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No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

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

VOLUME V.

(Pages 1601 to 2000, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
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(Testimony of Edward E. Butler.)

Q. Did she take hers up before you did, or later?

A. Afterwards.

Q. Now, it came time for you to make your final proof.

A. Yes.

Q. And do you remember that occasion?

A. I do.

Q. Who went to the land office with you then?

A. I remember that I proved up, but I couldn't swear who my witnesses were.

Q. When you went to Idaho City—I understood you to say that it was just the day before, or two days before you filed that you returned from Idaho City.

A. I went up there before I filed, certainly.

Q. And then you returned the day after you saw Downs; is that right?

A. After he located me, yes.

Q. And then you filed the next day, or the day after?

A. Pretty soon after; it might have been the next day for all I know.

Q. Do you remember the kind of weather you had up there on that occasion that you viewed this land?

A. It seems to me that there was quite a good snow on the ground; that is about all I remember.

Q. Did you go over all this land, or did you just see one of the corners?

A. We went over most of it; that is what I thought.

Q. You walked around the hundred and sixty acres?

A. No, I don't know as I walked over it all; I

(Testimony of Edward E. Butler.)

walked through the most of it.

Q. Do you remember whether you went to each of the four corners?

A. No, I couldn't swear to that.

Q. Do you remember how deep the snow was?

A. No, I don't.

Q. Was it four or five feet?

A. I couldn't say.

Q. What is your best recollection?

A. I wouldn't say.

Q. You remember that there was snow on the ground? A. Yes.

Q. You remember that it was deep, don't you?

A. No, I don't remember that it was deep.

Q. Did you tell me who went to the land office with you the day you made your final proof?

A. I haven't yet, no; because I don't remember who did go with me.

Q. Do you remember how much you paid at the land office that day?

A. Twelve or fifteen dollars, something of the kind.

Q. The second time you went I mean, to make your final proof. A. Something like \$400.

Q. Did you pay that in cash or in check?

A. Paid it in cash.

Q. And did you draw it out of the bank that morning?

A. No, I don't think I did. I might have got part of it there; I don't remember.

Q. Where did you get the money with which you

(Testimony of Edward E. Butler.)

made this final proof?

A. Collections from the ice business.

Q. All of it?

A. Yes, sir; to the best of my knowledge.

Q. And how long had you had it in your possession?

A. I don't remember.

Q. About how long?

A. I couldn't tell you how long. To make a long story short, I was looking after the ice business, and my brother was looking after the sprinkling business. I had seven ice wagons. Eaglesons and us was in partners, and they paid me a salary for looking after their part of it.

Q. How much did they pay you?

A. The company paid me \$100 a month.

Q. Do you remember whether you got this out of the bank?

A. No, I don't remember.

Q. Do you remember whether you gave a note to the bank?

A. No, I didn't give no note to the bank.

Q. You are sure of that?

A. I know I didn't.

Q. Do you know whether you drew any of this money from the bank, or whether you had it all in your pockets at that time?

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

Q. What is your best recollection?

A. I just told you what it was.

Q. Do you mind repeating it?

A. I told you that I didn't know positive whether

(Testimony of Edward E. Butler.)

I drew any out. I was in the habit of carrying quite a bit of money around with me, always was; that time of the year the collections amounted up pretty good, and I always had plenty of money.

Q. Do you know whether you had in the bank or you deposited \$412.50 the day that you made your final proof?

A. No, I don't know whether I did or not.

Q. Do you know whether you had had that much to your credit in the bank for five years preceding that?

A. Why, certainly I know I had. Do you mean that much at once?

Q. No, I mean that much on deposit for five years, not less than that.

A. Oh, no; sometimes I would overdraw.

Q. Do you remember this question being asked you when you made your final proof: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Do you remember that question being asked you?

A. I guess it was asked me all right.

Q. Did you make this answer: "I drew a check for it and got it from the Capital State Bank on my own account. For the last five years I received no money from anyone to replace the amount so used or drawn." Had you had that amount of money to your credit in the bank for five years?

A. I couldn't tell you.

Q. Mr. Butler, this was in the summer of 1902

(Testimony of Edward E. Butler.)

that you made your final proof?

A. Yes, I think it was 1902.

Q. How long after that was it that you started negotiations for the sale of this property?

A. I couldn't tell you sure how long it was.

Q. Was it a week, or was it a month?

A. I don't know now.

Q. What is your best recollection?

A. I stated once that I thought it was in June, but I don't know whether it was or not.

Q. Was it the same year that you made your final proof? A. I sold it the same year, yes.

Q. Who did you have these negotiations with?

A. I think I had them with Mr. Pritchard.

Q. Was that Mr. Louis M. Pritchard?

A. I believe those are his initials, yes, sir.

Q. Did you know Mr. Pritchard at that time?

A. Yes.

Q. Had you ever done any business with Mr. Pritchard before that?

A. Not any more than collecting ice bills off of him for ice water that he used in his office.

Q. Did you go to Mr. Pritchard, or did he come to see you? A. I think I went and seen him.

Q. Do you know who told you to go and see him?

A. I couldn't tell you.

Q. Did Mr. Wells tell you to go and see Pritchard?

A. Well, I don't know whether it was Wells or not; it might have been.

Q. You know some reason why you went to see

(Testimony of Edward E. Butler.)

him, don't you?

A. Certainly; I went to see him to sell him the timber claim.

Q. Did you know that he was buying timber claims? A. Yes, sir.

Q. Who told you?

A. I couldn't tell you that; there was several parties that sold before I did.

Q. And you went up there to see him, and I want to know how long that was after you paid your \$400 into the land office?

A. I couldn't tell you, Mr. Gordon, how long it was.

Q. Was it the same summer?

A. I told you it was the same summer, yes, sir; it was the same year.

Q. Now, you made your proof in June?

A. Yes.

Q. Do you remember whether it was in the summer of that year, or the fall, or the winter?

A. It wasn't in the winter, I am satisfied. I couldn't state—I think it was before October.

Q. And you carried the receipt they gave you to the land office?

A. The receipt for the money? I must have. I don't know as I carried it.

Q. You had it with you, I mean, when you went to Pritchard's office.

A. I don't know whether I did or not.

Q. Did he pay you any money on the occasion that you went there the first time?

(Testimony of Edward E. Butler.)

A. Never paid me any money until I turned the timber claim over to him.

Q. What did you do to turn the timber claim over to him? Did you sign a bond or agreement?

A. I don't remember signing but the one set of papers.

Q. What were they?

A. They must have been the deeds.

Q. How much money did he give you then?

A. I think he paid me \$650.

Q. Did he give it to you in cash or in check?

A. He gave it to me in cash.

Q. Was your wife with you at that time?

A. I don't think she was, Mr. Gordon.

Q. Where was your wife at that time?

A. I think she was home, on Fort street.

Q. Did you know to whom you made the deed?

A. I couldn't tell you. I knowed then, certainly.

Q. Do you know what the consideration in the deed was? A. I do not.

Q. You read it over, didn't you?

A. I did. I must have known then, certainly.

Q. Did you know that it was \$1000?

A. I don't know now. Of course I knowed then, if there was any consideration there, which, of course, there must have been.

Q. Were you ever called upon to make any other deed to this land?

A. I don't ever remember doing it.

Q. I will ask you if you didn't go to Mr. Pritchard some time in July of 1902, and make a deed,

(Testimony of Edward E. Butler.)

within a month after you got your final receipt?

