have prevailed of buying conveyances and powers of attorney executed in blank, but, custom or no custom, such purchase is attended with great hazards. However, aside from that feature of the "scrip," we find that these powers of attorney were signed by the administrators of the Reddy estate jointly with the plaintiff, and while this fact was apparent upon the face of the instruments themselves, they were accepted without any [470] inquiry on the part of Cobban as to the legal authority of the administrators to execute them. There was certainly no presumption that these administrators, residing in California, and appointed by, and act-

ing only under, the authority of a California court, had the power to delegate to an unknown agent the authority to convey lands belonging to the estate of their intestate, situate in Idaho. To be sure, this consideration does not relate to the plaintiff's interest in the lands, but if, in the exercise of what would seem to have been ordinary prudence, Cobban had set on foot inquiry concerning the validity of the powers of attorney so far as they concerned the Reddy interests, doubtless he would have discovered facts which would have put him upon his guard as to the plaintiff's rights.

Now, as to the relief to be awarded to the plaintiff. Under the circumstances, our purpose should be to protect her rights in such a manner as will be least injurious to the defendants. To grant that for which she specifically prays might work great and unnecessary hardship to them. It is not improbable that expenses aggregating considerable amounts have been incurred in procuring title to the selected lands, and in caring for the timber growing thereon, and in paying taxes and other charges; nor is it unlikely that the lands are now of a value greatly in excess of the amount due to the plaintiff under her contract with Benson. It would therefore seem to be inequitable to award to the plaintiff property the value of which is, in a large measure, the fruit of the defendant's expenditure, foresight and care. If the plaintiff receives the amount which Benson should have paid to her, she will have suffered no substantial injury; she will thus have gotten what she contracted for. Time was not of the essence of

her agreement with Benson, and it would seem that the rights of all parties can now best be conserved by requiring its substantial performance. In the [471] course of her testimony, the plaintiff declared that what she wanted was pay for the land, and in the course of their argument her counsel reiterated that the plaintiff desired nothing inequitable, but that she was entitled either to the land or the stipulated purchase price. I have therefore concluded that if the defendants will, within a reasonable time hereafter to be specified, pay to the plaintiff the amount due to her, under the terms of the Benson agreement, she will be required to execute to the defendant corporation a proper instrument of conveyance, and thereupon the relief which she specifically prays for will be denied; otherwise, in default of such payment, her prayer will be granted.

My present impression is that the record, as it now stands, does not enable me to make an intelligent finding as to the precise amount due the plaintiff under the Benson agreement, and it is possible that it will be necessary to take further evidence. However, before making any order in the premises, I will hear further from counsel, and to that end the several attorneys are requested to be present in court on Monday, July 29th, at 10 o'clock A. M.

Dated July 26th, 1912.

[Endorsed]: Filed July 26, 1912. A. L. Richardson, Clerk. [472]

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

**IN EQUITY—CONSOLIDATED NUMBER  
SIXTY.**

**UNITED STATES OF AMERICA and MOLLIE  
CONKLIN,**

Complainants,

vs.

**R. M. COBBAN, E. B. WEIRICK, Individually,  
and also as Trustee; PAYETTE LUMBER  
AND MANUFACTURING COMPANY, a  
Corporation et al.,**

Defendants.

**Stipulation [of Facts].**

It is hereby stipulated and agreed by and between the solicitors for the complainant, Mollie Conklin, and the solicitors for the defendants, R. M. Cobban, E. B. Weirick, individually, and E. B. Weirick, as Trustee, and Payette Lumber and Manufacturing Company, a corporation, that for the purpose of enabling the Court to make a finding as to the amount due the complainant, Mollie Conklin, under the Benson agreement, and to avoid the necessity of taking additional evidence herein, that the evidence shall be deemed for the purpose of entering final order in this cause, to show the following facts:

That the total acreage of land embraced in what is known as the "Monache Lands" is Nine Thousand Six Hundred (9,600) acres.

That the payment of Two Thousand Seven Hun-

dred Fifty Dollars (\$2,750.00) made to the complainant, Mollie Conklin, by Benson, on account of such agreement, shall be deemed a credit on the price that should have been paid to complainant, Mollie Conklin, for the lands involved in this action, in the ratio that the lands involved herein bears to the total acreage of the Monache Lands. [473]

This stipulation shall not be binding upon any of the parties hereto other than as to this action and shall not be used or considered as in anywise binding in any other cause or action, and it is further understood that in making this stipulation that the parties thereto shall not be deemed to waive any objection to the decision of the Court in this action or to any relief granted herein, but that this stipulation shall be solely confined to supplying facts in the record for the purpose of enabling the Court to make a finding as to the amount due complainant, Mollie Conklin, under the decision on the lands involved herein.

Dated October 29th, 1912.

WM. B. DAVIDSON and  
N. E. CONKLIN,

Solicitors and of Counsel for Complainant, Mollie  
Conklin.