A. I don't know, Mr. Gordon, whether I did or not.

Q. You say you think it was before October of that year? A. Yes, sir.

Q. Now, can you think whether it was in July or August?

A. No. The reason why I told you I thought it was before October was that my wife filed on a timber claim that fall, and I think I sold before she went up there. That is the reason I thought it was before October.

Q. This deed that I showed you is dated June 19, 1903. That is over a year after you made your final proof, and I notice that there is an erasure in the deed, and I want to ask you now if you are positive that you made that deed the same summer or fall that you made your final proof?

Mr. FRASER.—What does the acknowledgment say?

Mr. GORDON.—The acknowledgment has been erased, changed.

Mr. BUNDY.—What does it say?

Mr. GORDON.—It says June 19, 1903. What is your recollection of that?

A. I couldn't tell you, Mr. Gordon. I know—if you will tell me when my wife filed on a timber claim I will tell you.

Mr. BUNDY.—She filed September 15, 1902.

A. I sold it before she went up there, I am positive.

(Testimony of Edward E. Butler.)

Mr. BUNDY.—I don't think there is any question about that, Mr. Gordon; that deed was perhaps reacknowledged or something.

Mr. GORDON.—Did you ever go to Mr. Kinkaid's office with reference to this property, after the time you sold and got your money?

A. Not that I remember of.

Q. Did he ever come to you and ask you to make another deed, or ask you to acknowledge the deed again?

A. Not that I remember of.

Q. Do you remember whether or not John I. Wells sent you to see Pritchard?

A. It runs in my mind, Mr. Gordon, that he did, but I couldn't say positive, because it has been so long ago; I couldn't tell you.

Q. From the very start of this, didn't you know that as soon as you put up your money in the land office and got your receipt, that Wells and the rest of these people would give you \$250 for your claim?

A. I didn't, no, sir.

Q. You never made a statement to that effect anywhere, did you?

A. No, sir, not that I know of. If I did, it must have been something wrong.

Q. Did either Mr. Wells or Mr. Wilmot tell you when you went to the land office to make your final proof that you were to be careful about the answers you made?

A. I couldn't swear that they did, Mr. Gordon.

Q. Would you say that they didn't?

A. No, I couldn't say they didn't, no sir; because

(Testimony of Edward E. Butler.)

I don't remember.

Q. Did they tell you to be careful to say that you had no understanding about what you were going to get out of it? A. No, certainly not.

Q. You are sure of that?

A. I am not positive. Read it again. I didn't understand you.

Q. I will ask you if either Mr. Wells or Mr. Wil-mot told you to be careful to say, when you went to the land office, that you had no *undertaking* as to what you were going to get out of this claim.

A. I don't think they did, because I didn't know myself.

Q. You expected to get \$250 over and above what it cost you, and you didn't get that much. Isn't that true?

A. There was no expectations about it. I didn't get what I thought I ought to get; I will admit that.

Q. You didn't get but a little over \$200 over and above what it cost. A. That's all.

Q. What did you think you were going to get over and above what it cost you?

A. I didn't know exactly; I expected I would get what it was worth.

Q. How much did you think you were going to get when you entered it, over and above what it cost you?

Mr. BUNDY.—You have asked that twice now. We object to your asking it again.

A. I didn't know, Mr. Gordon, what I was going to get for it.

(Testimony of Edward E. Butler.)

Q. They didn't give you to understand that you could get \$250 over and above what it cost you, you are sure of that? A. Certainly, I am.

Q. I will ask you again whether, when you went up to look at this claim, whether on the day you went there, there was four or five or six feet of snow on the ground, on the claim that was shown you?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and gone over already twice.

A. I don't know, Mr. Gordon, how many feet there was.

Q. You don't know whether there was six inches, or a foot, or three feet, or four feet, or six feet, do you?

A. I do not. I went over quite a bit of gravel road, and I think where we went over the rocks the snow had gone off; that is the way I remember it.

Q. That was several days before you made your filing, in March, 1902.

A. Not several days, but it certainly was before then.

Q. When you got off the road to go over this claim, how deep was the snow?

A. I don't remember.

Q. Was it six inches deep?

A. I couldn't tell you.

Q. Was it a foot deep?

Mr. BUNDY.—I object to that.

Mr. FRASER.—Tell him you don't know how deep it was.

(Testimony of Edward E. Butler.)

Mr. GORDON.—I object to counsel telling the witness how to answer the questions.

The EXAMINER.—The attorneys can make objections, but the witness must answer the questions just the same. If he don't know anything about it, he can so state.

Mr. BUNDY.—He has said that four or five times.

The WITNESS.—More than that.

Mr. GORDON.—I think, if the Court please, it is a fair question for a man to say whether the snow was on the ground a foot deep or six feet deep.

The EXAMINER.—The witness don't need any help from the attorneys. If he can't tell anything about it, he can say so.

Mr. GORDON.—Do I understand you to say that you can't tell whether the snow on your claim the day you went up there was six inches or six feet deep? Is that right?

A. It was no six feet, I don't suppose, but I don't know how deep it was.

Q. Was it six inches? A. I don't know.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mr. Butler, dated March 28, 1902, identified by him as having been signed by him; the non-mineral affidavit of the same date, identified by the witness as having been signed by him; the notice of publication, dated March 28, 1902; the testimony given by the witness on final proof, dated June 24, 1902, and identified by him; the cross-examination attached; the register's and receiver's certificates dated June 24, 1902; the deed,

(Testimony of Edward E. Butler.)

dated June 19, 1903, by Edward E. Butler, and wife, Elvie M., to A. E. Palmer, consideration \$1000, identified by the witness as having been signed by himself and wife; the patent, dated January 28, 1904; and the other proof papers; all to the southeast quarter of section 32, in township 6 north of range 6 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 92A to 92M, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Butler, there seems to be some kind of formality that the land office goes through with here, by which some officer, and in this case Mr. King, certifies that you were either personally known to him or had been identified by someone. A. Yes, sir.

Q. Now, on the 28th of March, 1902, did you require any introduction to Mr. James King, the register of the land office?

A. Not that I remember of, because I think I know Mr. King for several years.

Q. And the other man, Mr. Garrett.

A. I have known Mr. Garrett ever since he has been in town.

Q. At the time you filed this first paper, on March 28, 1902, you said, among other things, this: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit

(Testimony of Edward E. Butler.)

of any person except myself." That statement was true at the time you made your filing?

A. Yes, sir, it was.

Q. And that same thing was true at the time you made your final proof, was it not? A. Yes, sir.

Q. Up to the time you made your final proof, had you any agreement of any kind, written or verbal, express or implied, with John I. Wells, Kinkaid, Downs, or any other person, firm or corporation, by which you had agreed to turn this property over to them as soon as you got your final receipt?

A. No, sir.

Q. It is alleged in this complaint in this action we are trying, Mr. Butler, that you didn't enter this land for your own benefit, but for the benefit of and at the request of the Barber Lumber Company and the other defendants named in the action. Is that true or false? A. It is false.

Q. And it is alleged in this complaint that you entered into an agreement with the Barber Lumber Company and the other defendants by which you agreed to go to the land office and swear falsely in order to get the land, and when you got it turn it over to the defendants, or to such person as they should direct. Is that allegation true or false?