CAVANAUGH, BLAKE, & MACLANE,  
Solicitors and of Counsel for Payette Lumber and  
Manufacturing Company.

RICHARDS & HAGA,  
Solicitor and of Counsel for Defendants R. M. Cob-  
ban, E. B. Weirick, Individually, and also E. B.  
Weirick, as Trustee.

[Endorsed]: Filed Nov. 4, 1912. A. L. Richardson, Clerk. [474]

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*In the United States District Court for the District  
of Idaho, Southern Division.*

IN EQUITY—CONSOLIDATED No. 60.

UNITED STATES OF AMERICA and MOLLIE  
CONKLIN,

Complainants,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually,  
and also as Trustee; PAYETTE LUMBER  
AND MANUFACTURING COMPANY, a  
Corporation; JOHN A. BENSON and JO-  
SEPH C. CAMPBELL,

Defendants.

**Decree.**

This cause coming on to be heard upon the pleadings and proofs and the stipulations of counsel as to facts deemed to be shown by the record in this case, and the Court having considered the same and the arguments of counsel, and being duly advised in the premises, it is ORDERED, ADJUDGED AND DECREED as follows:

1. That the powers of attorney as alleged in Complainant Mollie Conklin's amended bill of complaint herein, each purporting to have been executed by the complainant Mollie Conklin, and appointing the defendant, R. M. Cobban as attorney in fact for

the said complainant, and more specifically described as follows:

Power of Attorney, dated June 28, 1901, recorded in Book 2 of Powers of Attorney, page 386 of the records of Boise County, State of Idaho.

Power of Attorney, dated Sept. 27, 1900, recorded in Book 2 of Powers of Attorney, page 305 of the records of Boise County, State of Idaho. [475]

Power of Attorney, dated Feb. 28, 1901, recorded in Book 2 of Powers of Attorney, page 365 of the records of Boise County, State of Idaho.

Power of Attorney, dated April 3, 1901, recorded in Book 2 of Powers of Attorney, page 355 of the records of Boise County, State of Idaho.

Power of Attorney, dated March 1, 1901, recorded in Book 2 of Powers of Attorney, page 342 of the records of Boise County, State of Idaho.

Power of Attorney, dated Feb. 28, 1901, recorded in Book 2 of Powers of Attorney, page 384 of the records of Boise County, State of Idaho.

Power of Attorney, dated March 1, 1901, recorded in Book 2 of Powers of Attorney, page 338 of the records of Boise County, State of Idaho.

Power of Attorney, dated Feb. 13, 1901, recorded in Book 2 of Powers of Attorney, page 353 of the records of Boise County, State of Idaho.

Power of Attorney, dated Sept. 26, 1900, recorded in Book 2 of Powers of Attorney, page 349 of the records of Boise County, State of Idaho.

Power of Attorney, dated Sept. 26, 1900, recorded in Book 2 of Powers of Attorney, page 351 of the records of Boise County, State of Idaho.

Power of Attorney, dated Sept. 16, 1901, recorded in Book 3 of Powers of Attorney, page 31, of the records of Boise County, State of Idaho.

—be and each and all of said powers of attorney hereby are annulled, cancelled and declared to be utterly void and of no effect, but only in so far as they or either of them affect the title to the undivided one-half interest of the complainant Mollie Conklin in and to the lands described in said complainant Mollie Conklin's amended bill of complaint herein and hereinafter fully described.

It is further **ORDERED, ADJUDGED AND DECREED** that all Warranty Deeds purported to have been executed for and on behalf of the complainant, Mollie Conklin, by [476] the defendant, R. M. Cobban, as attorney in fact for the said Mollie Conklin, recorded in the office of the County Recorder of Boise County, State of Idaho, and purporting to convey the undivided one-half interest of the complainant Mollie Conklin in and to the lands described in the said complainant's amended bill of complaint herein, and hereinafter fully described, be and each and all of said deeds hereby are annulled, cancelled and declared to be utterly void and of no effect, in so far as they pretend to convey the undivided one-half interest of the said **Complainant**, Mollie Conklin in and to said lands.

It is further **ORDERED, ADJUDGED AND DECREED** that that certain Warranty Deed dated May 19, 1903, executed and delivered by the said defendant, E. B. Weirick, as Trustee, to the defendant, Payette Lumber and Manufacturing Company,

a corporation, which said deed was recorded in Book 24 of Deeds, at page 380, of the records of Boise County, State of Idaho, be and the same hereby is annulled, cancelled and declared to be utterly void and of no effect, in so far as the said deed pretends to convey the undivided one-half interest of the complainant Mollie Conklin in and to the lands described in said complainant Mollie Conklin's amended bill of complaint herein, and hereinafter fully described.