A. It is false.

Q. You said you didn't know but possibly Mr. Wells sent you to Pritchard. Do you mean that Mr. Wells directed you or had any authority to tell you to go there?

A. No, I didn't mean that. After I had located

(Testimony of Edward E. Butler.)

I had seen him quite a little on the street, and I might have talked to him about it.

Q. Whoever told you to go to Pritchard simply told you that Pritchard was in the market buying claims, and if you went there you could sell it.

A. Yes, sir, that is what he said.

Q. You have been asked about snow in the mountains in March, 1902. I suppose the snow in the mountains would probably be different depths in different places, wouldn't it?

A. Certainly it would.

Q. Undoubtedly; it would be six feet in some places, twenty feet in some places, and six inches in others?

A. Yes, sir, I think so.

Q. You paid John I. Wells \$25 for locating you?

A. I did.

Q. Did you pay that before final proof?

A. Yes, certainly.

Q. After you filed or before?

A. I think I paid it before I filed.

Q. You paid the expense of going up there?

A. I did.

Q. And paid the land office fees, of course?

A. Yes, sir.

Q. Your attention has been called to this question 17 that you were asked on cross-examination, with reference to where you got the money and how long you had had it in your possession, and the answer here seems to be: "I drew a check for it and got it from the Capital State Bank on my own account." What is your present recollection of it?

(Testimony of Edward E. Butler.)

A. I couldn't tell you sure.

Q. In any event, wherever you got the money you took to the land office, it was derived from collections for ice?

A. I presume it was.

Q. It wasn't furnished you by Wells or any other person on earth?

A. No, sir.

Q. Have you been examined by officers of the Government at different times on this timber matter lately?

A. No; not for a year.

Q. At the time of the Borah trial were you examined?

A. I believe so.

Q. And any time in the Grand Jury?

A. Yes, sir.

Q. And you testified then along the same ground you have now?

A. Yes, sir.

Q. Were your statements taken down, do you know?

A. Yes, sir.

(Witness excused.)

[Testimony of Mrs. Jennie E. Thompson, on Behalf of the Complainant.]

MRS. JENNIE E. THOMPSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Jennie E. Thompson?

A. I am.

Q. What is your husband's name, Mrs. Thompson?

A. Sherman B. Thompson.

Q. Where do you reside?

(Testimony of Mrs. Jennie E. Thompson.)

A. 1517 North 7th Street.

Q. What is your husband's occupation?

A. He is a barber.

Q. How long has he been a barber?

A. About eighteen years, I think; I don't exactly know.

Q. Does he work in a shop, or does he own a shop of his own? Is he the proprietor of a barber-shop, or does he work as a barber in a shop?

A. Just at present, I can't tell you. He is not here. I think he hasn't a shop of his own, and I am not sure that he is working in a shop just now.

Q. In August, 1902, was he working in a barber-shop? A. He was working in a barber-shop.

Q. Whereabouts?

A. On the corner of Seventh and Main streets.

Q. You took up a claim under the Timber and Stone Act in August, 1902, did you?

A. Yes, sir.

Q. Who was the first person that spoke with you about taking up a timber claim?

A. Mr. Patrick Downs.

Q. I show you timber and stone land sworn statement, dated August 12, 1902, and ask you if you signed that paper?

A. Yes, sir; that is my writing.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that? A. Yes.

Q. I show you testimony of Jennie E. Thompson, dated November 11, 1902, and ask you if you signed that? A. I did.

(Testimony of Mrs. Jennie E. Thompson.)

Q. I show you the cross-examination attached, and ask you if that is your signature to that paper?

A. It is.

Q. I show you deed, dated March 23, 1903, made by Sherman B. Thompson and Jennie E., his wife, to A. E. Palmer, and ask you if that is your signature to that?

A. It is.

Q. And is that the signature of your husband?

A. Yes, sir.

Q. How long had you known Mr. Downs before he spoke to you about this claim?

A. Only a short time. I just came here from the east and met him at the hotel where I was stopping.

Q. In what month did you come from the east?

A. In June.

Q. 1902? A. The 27th of June, I think.

Q. Did your husband come with you?

A. No, he had been here some time before I came.

Q. And Mr. Patrick Downs stopped at the same hotel with you?

A. Yes, sir.

Q. Was that the Pacific Hotel? A. Yes.

Q. Will you state what Mr. Downs said to you about it?

A. Why, he told us he was cruising, and had claims, timber claims, and wanted to get people to take them up, told us the advantages.

Q. Did he tell you who he was cruising for?

A. No, sir.

Q. And what advantages did he tell you?

A. He said it was a good investment; if we would like to take up a claim it would be a good investment;

(Testimony of Mrs. Jennie E. Thompson.)

that he had some good claims, and talked to us about going.

Q. And you went? A. Yes.

Q. Did Mr. Downs arrange the party, for the party to go? A. I think he did.

Q. Did your husband go with you at that time?

A. No, he didn't.

Q. Who went with you?

A. There was a Mr. George Warran, and Mr. and Mrs. Albert Ewing, and Mr. and Mrs. Will Humphrey, I think their name is.

Q. Did you know Mr. John I. Wells, the gentleman sitting here, at that time? A. No, sir.

Q. How long after you had this conversation with Mr. Downs did you meet Mr. Wells?

A. Not till after I had been up to see the claim.

Q. Where did you go from Boise to view this claim?

A. Somewhere near Centerville—I don't know just exactly—about five miles, I think, from there.

Q. Did you stop at Centerville over night?

A. Yes.

Q. At what place?

A. Really I don't remember the name of the hotel.

Q. Did you stop at a hotel, or a ranch, or camp?

A. I stopped at a hotel.

Q. Did you ride out the next morning to see this claim, or did you walk?

A. I took my claim as we was on the way to Centerville.

Q. How was that done? Was your claim along-

(Testimony of Mrs. Jennie E. Thompson.)

side of the road?

A. I don't know whether it was on the direct road to Centerville or not, but we drove to the claim he had for me.

Q. Did you go off the road?

A. To get to it?

Q. Yes.

A. I couldn't tell you whether it was off the main road or not. There was a road there.

Q. Were you driving in a wagon, or were you riding horseback? A. In a wagon.

Q. Did you get out of the wagon?

A. I did, sir.

Q. And you were the first one of the party that was located? A. I was.

Q. And Mr. Downs took you to this claim and said, "This is the one I have selected for you"?

A. Yes, sir.

Q. And you went over it? A. Yes, sir.

Q. Was this a regular county road that your claim laid alongside of?

A. I can't tell you as to that; I don't know.

Q. How far from the road did you go to see this claim?

A. I think—I am not sure about it—that one end of the claim came near the main road; still I wasn't paying attention to the road part, and didn't notice that.

Q. And that was on the road that leads from here to Centerville? A. I think so, yes.

Q. How far from Centerville?

(Testimony of Mrs. Jennie E. Thompson.)

A. I think it was five miles.

Q. Did he give you a description of the land there? A. He did.

Q. Did he write it out on a piece of paper for you? A. He did.

Q. Did he give each of the other parties a description of their land? A. I don't know.

Q. Did he tell you what to do with that description? A. Yes.

Q. Was your husband along? A. No, sir.

Q. Did you tell me whether Mr. Downs told you what to do with that description or where to take it?

A. I did.

Q. Where did he tell you to take it?

A. I asked him what I was to do with the paper, and he said if I would take it to Mr. Wells' office he would make out the papers for me to have them filed.