It is further ORDERED, ADJUDGED AND DECREED that the said defendants have not, nor has either of them, any right, title or interest in and to the said undivided one-half interest of the said complainant Mollie Conklin in the lands hereinafter described, or in any part thereof. [477]

2. That if said defendants or either of them pay to the clerk of this court, for the use and benefit of the said Mollie Conklin, within sixty days from the date hereof, the sum of Ten Thousand One Hundred Thirty Dollars and Thirty-eight Cents (\$10,130.38), together with interest thereon from the date hereof, to the date of such payment, at the rate of seven per cent (7%) per annum, also the said complainant Mollie Conklin's costs of suit herein, together with all fees and commissions of the said Clerk of this court for handling and disbursing said money, the clerk of this court, as the commissioner of this court, hereby appointed as such commissioner for such purpose, shall execute and deliver for and on behalf of the said complainant, Mollie Conklin, to the said defendant, Payette Lumber and Manu-

facturing Company, a corporation, a deed, conveying to the said defendant all the right, title and interest of the said complainant Mollie Conklin in and to the lands hereinafter fully described, the same being an undivided one-half interest, and the said clerk shall thereupon pay to the said complainant, Mollie Conklin, or her counsel, said money so paid in by the defendants or either of them.

3. Upon the failure of the said defendants to pay to the said clerk the sum of Ten Thousand One Hundred Thirty Dollars and Thirty-eight Cents (\$10,130.38), with interest thereon from the date hereof, at the rate of seven per cent per annum, and costs, within sixty days from this date, the clerk of this court, as commissioner of this court, hereby appointed for such purpose, shall execute and deliver, for and on behalf of the said defendants and each of them, to the said complainant, Mollie [478] Conklin, a deed conveying to the said complainant, Mollie Conklin, all the right, title and interest which said defendants, or either of them may have acquired in and to an undivided one-half interest in the lands and premises hereinafter described, under and by virtue of the powers of attorney claimed to have been executed by the said complainant, Mollie Conklin, and also all deeds executed under and by virtue of said powers of attorney, or either of them, and by or through which the said defendants, or either of them, claim any right, title or interest in and to an undivided one-half interest in the said premises; reserving, however, to the said defendants, as their respective interests may appear, all

such right, title or interest as they *may acquired* in and to an undivided one-half interest in said lands through the estate of Patrick Reddy, deceased.

The lands and premises affected by this decree and to be conveyed to the said defendant, Payette Lumber and Manufacturing Company, by the clerk of this court upon the payment of the sum aforesaid, and to be conveyed to the said complainant, Mollie Conklin, by the clerk of this court upon default in said payment, are situated in the County of Boise, and State of Idaho, and are fully described as follows, to wit:

The southwest quarter (SW.  $\frac{1}{4}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) and the southeast quarter (SE.  $\frac{1}{4}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) of section nineteen (19), township thirteen (13) north, range five (5) east of the Boise meridian;

The northwest quarter (NW.  $\frac{1}{4}$ ), and southwest quarter (SW.  $\frac{1}{4}$ ) and south half (S.  $\frac{1}{2}$ ) of the southeast quarter (SE.  $\frac{1}{4}$ ) of section twenty-six (26), township sixteen (16) north, of range four (4) east of the Boise meridian; [479]

The north half (N.  $\frac{1}{2}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) and the southwest quarter (SW.  $\frac{1}{4}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ), and the northwest quarter (NW.  $\frac{1}{4}$ ) and the north half (N.  $\frac{1}{2}$ ) of southwest quarter (SW.  $\frac{1}{4}$ ) and the northwest quarter (NW.  $\frac{1}{4}$ ) of the southeast quarter (SE.  $\frac{1}{4}$ ) of section seventeen (17), township sixteen (16) north, of range four (4) east of the Boise meridian;

The northwest quarter (NW.  $\frac{1}{4}$ ) and the north half (N.  $\frac{1}{2}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) of

section thirty-five (35), township sixteen (16) north, of range four (4) east of the Boise meridian;

The southwest quarter (SW.  $\frac{1}{4}$ ) of the southwest quarter (SW.  $\frac{1}{4}$ ) of section twenty-nine (29), township sixteen (16) north, of range five (5) east of Boise meridian;

The northeast quarter (NE.  $\frac{1}{4}$ ) of the northwest quarter (NW.  $\frac{1}{4}$ ) of section seven (7), township thirteen (13) north, range five (5) east of the Boise meridian;

The northwest quarter (NW.  $\frac{1}{4}$ ) of section twenty-five (25), township sixteen (16) north, of range four (4) east of the Boise meridian;

The west half (W.  $\frac{1}{2}$ ) of the southeast quarter (SE.  $\frac{1}{4}$ ) and the east half (E.  $\frac{1}{2}$ ) of the southwest quarter (SW.  $\frac{1}{4}$ ) and lots three (3) and four (4) of section nineteen (19), township fifteen (15) north, of range four (4) east of the Boise meridian;

The southeast quarter (SE.  $\frac{1}{4}$ ) and the east half (E.  $\frac{1}{2}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) of section twenty-five (25), township fifteen (15) north, range three (3) east of the Boise meridian;

Lots one (1) and four (4) of section thirty-five (35), township twelve (12) north, of range three (3) east of the Boise meridian; [480]

Lot four (4) of section five (5) township fifteen (15) north, range four (4) east of the Boise meridian;

Lot two (2), section five (5), township fifteen (15) north, range four (4) east of the Boise meridian;

Southeast quarter (SE.  $\frac{1}{4}$ ) of the northeast quar-

ter (NE.  $\frac{1}{4}$ ) of section twenty-nine (29), township sixteen (16) north, range four (4) east of the Boise meridian;

Lot four (4) and the south half (S.  $\frac{1}{2}$ ) of the northwest quarter (NW.  $\frac{1}{4}$ ) of section four (4), township fifteen (15) north, of range four (4) east of the Boise meridian;

Lot three (3) of section five (5), township fifteen (15) north, range four (4) east of the Boise meridian;

Lot two (2) of section six (6), township fifteen (15) north of range four (4) east of the Boise meridian;

Lot one (1) of section six (6), township fifteen (15) north, of range four (4) east of the Boise meridian;

The east half (E.  $\frac{1}{2}$ ) of the southeast quarter (SE.  $\frac{1}{4}$ ) and the southwest quarter (SW.  $\frac{1}{4}$ ) of the southeast quarter (SE.  $\frac{1}{4}$ ) of section thirty-one (31), township sixteen (16) north, of range four (4) east of the Boise meridian;

The south half (S.  $\frac{1}{2}$ ) of the southeast quarter (SE.  $\frac{1}{4}$ ) of section thirty-two (32), township sixteen (16) north, range four (4) east of the Boise meridian;

The southwest quarter (SW.  $\frac{1}{4}$ ) of section twenty-eight (28), in township sixteen (16) north, range four (4) east of the Boise meridian;

The southeast quarter (SE.  $\frac{1}{4}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) of section thirty-one (31), township sixteen (16) north, of range four (4), east of the Boise meridian; [481]

The southwest quarter (SW.  $\frac{1}{4}$ ) of section thirty-two (32), township sixteen (16) north, of range four (4) east of the Boise meridian;

The southeast quarter (SE.  $\frac{1}{4}$ ) and the east half (E.  $\frac{1}{2}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) of section twenty-six (26), township thirteen (13) north, range three (3) east of the Boise meridian;

Lot one (1) and the southeast quarter (SE.  $\frac{1}{4}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) of section two (2), township twelve (12) north, of range three (3) east of the Boise meridian;

The west half (W.  $\frac{1}{2}$ ) of the southwest quarter (SW.  $\frac{1}{4}$ ) of section one (1), township twelve (12) north, of range three (3) east of the Boise meridian;

The north half (N.  $\frac{1}{2}$ ) of the northeast quarter (NE.  $\frac{1}{4}$ ) of section twenty-nine (29), township fifteen (15) north, range four (4) east of the Boise meridian;

The northeast quarter (NE.  $\frac{1}{4}$ ) of the southeast quarter (SE.  $\frac{1}{4}$ ) of section thirty-one (31), township fifteen (15) north, of range four (4) east of the Boise meridian;

The west half (W.  $\frac{1}{2}$ ) of the southwest quarter (SW.  $\frac{1}{4}$ ) and the southeast quarter (SE.  $\frac{1}{4}$ ) of southwest quarter (SW.  $\frac{1}{4}$ ) of section thirty-two (32), township fifteen (15) north, range four (4) east of the Boise meridian;

The south half (S.  $\frac{1}{2}$ ) of the southeast quarter (SE.  $\frac{1}{4}$ ) and the south half (S.  $\frac{1}{2}$ ) of the southwest quarter (SW.  $\frac{1}{4}$ ) and the northwest quarter (NW.  $\frac{1}{4}$ ) of the southwest quarter (SW.  $\frac{1}{4}$ ) of section five (5) township fifteen (15) north, range four (4)

east of the Boise meridian;

The southeast quarter (SE.  $\frac{1}{4}$ ) of the northwest quarter (NW.  $\frac{1}{4}$ ) of section seven (7), township thirteen (13) north, range five (5) east of the Boise meridian; [482]

4. Should an appeal from this decree be perfected by the said defendants, or either of them, within sixty days from this date, and a supersedeas be approved by this Court, then and in that event the said defendants or either of them shall have thirty days from and after the filing of the mandate of the court of appeals with the Clerk of this court in which to do the act or acts required to be done by them hereunder, and in which to pay the said sum or sums to be paid hereunder, and the authority of the said commissioner to make said conveyances shall be extended accordingly, and the sum or sums so to be paid shall bear interest at the rate of seven per cent (7%) per annum from the date hereof until paid.

5. That the bill of complaint of the United States of America be and the same hereby is dismissed.

6. That the complainant, Mollie Conklin, may have judgment for her costs herein, taxed at \$227.65.

Dated Nov. 4, 1912.

FRANK S. DIETRICH,  
Judge.