Q. And you took them to Mr. Wells' office?

A. I did.

Q. And he made out this sworn statement, the first paper you filed in the land office?

A. Yes, sir.

Q. And this non-mineral affidavit? A. Yes.

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

A. No.

Q. Do you know who introduced you at the land office?

A. I don't know that anybody did. I have no recollection of it.

Q. Was Mr. Wells along with the party that went up to look at this land? A. No, sir.

(Testimony of Mrs. Jennie E. Thompson.)

Q. Did you pay a location fee? A. I did.

Q. To whom did you pay it?

A. I paid it to Mr. Wells.

Q. When?

A. Well, it was a few days after I located.

Q. When you filed this paper in the land office, the sworn statement, did you pay any money into the land office at that time?

A. You mean when I filed, for the entry?

Q. Yes.

A. I don't think I did.

Q. Did you pay \$7.50 or \$12?

A. Yes; I had forgotten all about that.

Q. Then it came time for you to make your final proof? A. Yes.

Q. Do you remember that occasion?

A. Yes.

Q. Did you go to the land office alone, or did someone go with you?

A. I don't know; there was a party of us there that day. I don't remember whether I went alone or how I did.

Q. Do you remember how much money you paid at the land office? A. I paid \$300.

Q. Where did you get that money?

A. I had it of my own.

Q. How long had you had it?

A. Well, I had part of it for some time.

Q. How much of it had you had for some time?

A. I can't just exactly tell you how it was. I earned it and laid it away as I earned it; some of it

(Testimony of Mrs. Jennie E. Thompson.)

I had had laid up for a long time.

Q. You remember coming here about two months before you filed on this claim?

A. It wasn't quite two months.

Q. Do you remember how much of that money you brought here with you?

A. I brought with me something about \$500.

Q. Did you have that \$500 or did you spend part of it while you were here?

A. No. I meant no to the spending part of it; I had kept it.

Q. Did you borrow any money with which to make your final proof? A. No, sir.

Q. Did your husband make his proof at the same time? A. No, sir.

Q. How long after you made your proof did he make his?

A. He didn't make any proof at all.

Q. How long after you paid that money into the land office did you negotiate for the sale of this property?

A. It must have been five or six months.

Q. With whom did you negotiate for the sale?

A. Mr. Pritchard was the gentleman, I believe.

Q. Did anyone tell you to go to see Mr. Pritchard?

A. No, sir; he wrote me a letter stating that he was purchasing claims, and would like to purchase mine.

Q. You made your proof in November, 1902. Now, do you remember how long after that—whether

(Testimony of Mrs. Jennie E. Thompson.)

it was before Christmas, or after Christmas, or when it was that you received this letter from Mr. Pritchard?

A. It was sometime the first of March?

Q. And you went to his office? A. I did.

Q. And how much did he offer you for the property? A. \$600.

Q. And you took \$600? A. I did.

Q. How did he pay you—in cash or by check?

A. In cash.

Q. Did you see him but the once?

A. He came out to my house to make out the deed and paid me the money, because at that time my mother was very ill and I couldn't go to his office.

Q. Was that the only time you saw him with reference to this property? A. It was.

Q. Did you write him a letter and tell him to come to see you? A. No; I telephoned.

Q. And he came to see you? A. Yes.

Q. When he came to see you did you have any agreement with him to sell that property? Before he came to see you, did you have any agreement with him to sell the property to him?

A. When I went to his office and talked to him about it, he offered me that much for it, and I told him I would accept it when—

Q. When what?

A. When he was ready to pay me for it.

Q. How long after that was he ready to pay you?

A. The latter part of March, I think it was.

Q. How long before that had you been to his of-

(Testimony of Mrs. Jennie E. Thompson.)

fice?

A. I don't remember whether it was in February or March that I went to his office—a few days after he wrote me.

Q. Was your husband there at that time?

A. At the office?

Q. At your house? A. No.

Q. Do you know whether your husband was in town on that occasion?

A. Yes, he was working.

Q. And you acknowledged it before Mr. Pritchard? A. I did.

Q. And did he bring the deed to the house with him when he came? A. He did.

Q. Have you ever made any other deed for this property? A. No, sir.

Q. Have you ever been requested to make another deed? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of the witness, identified by her, and dated August 12, 1902; the non-mineral affidavit, identified by the witness; the testimony of the witness, given on final proof, identified as having been signed by her, and dated November 11, 1902; the testimony of the witness, given on cross-examination; the register's and receiver's certificates, dated November 11, 1902; the deed, dated March 23, 1903, and made by Sherman B. Thompson and Jennie E., his wife, to A. E. Palmer, consideration \$950; and the certified copy of the patent, dated July 2, 1904; all to the southwest quarter of the

(Testimony of Mrs. Jennie E. Thompson.)

northeast quarter, the south half of the northwest quarter of section 34, township 7 north of range 4 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 93A to 93H, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Thompson, I think you said that you arranged with Downs to be located? A. I did.

Q. And paid the location fee to Wells?

A. Yes.

Q. And you understand that Mr. Downs and Mr. Wells were partners in the locating business at that time?

A. I didn't know it until after we came home.

Q. Did Mr. Downs tell you to settle with Wells?

A. Mr. Downs didn't tell me this. I said, "What shall I do about this matter? Are you going back to Boise"? And he says, "No, I am going to cruise." And I said, "Who shall I give the money to"? And he said, "Wells." I didn't know then, but afterwards I learned it.

Q. And acting on that suggestion, you went and paid Mr. Wells \$25? A. Yes, sir.

Q. Which covered the locating and making out of the papers? A. Yes, sir.

Q. You had some trouble with one forty of your claim.

A. Yes. On account of being mineral.

Q. So that you really got only three forties instead of four? A. Yes, sir.

(Testimony of Mrs. Jennie E. Thompson.)

Q. As I understand it, Mrs. Thompson, you made final proof and got your final receipt November 11, 1902, and you then held this claim until March 23, 1903, about four months, and the first negotiations relative to settling it was a letter that you received from Mr. Pritchard. A. Yes, sir.

Q. That letter, you think, was sometime either in February or March, 1903?

A. I am pretty sure it was in there sometime, but I can't remember just when.

Q. It was some considerable time after final proof anyway? A. Yes.

Q. Mrs. Thompson, at the time you made your first filing, on August 12, 1902, did you then have any agreement, written or oral, express or implied, with Mr. Wells, or Mr. Downs, or any other person, firm, or corporation, by which you had agreed to turn over or transfer this land to them as soon as you got title, or to such person as they should direct?

A. No, sir, I did not.

Q. Did you have any such agreement at the time you made your final proof? A. No, sir.

Q. It is alleged in this complaint in this lawsuit we are trying, and the United States charges, that you made this entry at the instance and at the request of the Barber Lumber Company and the other defendants named in this action. Is that true or is it false? A. It is false.

Q. And it is alleged that you had an agreement with these defendants by which you were to enter this land and go before the land office and testify

(Testimony of Mrs. Jennie E. Thompson.)

falsely, at their suggestion and request, and when you got title, turn it over to them. Is that true or false?

A. That is false.

(Witness excused.)