[Endorsed]: Filed Nov. 4, 1912. A. L. Richardson, Clerk. [483]

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually  
and also as Trustee, and PAYETTE LUM-  
BER & MANUFACTURING COMPANY,  
a Corporation,

Defendants.

(Consolidation with No. 49 as Consolidated No. 60.)

**Stipulation Relative to Record on Appeal.**

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that in order to save expense in the printing and certification of the record, and to avoid encumbering the record with papers and documents not pertinent to the questions involved on appeal, the following portions of the record, and no more, the same being sufficient to show the errors complained of and the evidence relating thereto, shall be transcribed, certified and transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit by the Clerk of the United States District Court for the District of Idaho, under the appeal of appellants herein, to wit:

1. Complainant's amended bill of complaint.
2. Separate answer of Payette Lumber & Manufacturing Company, filed May 1st, 1909.

3. Replication of complainant to above answer.
4. Answer of defendants Cobban and Weirick.
5. Replication of complainant to above answer.

[484]

6. Deposition of Mrs. Mollie Conklin, Mrs. M. C. Olcese, and N. E. Conklin, taken before Robert M. McCracken at Boise, Idaho, on or about January 3, 1910, and filed January 17, 1910.

7. Deposition of H. M. Wright, R. B. Swayne, and Mrs. Sybil J. Coleman, taken before Charles R. Holtman on March 21, 1910, at San Francisco, and filed November 4, 1911; but the commission to take said deposition may be omitted, it being hereby stipulated and agreed that the same was properly taken and pursuant to commission duly authorizing the taking thereof.

8. Deposition of Joseph C. Campbell, J. A. Benson, James H. Lavenson, and Clara E. Glover, taken before Flora Hall at San Francisco on April 28th, 29th and 30th, and May 2d, 1910, and filed October 18, 1911.

9. Deposition of R. M. Cobban, E. B. Weirick and E. M. Hoover, taken before Robert M. McCracken at Boise, Idaho, on June 24, 1910, and filed June 29, 1910.

10. All letters and copies of letters and other exhibits, excepting deeds and powers of attorney, which are hereinafter separately provided for. It is expressly agreed, however, that no exhibit which has been copied into the depositions above mentioned, or any or either of them, shall again be set out, it being the intention to hereby avoid repetition or the set-

ting out of an exhibit more than once in the record.

11. The power of attorney marked Plaintiff's Exhibit "D," the same being substantially the same as the other powers of attorney, excepting as to the description of the land used as a base or to be conveyed thereunder, and it shall be unnecessary to set out in the record a description of any other [485] power of attorney; but it shall be sufficient to give a synopsis of the others substantially as follows: Power of Attorney, Plaintiff's Exhibit . . . ., Dated . . . . ., signed by . . . . . Acknowledged on the . . . . day of . . . . ., 19. . . ., before . . . . . at . . . . .

12. Deed from E. B. Weirick, Trustee, to Payette Lumber & Manufacturing Company, dated May 19, 1903 (Defendants' Exhibit "A"); but in lieu of the description of the lands therein set forth, it shall be sufficient to insert the following: "Conveys lands described in the decree and other lands; description omitted pursuant to stipulation of counsel."

13. This stipulation.

14. Opinion of Court filed July 26, 1912.

15. Stipulation of counsel dated October 29, 1912, and filed November 4, 1912.

16. Decree.

17. All papers filed for perfecting the appeal (Assignment of Errors, Petition for Appeal, Bond, and Citation, and all orders made in connection therewith).

It is hereby further stipulated and agreed that all original exhibits introduced in the above-entitled cause shall be transmitted to the Clerk of the United States Circuit Court of Appeals, for the Ninth Cir-

cuit, before the hearing of the cause in said court, and the same may be used upon the argument or at the hearing of said cause in said court, and shall be considered a part of the record on appeal therein as fully and to the same extent as if transcribed and printed in the record. And appellants shall have the right, and they may be required so to do by appellee (complainant) if deemed necessary, to [486] print as part of the record on appeal any exhibit and any other part of the record not hereby expressly authorized to be transcribed.

Dated this 4th day of December, 1912.

N. E. CONKLIN and

WM. B. DAVIDSON,

Solicitors for Complainant.

CAVANAHA, BLAKE & MacLANE,

Solicitors for Defendant, Payette Lumber & Manufacturing Company.

J. H. RICHARDS and

OLIVER O. HAGA,

Solicitors for Defendants, R. M. Cobban and E. B. Weirick.

[Endorsed]: Filed December 5, 1912. A. L. Richardson, Clerk. [487]

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually  
and also as Trustee, and PAYETTE LUM-  
BER & MANUFACTURING COMPANY,  
a Corporation,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

**Assignment of Errors.**

And now comes the defendants, R. M. Cobban, E. B. Weirick, individually and also as Trustee, and the Payette Lumber & Manufacturing Company, a corporation, by their solicitors, and having prayed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree entered in the above cause on the 4th day of November, A. D. 1912, say that the said decree, made and entered as aforesaid, is erroneous and unjust to these defendants, and particularly in this:

1. Because complainant did not show that these defendants, or any or either of them, were guilty of any fraud or wrongdoing in purchasing or acquiring the land in the State of Idaho, which complainant sought to recover in her bill of complaint, or in purchasing or acquiring the scrip, deeds or powers of attorney under which or through which defendants, or

either of them, claim title to said land. And complainant failed to show any collusion, confederation [488] or conspiracy between these defendants, or either of them, and any other person or persons whomsoever for the purpose of acquiring title to said lands or defrauding complainant thereof.

2. Because complainant had been guilty of laches and was not entitled to equitable relief, or any relief, in said suit.

3. Because the defendant, Payette Lumber & Manufacturing Company, was a *bona fide* purchaser for a valuable consideration, without notice of any claim of complainant.

4. Because the defendants, R. M. Cobban and E. B. Weirick, individually and as Trustee, were the *bona fide* purchasers, in good faith, for a valuable consideration of all the right, title and interest of complainant in the California lands, known as the "Monache" lands, and of the lands in the State of Idaho which complainant in her bill of complaint seeks to recover in this suit.

5. Because if any wrong, injury or damage has been sustained by complainant under the record in this cause, it was due to her own laches, carelessness and negligence, and not through any fault or wrongful act of these defendants, or any or either of them.

6. Because the decree and the relief granted complainant is not within the issues framed by the pleadings, and is not sustained by the record, and is inequitable and unjust to these defendants.

7. Because the District Court erred in ordering, adjudging and decreeing that the powers of attorney

from complainant, Mollie Conklin, and described in her amended bill of complaint and in said decree, appointing the defendant [489] R. M. Cobban as attorney in fact for said complainant, be annulled, cancelled and declared utterly void and of no effect.

8. Because the District Court erred in ordering, adjudging and decreeing that all warranty deeds purporting to have been executed for and on behalf of complainant by the defendant R. M. Cobban, as her attorney in fact, be annulled, cancelled and declared to be utterly void and of no effect.

9. Because the District Court erred in ordering, adjudging and decreeing that the warranty deed dated May 19, 1903, from defendant Weirick, as Trustee, to the defendant Payette Lumber & Manufacturing Company be cancelled, annulled and declared void and of no effect.

10. Because the District Court erred in decreeing that these defendants, or either of them, had no right, title or interest in the lands described in the decree and situated in the State of Idaho.

11. Because the District Court erred in adjudging and decreeing that these defendants should pay to complainant the sum of Ten Thousand One Hundred Thirty and 38/100 Dollars (\$10,130.38), with interest at seven per cent (7%) per annum, and costs of suit before they would be entitled to hold or enjoy the lands described in the decree.

12. Because the District Court erred in its decision in holding and concluding that complainant did not acknowledge before a notary public the instruments through which defendants deraign title to the

land in question.

13. Because the District Court erred in its decision in holding and concluding that there was no evidence [490] in the record to support the theory that complainant ever authorized or ratified the delivery of any power of attorney to "convey," without the prior payment to her of the full purchase price agreed upon.

14. Because the District Court erred in its decision in holding and concluding that complainant neither expressly nor impliedly authorized the delivery to Benson of the instruments executed by her for the purpose of conveying the said Monache Lands, or lands selected in lieu thereof.

15. Because the District Court erred in its decision in holding and concluding that the delivery of the instruments executed by complainant was not in accordance with the authorization or consent of complainant, or anyone authorized to act for her.

16. Because the District Court erred in its decision in holding and concluding that complainant did not know and had no reason to suspect that the powers of attorney in question had been delivered to Benson until after the sale to these defendants had been consummated, and that she acted with reasonable diligence in apprising defendants of her repudiation of the acts of Benson and others acting for her in delivering said instruments.

17. Because the District Court erred in its decision in holding and concluding that the revocation of the powers of attorney, filed January 16, 1903, in any way affected the rights of these defendants.

18. Because the District Court erred in its decision in holding and concluding that complainant had neither expressly nor impliedly ratified the delivery of the instruments, through which defendants deraign title, or proclaimed in a proper manner with reasonable diligence her unwillingness to be bound thereby. [491]

19. Because the District Court erred in its decision in holding and concluding that complainant would have accepted payment for the lands in question, or the so-called Monache lands, at \$1.90 per acre for her undivided one-half interest from the said Benson during the years 1901 and 1902.

20. Because the District Court erred in its decision in holding and concluding that the course pursued by complainant in her dealings with Benson and Campbell, and in other matters leading up to the commencement of this suit, was not such as to debar complainant from seeking relief in a court of equity.

21. Because the District Court erred in its decision in holding and concluding that neither of these defendants are protected under the rule, that where one of two innocent persons must bear the loss due to the injurious act of another, he must sustain the loss who has put it within the power of such other person to do the wrong.