At this time the hearing was adjourned until 2 P. M., at which time the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Norman H. Young, on Behalf of the Complainant.]

NORMAN H. YOUNG, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Norman H. Young?

A. Yes, sir.

Q. What is your business, Mr. Young?

A. Telephone agent and station agent, at the present time.

Q. Where do you reside? A. Centerville.

Q. How long have you resided at Centerville?

A. The last period.

Q. Well, I want to know how long you have been in the state, mostly.

A. I was born within twelve miles of Centerville.

Q. And you have lived in the state of Idaho most of your life? A. Yes, sir.

Q. What was your occupation in 1902?

A. Bookkeeper.

(Testimony of Norman H. Young.)

Q. For whom?

A. Falk Mercantile Company.

Q. That is in Boise? A. Yes, sir.

Q. You took up a claim under the Timber and Stone Act in 1902? A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated January 22, 1902, and ask you if you signed that paper? A. I did.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that paper?

A. Yes, sir.

Q. I show you testimony of Norman H. Young, given on final proof, dated April 14, 1902, and ask you if you signed that? A. Yes, sir.

Q. I show you deed, dated November 10, 1904, by Norman H. Young to A. E. Palmer; did you sign that deed? A. Yes, sir; that is my signature.

Q. Do you know who the first person was that suggested or spoke to you of taking up a claim under the Timber and Stone Act?

A. To the best of my knowledge, it was John Kinkaid.

Q. Do you remember what Mr. Kinkaid said to you?

A. I do not recall any conversation at the present time as definite.

Q. Did he hold out any inducement or tell you the advantages of taking up a claim?

A. No, sir; he did not.

Q. Did he tell you of a market for the claim?

A. No, sir.

(Testimony of Norman H. Young.)

Q. Did you know of a market for timber claims in the section in which you located at that time?

A. No, sir.

Q. Did you know of a prospective market?

A. No, sir.

Q. And did Mr. Kinkaid tell you who would locate you?

A. He suggested that he was going to take up a claim, and we could take up claims adjoining, somewhere close, so that we could use each other as witnesses on our proof.

Q. Did you go with Mr. Kinkaid to take a claim?

A. No, sir.

Q. Did you go with a party to look at this land?

A. No, sir.

Q. Did you locate yourself, or did someone locate you?

A. Mr. Kinkaid told me where there was a vacant quarter, 160 acres, that I could locate on.

Q. He gave you a description of it?

A. Yes, sir.

Q. And how far was the claim that you located from Centerville, where you resided?

A. In an air line, it would be about two or two and a half miles.

Q. And you went out and located your claim by yourself? A. Yes, sir.

Q. Where did you get your witnesses?

A. I took them all in the city.

Q. You were working at the Falk Mercantile Company, at that time, in the city?

(Testimony of Norman H. Young.)

A. Yes, sir.

Q. And then you made a trip to Centerville for the purpose of going over this land?

A. Yes, sir.

Q. When you returned to the city did Mr. Kin-kaid make out your filing papers for you?

A. Yes, sir, he made out the papers.

Q. Did you pay him anything for it?

A. No, sir.

Q. Did you use your own money when you paid your filing fee at the land office? A. Yes, sir.

Q. You remember the occasion of going to the land office and making final proof?

A. Yes, sir.

Q. Who went with you?

A. I went alone, but I think my witnesses came later.

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

A. I paid something like \$11, I think.

Q. For filing fees. I am speaking now about when you made your final proof. A. Oh, \$400.

Q. Do you remember whether you paid that in cash or by check?

A. I had some cash and some demands, certificates of deposit, on one of the banks. I had three or four deposit checks; I don't know which I used, either the Boise City National or the First National Bank.

Q. It was your own money? A. Yes, sir.

Q. How long had you had these certificates of deposit?

(Testimony of Norman H. Young.)

A. Some from January, I believe. I had some state warrants, and some Ada County warrants that were paid sometime during the month of January, that I turned in for demand certificates, and I had some certificates running before that, but I don't think I had to use any of those.

Q. You had made this money in your own business? A. Yes, sir.

Q. Was your claim held up for any reason at that time? A. I beg pardon.

Q. Was your claim suspended for any reason that you know of? A. Not that I know of.

Q. Do you remember giving notice in your notice of publication that you would prove up on the 11th of April, 1902?

A. I don't remember any such date.

Q. You located in January, 1902?

A. Yes, sir.

Q. And you knew that you were to make your final proof in about three months; and you didn't make your proof until along in July sometime.

Mr. BUNDY.—Oh, yes, he did; he made his proof, and the papers show it, on April 14, 1902.

Mr. GORDON.—I am speaking about his getting his final certificate.

A. I received a receipt and exchanged it for final certificate.

Mr. BUNDY.—They gave you, when you paid your money, just a temporary receipt?

A. Yes, just a receipt for the money tendered, and they asked me to surrender that, which I did, and

(Testimony of Norman H. Young.)

they sent me another receipt, which you call the final receipt.

Mr. BUNDY.—This first one was simply a type-written receipt, was it not? A. Yes, sir.

Mr. GORDON.—Q. What did you do with that receipt? Did you keep it? A. Yes, sir.

Q. Then they asked you to make a return of it, and gave you what you call a final receipt, in July of that year? A. I am not sure as to the month.

Q. The final receipt was issued July 16, 1902. Now, had you heard of a market for that during the time that elapsed from the time you made your original entry to the time you got your final receipt?

A. No, sir.

Q. How long after that was it that you learned of a market? A. It was over a year.

Q. That was sometime in 1903?

A. A year or more, I am not sure.

Q. Who spoke with you about it then?

A. Mr. Wells.

Q. Mr. John I. Wells, the gentleman here present? A. Yes, sir.

Q. What did he say to you?

A. I suggested to him that I was in need of some ready money, and he asked me why I didn't sell my timber claim.

Q. Did you address him with the view of borrowing some money from him? A. No, sir.

Q. Then you had in your mind at that time the selling of your timber claim?

A. I had in my mind at the time I spoke to him

(Testimony of Norman H. Young.)

a collection of an account I had against Mr. Wells.

Q. And he told you to sell the timber claim? He didn't grasp the idea with which you approached him, and did he tell you where to go to sell it?

A. No; he suggested that he could find a buyer.

Q. Did he sell it for you?

A. He paid me the money for my claim.

Q. How much did he pay you? A. \$700.

Q. Did he pay you in cash? A. Yes, sir.

Q. Was that the same day you saw him with reference to the conversation you had in which you said you needed the money?

A. No; it was sometime after.

Q. How long after?

A. Three or four days.

Q. Where was it that he paid you the money?

A. In Centerville.

Q. He came up there? A. Yes, sir.

Q. Did you execute a deed at that time?

A. No, sir.

Q. Had you executed a deed before then?

A. No, sir.

Q. And how long after that was it that you executed the deed?

A. I don't remember exactly. I had to appear before some notary public.

Q. Do you know in whose office you appeared?

A. I do not. I kept the deed for some time before acknowledging it.

Q. Do you know who prepared the deed?

A. No, sir.

(Testimony of Norman H. Young.)