22. Because the District Court erred in its decision in holding and concluding that the power of attorney delivered to defendant Cobban, and executed by complainant, did not operate to confer upon said defendant the power to convey the land in question.

23. Because the District Court erred in its deci-

sion in holding and concluding that the defendant Cobban did not, under the facts and circumstances disclosed by the record in this case, have authority to insert his name in the powers of attorney executed by complainant.

24. Because the District Court erred in its decision in holding and concluding that the payments by defendant Cobban and his associates to Benson are in no way binding upon complainant, and that said Benson was not the agent of complainant. [492]

25. Because the District Court erred in its decision in holding and concluding that the said Benson was as much the agent of the defendant Cobban as of the complainant.

26. Because the District Court erred in its decision in holding and concluding that the instruments executed by complainant and delivered to the defendant Cobban and his associates by Benson upon payment of the stipulated purchase price, and through which title is deraigned by these defendants to the lands in question, were inoperative for any reason.

27. Because the District Court erred in its decision in holding and concluding that Benson was to receive possession of the deeds and instruments in question only after he had paid in full the purchase price, and that these defendants were bound to know such fact and to know that said instruments had not been delivered by complainant, either in accordance with her agreement with Benson and Campbell, or otherwise.

28. Because the District Court erred in its deci-

sion in holding and concluding that Campbell was the attorney or agent of complainant for any purpose.

29. Because the District Court erred in its decision in holding and concluding that in purchasing the scrip in question defendants did not exercise due or proper care and caution.

30. Because the District Court erred in its decision in holding and concluding that the universal custom, in handling scrip of the kind in question, of permitting the purchaser to insert in the powers of attorney to select and to convey the name of an agent of his own selection, would not operate to protect these defendants in the purchase of the scrip in question.

31. Because the District Court erred in its decision in holding and concluding that the fact that the Reddy estate [493] owned the other undivided one-half interest in the lands in question, would in any way or for any purpose put these defendants, or either of them, on notice of any of the fraudulent acts alleged to have been committed against complainant, or that the instruments executed by her had been executed unwittingly or unintentionally, and had not intentionally been delivered by complainant.

These defendants, however, expressly reserve to themselves all benefit and advantage of so much of said decree from which an appeal is prayed in this cause as dismisses the bill of complaint and holds that the United States of America is not entitled to any relief in that certain suit wherein the United

States is complainant and these defendants and John A. Benson and Joseph C. Campbell are defendants, the same being Cause No. 49, and being the identical suit which was consolidated with the suit of complainant herein, said suits being thereafter known as Consolidated No. 60.

WHEREFORE, these defendants pray that the portions of said decree granting any relief to the complainant herein be reversed, and the District Court directed to dismiss complainant's bill.

RICHARDS & HAGA,  
Solicitors for Defendants.

Service of the foregoing Assignment of Errors and receipt of copy thereof, admitted this 13th day of December, 1912.

N. E. CONKLIN &  
WM. B. DAVIDSON,  
Solicitors for Complainant.

[Endorsed]: Filed Dec. 13, 1912. A. L. Richardson, Clerk. [494]

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,  
Complainant,  
vs.

R. M. COBBAN, E. B. WEIRICK, Individually and  
also as Trustee, and PAYETTE LUMBER &  
MANUFACTURING COMPANY, a Corpora-  
tion,  
Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

**Petition for Appeal and Order Allowing Appeal.**

The above-named defendants, conceiving themselves aggrieved by the decree made and entered on the 4th day of November, A. D. 1912, in the above-entitled cause, do hereby appeal from said Order and Decree to the United States Circuit Court of Appeals for the Ninth Circuit, except from so much of said decree as dismisses the bill of complaint of the United States in the suit against the above-named defendants and others, which was consolidated and tried with the suit of the above-named complainant, for the reasons specified in the Assignment of Errors, which is filed herewith, and defendants pray that this appeal may be allowed and that Citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit;

And these defendants desiring to supersede the execution of the decree, tender bond in such amount as the Court [495] may require for such purpose, and pray that with the allowance of the appeal a supersedeas be issued.

**RICHARDS & HAĞA,**

Solicitors for Defendants.

And now, to wit, on the 13th day of December, 1912, it is ORDERED that the petition be granted and the appeal be allowed as prayed for, the same to operate as a supersedeas upon the petitioners filing a bond in the sum of Twelve Thousand Dollars

(\$12,000.00), with sufficient sureties, to be conditioned as required by law.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Filed Dec. 13, 1912. A. L. Richardson, Clerk. [496]

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and  
also as Trustee, and PAYETTE LUMBER &  
MANUFACTURING COMPANY, a Corpo-  
ration,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS,  
That we, E. B. WEIRICK, Trustee, as Principal,  
and the UNITED STATES FIDELITY AND  
GUARANTY COMPANY, a corporation organized  
under the laws of the State of Maryland, as Surety,  
are held and firmly bound unto Mollie Conklin, the  
above-named complainant, in the penal sum of  
Twelve Thousand Dollars (\$12,000.00), to be paid  
to the said Mollie Conklin, her executors, adminis-  
trators or assigns; to which payment well and truly  
to be made we bind ourselves, our heirs, executors,

administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals, and dated this 13th day of December, in the year of our Lord, one thousand nine hundred and twelve.