Q. Did you ever talk with Mr. Kinkaid about it after you entered? A. No, sir.

Q. Do you know Mr. Kinkaid's writing?

A. Certainly.

Q. Was the deed that you signed in Mr. Kinkaid's handwriting? (Hands witness deed.)

A. That is his writing.

Q. Then the deed you signed was in Mr. Kinkaid's handwriting? A. Yes, sir.

Q. Now, I notice that the deed is dated November 10, 1904. There is evidence of an erasure here, and "four" written in, and I notice that the date of the acknowledgment is 1903, November 10th. Do you remember whether or not you acknowledged that deed in 1903?

A. It was—I remember something about the acknowledgment being filled in.

Q. When you signed it?

A. I signed it, but I kept it over the year., I know; it was in 1904 that the deed was acknowledged.

Q. There is just one year's difference to the day between the date of the deed and the date it was acknowledged. I will ask you to look at that and state what your recollection is as to when you acknowledged that deed.

A. That "four" is my writing.

Q. Did you scratch that out there and put it in?

A. I think so.

Q. Did you hold that deed a year to the day?

A. I don't know that I did.

(Testimony of Norman H. Young.)

Q. Do you remember how long you held the deed after it was sent to you before you acknowledged it?

A. It was in my safe for a long time, but I can't say how long.

Q. Were you holding it there for any purpose?

A. Not particularly, no.

Q. And where did you acknowledge it?

A. In Centerville.

Q. And to whom did you send the deed?

A. I don't remember.

Q. Did you send it to Mr. Kinkaid or Mr. Wells?

A. I can't say which one.

Q. What is your best recollection?

A. I can't say.

Q. As I understood you, this deed was drawn or prepared and sent to you, or delivered to you?

A. It was delivered, I believe.

Q. By whom? A. By Mr. Wells.

Q. The day he paid you the money?

A. Yes, sir.

Q. And the date of the deed was written in there as it is now, with the exception of the fact that you changed the word "three" to "four." Is that correct? A. Yes, sir.

Q. And you failed to change the year in the acknowledgment? A. Yes, sir.

Q. Now, was the date of November 10th the correct date that you acknowledged this deed, or did you acknowledge it in blank?

A. I can't say as to that. Mr. McDevitt took the

(Testimony of Norman H. Young.)

acknowledgment, and I can't recall any of the particulars.

Q. How long did you say you had this deed in your possession before you signed and acknowledged it? A. It was all of a year.

Q. You had it a year before you acknowledged it and returned it?

A. Yes, sir, possibly; I wouldn't say positively.

Q. It may have been eleven months or ten months, but you mean that it wasn't a month or two?

A. Yes, sir.

Q. Did you say that you had no reason for holding it other than that you just failed to send—

A. I suggested that I would like a little better figure for the claim, and he told me that if I could find someone that would pay me more, to sell to them, that that was as much as he would give.

Q. You had the money at that time, didn't you?

A. Yes, sir.

Q. And you were, if you could sell it for more, to turn back the \$700? A. Yes, sir.

Q. Were you ever asked to make another deed to this property?

A. A deed correcting some errors in the date of acknowledgment.

Q. Was it prior to this one, or subsequent to it?

A. Subsequent.

Q. When did you make that?

A. About—I think something over two or three years ago.

Q. That was a deed to correct this deed here?

(Testimony of Norman H. Young.)

A. To correct dates, it says.

Q. And who prepared that deed for you?

A. I think that came from the Barber Lumber Company.

Q. Was it mailed to you?

A. Yes, sir, to me, with a letter.

Q. Do you know who wrote the letter?

A. I do not.

Q. Was it sent from Boise?

A. From the office in Boise.

Q. Do you know who signed the letter?

A. No, sir.

Q. Was it signed by Mr. Chapman?

A. I don't know, I am sure.

Q. Where did you receive that communication—
at Centerville? A. Centerville, yes, sir.

Mr. KEIGWIN.—Q. Mr. Young, in the year 1899 you failed in business, didn't you?

A. Yes, sir.

Q. You had an unfortunate suit, in which your stock of merchandise was cleaned out on attachment?

A. Yes, sir.

Q. Then between 1899 and 1902 you were working on a salary? A. No, sir.

Q. What were you doing?

A. I was collecting accounts until 1901, when I accepted a position.

Q. Collecting for whom? A. Myself.

Q. Collecting on account of your own business?

A. Yes, sir.

Q. That would be collecting for your creditors,

(Testimony of Norman H. Young.)

wouldn't it? A. Yes, sir.

Q. That was your means of livelihood during that period—the money you collected?

A. Yes, sir.

Q. You had no other occupation than collecting the accounts of your old business? A. No, sir.

Q. Then, in 1901, you went into the employ of the Falk Mercantile Company in this city, did you not?

A. Yes, sir.

Q. In what capacity?

A. Cashier and bookkeeper.

Q. Do you remember the month in which you entered their employ? A. February, I believe.

Q. Of 1901? A. Yes, sir.

Q. Then you were working for them on a salary?

A. Yes, sir.

Q. Have you any objection to stating the amount of your salary? A. No, sir.

Q. How much was it? A. \$85.

Q. Well, at the time you made this location under the timber land law were you then in the employ of the Falk Company, in this city? A. Yes, sir.

Q. Well, were you a resident here in Boise, or were you a resident of Centerville at that time, January, 1902? A. Of Boise.

Q. Then you went from Boise up into this timber region for the sake of looking at this land?

A. Yes, sir.

Q. On the suggestion of Mr. Kinkaid?

A. Yes, sir.

Q. How long after you made your application

(Testimony of Norman H. Young.)

was it that you were approached by Mr. Wells with a proposition to buy?

A. After making application?

Q. Yes.

A. It was in 1903, and year and a half anyhow, I think.

Q. After your final proof? A. Yes, sir.

Q. After the issue of your final certificate?

A. After my patent had been granted, several months.

Q. Did Mr. Wells offer to pay you the money for it?

A. He offered to sell my claim for me.

Q. How much did he say he could get for it?

A. He said he could get me \$700 for it.

Q. Did you agree to that? A. Yes, sir.

Q. Was there any time when Mr. Wells paid you the sum of \$400? A. Yes, sir.

Q. When was that? A. In 1902.

Q. Do you remember approximately what time in 1902?

A. It was just before I left for Centerville, after resigning in Boise.

Q. When did you resign your place in Boise?

A. I think I went home in June.

Q. June, 1902? A. Yes, sir.

Q. By "home" you mean Centerville?

A. Yes, sir.

Q. Did you go into business on your own account?

A. Yes, sir.

Q. Then in June, 1902, you did receive \$400 from

(Testimony of Norman H. Young.)

Mr. Wells? A. Yes, sir.

Q. On what account? A. On his account.

Q. For what reason?

A. For an account he owed me for merchandise furnished his family during his residence in Centerville.

Q. In what years did he live at Centerville?

A. I think he lived there until 1900. I can't state definitely.

Q. You had gone out of business in 1899.

A. It was after that; I held my property until 1900.

Q. When was this attachment issued against your property?

A. I don't recall the date—foreclosure for mortgage.

Q. Do you remember the year? A. No, sir.

Q. That attachment took your stock of merchandise, did it not? A. Yes, sir.

Q. And your real estate holdings in Centerville?

A. Yes, sir.

Q. Do you remember how much Mr. Wells owed you at the time you went out of business?

A. Between \$800 and \$900.

Q. To what extent had that indebtedness been reduced in the intervening three years prior to June 1902?

A. He hadn't paid me anything on account.

Q. And in June, 1902, you succeeded in collecting \$400? A. Yes, sir.

Q. Has he paid the balance since then?

(Testimony of Norman H. Young.)