WHEREAS, the above-named defendants, R. M. Cobban, E. B. Weirick, individually and also as Trustee, and the Payette Lumber & Manufacturing Company, a corporation, have prosecuted an appeal to the United States Circuit Court of [497] Appeals for the Ninth Circuit to reverse the decree in the aforesaid suit, made and entered in the said United States District Court for the District of Idaho, Southern Division, on the 4th day of November, A. D. 1912.

NOW, THEREFORE, the condition of this obligation is such, that if the above-named defendants and appellants shall prosecute their said appeal to effect, and answer all damages and costs, if they fail to make their said plea good, then the above obligation to be void; else to remain in full force and virtue.

IN WITNESS WHEREOF, The said E. B. Weirick, Trustee, has caused his name to be hereunto subscribed, and the said United States Fidelity and Guaranty Company, Surety, has caused its name to be hereunto subscribed, and its corporate seal af-

fixed, by its attorneys in fact thereunto duly authorized by its Board of Directors.

E. B. WEIRICK,

E. B. WEIRICK, Trustee. [Seal]

UNITED STATES FIDELITY AND  
GUARANTY COMPANY.

[Corporate Seal] By W. D. McREYNOLDS,  
Its Attorney in Fact.

J. T. PENCE,

Its Attorney in Fact.

The foregoing bond is hereby approved to operate as a supersedeas, and all proceedings in the District Court under the decree appealed from are hereby stayed.

Dated Dec. 13, 1912.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Filed Dec. 13, 1912. A. L. Richardson, Clerk. [498]

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and  
also as Trustee, and PAYETTE LUMBER &  
MANUFACTURING COMPANY, a Corpora-  
tion,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

**Order Relative to Exhibits on Appeal.**

On motion of Messrs. Richards & Haga, solicitors for defendants, it is ORDERED that in addition to the transcript of the record on appeal in this suit, that the Clerk of this Court transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, all the original exhibits in this suit, to be by him safely kept and returned to this Court upon the final determination of the appeal in this suit in said Circuit Court of Appeals.

Dated this 24th day of December, 1912.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed Dec. 24, 1912. A. L. Richardson, Clerk. [499]

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and  
also as Trustee, and PAYETTE LUMBER &  
MANUFACTURING COMPANY, a Corpo-  
ration,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

**Citation.**

The United States of America,—ss.

To Mollie Conklin, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this Writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein Mollie Conklin is complainant and R. M. Cobban, E. B. Weirick, individually and also as Trustee, and the Payette Lumber & Manufacturing Company, a corporation, are defendants, to show cause, if any there be, why the judgment, order or decree in said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf;

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief [500] Justice of the Supreme Court of the United States of America, this 13th day of December, one thousand nine hundred and twelve, and of the Independence of the United States, the one hundred and thirty-seventh year.

FRANK S. DIETRICH,  
United States District Judge, for the District of  
Idaho.

[Seal] Attest:           A. L. RICHARDSON,  
Clerk.

Service of the foregoing Citation and receipt of

a copy thereof, admitted this 13th day of December, 1912.

N. E. CONKLIN and  
WM. B. DAVIDSON,  
Solicitors for Complainant. [501]

[Endorsed]: Con'd. No. 60. In the District Court of the United States for the District of Idaho, Southern Division. Mollie Conklin, Complainant, vs. R. M. Cobban et al., Defendants. Citation. Filed December 13, 1912. A. L. Richardson, Clerk. [502]

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**Return to Record.**

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal] Attest: A. L. RICHARDSON,  
Clerk. [503]

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[Certificate of Clerk U. S. District Court to  
Transcript of Record, etc.]

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

R. M. COBBAN, E. B. WEIRICK, Individually,  
and also as Trustee, and PAYETTE LUM-  
BER & MANUFACTURING COMPANY, a  
Corporation,

Appellants,

vs.

MOLLIE CONKLIN,

Appellee.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 504 inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause in accordance with Stipulation filed on December 5th, 1912, except the original exhibits which are transmitted by order of Court, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$278.20, and that the same has been paid by the Appellant.

Witness my hand and the seal of said District Court, affixed at Boise, Idaho, this 27th day of December, 1912.

[Seal]

A. L. RICHARDSON.

Clerk. [504]

[Endorsed]: No. 2236. United States Circuit Court of Appeals for the Ninth Circuit. R. M. Cobban, E. B. Weirick, Individually and also as Trustee, and the Payette Lumber & Manufacturing Company, a Corporation, Appellants, vs. Mollie Conklin, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Southern Division.

Filed December 31, 1912.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.