A. No, sir.

Q. That is all he has ever paid?

A. That is all he ever paid.

Q. After you went back to Centerville, in June, 1902, you were engaged in merchandising up there again?

A. Yes, sir.

Q. And after that were you employed for any purpose by the Barber Lumber Company?

A. No, sir.

Q. Didn't you, some time after you went to Centerville, receive a request from the Barber Lumber Company to assist in protecting their property there from fire?

A. No, sir.

Q. Did you ever have that sort of request from anybody?

A. Yes, sir.

Q. Who was that?

A. From the Government agent.

Q. Mr. Sharp? A. Mr. Sharp.

Q. Were there no private parties interested in that property up there at that time?

A. Mr. Sharp informed me there was, in one of the fires I was looking after for him.

Q. Didn't you have a communication from the agent of the Barber Lumber Company, residing here in Boise, asking you to look after their interests in the way of protecting their lands from fire?

A. No, sir; not at that time.

Q. Understand, Mr. Young, that I am not limiting my questions to the particular year 1902. Will you tell us when it was and what sort of employment it was?

(Testimony of Norman H. Young.)

A. It was after we had a fire near Centerville, and Mr. Sharp was on the ground there; he said he would tell other parties who had interests there of this fire, and I would hear from them in regard to it; they would simply ring me up over the 'phone and ask me what was doing.

Q. In what year was that?

A. I can't say without reference to some letters I have at home.

Q. It was subsequent to 1902?

A. It was after that, yes; it was 1903 or 1904.

Q. Perhaps both years?

A. 1903 or 1904, I won't state which year.

Q. Did you have any communication with the late Frank Steunenbergs on the same subject?

A. Someone called me up over the long-distance 'phone; I didn't inquire who it was at the time.

Q. From Boise?

A. It was from down the line; I think Caldwell. I think it was from Mr. Steunenbergs.

Q. Was it from Caldwell? A. Yes, sir.

Q. Mr. Steunenbergs lived at Caldwell at that time? A. Yes, sir.

Q. What did he say to you?

A. He simply asked me as to the extent of the fire.

Q. You reported to him? A. Yes, sir.

Q. Told him how much money you had spent?

A. No, sir.

Q. You told him how much indebtedness you had incurred?

(Testimony of Norman H. Young.)

A. No, sir; Mr. Sharp had that matter in hand.

Q. Didn't you employ the men that were fighting the fire up there? A. Yes.

Q. And you paid them, or promised to pay them, something? A. Yes, sir.

Q. How did you get the money to pay them?

A. Mr. Sharp sent it to me.

Q. Mr. Young, let me ask you to refresh your memory on that point. Isn't it a fact that on one, at least, of these occasions you received a remittance by check from Governor Steunenberg to pay for some services of that kind?

A. I don't remember it.

Q. I have here a typewritten document which purports to be a statement made by you on the 3d of April, 1907, which was taken from an interview had between you and the late United States Attorney, Mr. Ruick, in which you were asked a number of questions about this matter. Do you remember such an interview? A. Yes, sir.

Q. In this courthouse? A. Yes, sir.

Q. In Mr. Ruick's office? A. Yes, sir.

Q. And about that time? A. Yes, sir.

Q. Do you know whether or not what you said was taken down at that time? A. Yes, sir.

Q. There was a stenographer present?

A. Yes, sir.

Q. Now, do you remember who the stenographer was? A. Mr. Thomas, I believe.

Q. Now, if you will look over that page and see if it brings anything to your mind. (Hands witness

(Testimony of Norman H. Young.)

paper.)

Mr. BUNDY.—The defendant objects to all this evidence as incompetent, irrelevant, and immaterial, calling for hearsay evidence, and long subsequent to the entry made, and conversation with a person not a party of record in the case.

Mr. KEIGWIN.—Does that refresh your recollection at all, Mr. Young?

A. I am not able to explain it any better now than I was at that time.

Q. What I mean is this: Can you, from reading this statement, which purports to have been made by you, recall the facts which it relates?

A. No, sir.

Q. You have, then, no recollection as to whether or not you received any remittances from Governor Steunenberg on account of those forest fires?

A. No, sir.

Q. Would you say, Mr. Young, that this report is incorrect?

A. I don't know as I made any sworn statements.

Q. No, I don't say that you did, and I am not asking you with that idea in mind. Understand, I am not asking you with any idea of entrapping you into anything, but simply to get your best recollection of this subject; at the time you spoke to Mr. Ruick I suppose you intended to tell the truth.

A. Yes, sir.

Q. You didn't intend to tell him anything that wasn't so? A. No, sir.

Q. And at that time your recollection was prob-

(Testimony of Norman H. Young.)

ably better than it is now, in matters of detail, was it not? A. I don't know as it was.

Q. Would you say now that you did not make those statements?

A. No, sir; I won't deny any allegation I made, any statement I made as to being employed by the Barber Lumber Company to fight the fires. I was employed by Mr. Sharp, and to the best of my recollection received my money from him for payment for those services.

Q. But at the same time, if you did make these statements to Mr. Ruick in 1907 they were probably correct at that time?

A. There is one statement there, where I am asked if I was employed by the Barber Lumber Company. I answered, "Yes, sir." I don't remember that particular question.

Q. Well, what I am trying to get at now, Mr. Young, independently of this question and answer, what is the fact, what was the fact?

A. Mr. Sharp hired me to look after that fire. I looked to him for the pay for those men I employed to fight the fire.

Q. And you have now no recollection of ever being employed by the Barber Lumber Company or Mr. Steunenberg for the purpose of protecting anybody's property against fire? A. No, sir.

Q. Or of receiving any remittance from the Barber Lumber Company or Mr. Steunenberg on account of expenses or liabilities incurred in protecting property from fire? A. No, sir.

(Testimony of Norman H. Young.)

Q. As I understand from your examination—you will correct me if I have misapprehended it—when you first executed your first deed, on the suggestion of Mr. Wells, it was with the understanding that you were to be at liberty to sell to anyone else if you could get a better price, was it?

A. Yes, sir.

Q. And you kept that deed in your possession?

A. Yes, sir.

Q. You didn't deliver it to Mr. Wells or anybody else?

A. No, sir.

Q. Did you receive the money for it at that time?

A. Yes, sir.

Q. Mr. Wells paid you how much?

A. \$700.

Q. That \$700 was in addition to the \$400 which he had paid you in June, 1902?

A. \$700 he paid me for my claim.

Q. And he had previously paid you \$400, as another transaction?

A. Yes, sir.

Q. Do you remember before whom that first deed was acknowledged? Before what attesting officer?

Mr. BUNDY.—The deed is right there on the table, Mr. Young, if you want to see it.

A. That is the deed.

Mr. KEIGWIN.—That purports to be acknowledged before Mr. McDevitt.

A. That is the first deed I signed.

Q. You have seen the deed.

A. Yes, sir.

Q. Now, if you will kindly refresh your recollection

(Testimony of Norman H. Young.)

tion, I will ask you this: Isn't it a fact that the first deed you executed was a typewritten deed?

A. No, sir.

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

Q. I show you again this same typewritten statement which I showed you before, and ask you to read this page, page 15, and see if that in any way refreshes your memory.

Mr. BUNDY.—Before the witness answers that question, I want to ask him one or two. Mr. Young, did you ever see this typewritten statement which is here before to-day? A. No, sir.

Q. Did you make that statement?

A. No, sir.

Q. Did you write it out? A. No, sir.

Q. Did you ever sign it?

Mr. KEIGWIN.—It is not signed.

Mr. BUNDY.—Did you ever read it?

A. No, sir.

Q. And you don't know whether that contains correctly what you said or not?

A. No, sir.

Q. So that reading it wouldn't refresh your recollection at all, would it?

Mr. KEIGWIN.—You have read that page?

A. I referred to my first deed all the way through.

Q. You mean the deed which has been shown to you to-day and identified by you?

A. Yes, sir.

Q. There is no typewriting in that deed, is there?

A. No, sir.

(Testimony of Norman H. Young.)

Q. Then you have now no recollection of an antecedent deed, which was in typewriting?

A. No, sir.

Q. You don't remember, I suppose, the exact dates of either of those deeds you executed?

A. No; no more than is shown by that.

Q. The deed that is here now? A. Yes.

Q. What became of the former deed?

A. I recognize that one on the table.

Q. What became of the later deed then?

A. It went to the Barber Lumber Company.

Q. Then this is the original deed and the other deed is the one which is not here to-day, that is, the one that has not been shown to you to-day?

A. Yes, sir.

Q. Mr. Young, referring again to this typewritten statement, which purports to be a report of your interview with the District Attorney, in April, 1907, and which you have seen, I will ask you whether these questions were put to you, and these answers given, which I now read: "Q. You had something to do at the request of some of these people in regard to forest fires, didn't you? A. Yes, sir."

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial and an attempt to impeach their own witness.

Q. "Q. Now what was that? A. That I was to take charge and look out for any forest fires in my immediate vicinity. Q. Who made that arrangement with you? A. Why that was made through arrangement with the party by telephone. It wasn't

(Testimony of Norman H. Young.)

either of the parties we are speaking of. Q. Well, who was it? A. I think it was the Barber Lumber Company, or someone in their employ. Q. Was it Governor Steunenberg? A. Yes, I had communication with him. Q. You also had communication with Steunenberg, or was Steunenberg the party? A. Well, the first telephone I had was from someone in the office of the Barber Lumber Company; I didn't know who it was. Q. They told you this was the Barber Lumber Company? A. Yes, sir. I was the telephone operator there and they asked me in regard to the extent of the fire, and so forth. Q. What did the Barber Lumber Company ask you to do in connection with it? A. Simply as I told you, to look out for it, and hire men if necessary to extinguish the fire."

Mr. BUNDY.—The same objection, incompetent, irrelevant and immaterial, and tending to impeach their own witness, showing him a statement not identified by him.

Mr. KEIGWIN.—The question is whether or not those questions were asked and those answers given at your interview with the District Attorney in 1907.

A. I don't recall any of the statements at the present time.

Q. You can't say whether you did or did not say those things? A. No, sir.

Q. I will ask you again if these questions were asked and these answers given, which I now read:

Mr. BUNDY.—The same objection.

Mr. KEIGWIN.—Q. After some questions as to

(Testimony of Norman H. Young.)

men employed for the purpose of fighting fire, this question: "Q. Were they paid through you? A. Yes, sir. Q. In what way, by check? A. Yes, sir. Q. Signed by whom? A. I couldn't say. Q. Well, was it the Barber Lumber Company or yourself? A. I couldn't say that. Q. Or was it Steunenberg? A. I couldn't say as to that—in what way, whether it was placed to my credit here at the bank, or I received it by check, I couldn't say. Q. In any event, you employed those men on behalf of the Barber Lumber Company? A. Yes, sir. Q. Now, what conversation did you have with Steunenberg in reference to it? You say you afterwards had a conversation with him. Now, what conversation did you have with him? A. He telephoned me as to the extent of the fires, and the damage they were doing, and I told him they were, as best I could, the grounds that were being burned over, and the danger of it spreading, and so forth, from time to time." Now, Mr. Young, the question is whether or not those questions were put to you and those answers given by you on the occasion heretofore mentioned.

Mr. BUNDY.—Same objection.

A. I can't say whether they were. I have no recollection of the statements I made at that time.

Mr. KEIGWIN.—Q. You don't know whether these statements were or were not made?

A. No, sir.

Q. I will ask you again whether or not these questions were put to you and these answers given

(Testimony of Norman H. Young.)

by you, on the occasion of your interview with the District Attorney, which I now proceed to read from page 15 of the typewritten report, which page you have already examined: "Q. Now, didn't you sign more than one deed? A. The first deed was a typewritten one, I believe. Q. How long before the execution of the second deed was the first one, the typewritten deed? A. I couldn't say; it was a correction of some error in the original deed. Q. When was that correction deed signed? A. The details I haven't refreshed my memory, haven't given it any thought since. Q. The first was a typewritten deed, and then afterwards you had another deed? A. Yes, sir, a printed deed."

Mr. BUNDY.—Same objection.

A. I don't remember all the details of the interview with the district attorney; I can't say that these were my answers.

Q. You can't say whether you answered that way or did not answer that way? A. No, sir.

Q. But if you did make such answers as are reported they were at the time believed by you to be true?

Mr. BUNDY.—The same objection.

Mr. KEIGWIN.—Q. Were they not?

A. Yes, sir.

Q. You had no intention of deceiving the district attorney at that time, did you?

A. No, I had none.

Q. And you had no reason for undertaking to invent any fairy tales for the purpose of amusing the

(Testimony of Norman H. Young.)

district attorney, did you?

A. I would hope not.

Q. I don't believe you did. I would like to have this statement which has been shown to the witness marked for identification.

(Marked Plaintiff's Exhibit No. 94A.)

Mr. GORDON.—Q. Did I understand you, in response to some question I asked you, to say that John Kinkaid gave you a description of this land, and you went up to the land and went over it by yourself?

A. Yes, sir.

Q. John I. Wells didn't go over the land with you then?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Now, on your cross-examination, when you made your final proof, I will ask you if this question was asked: "How did you first learn about this particular tract of land, and that it would be a good investment to buy it? A. Have known the land generally for years. John I. Wells pointed out the vacant land."

A. From a plat in Mr. Kinkaid's office.

Q. I will ask you if you answered this question: "Did you pay or agree to pay anything for this information? If so, to whom, and the amount? A. No, sir. He simply told me that a party who had filed on the land had abandoned the filing." Is that correct?

A. That statement is correct, yes, sir.

Q. Do you know George T. Young?

A. He is my father.

(Testimony of Norman H. Young.)

Q. Did you ever see a check, dated September 25, 1903, signed by Frank Steunenbergh, to your father, George T. Young? A. I can't say.

Q. Do you mean you don't remember?

A. No, sir.

Mr. KEIGWIN.—Q. Were you associated in business with your father in September, 1903?

A. I was running the store for him.

Q. It was his business? A. Yes, sir.

Q. And you were in his employ on a salary?

A. Yes, sir.

Q. And the banking was done in his name?

A. Yes, sir.

Q. You had no bank account of your own at that time? A. Yes, sir.

Q. Was the banking of this mercantile establishment done in your name or your father's name?

A. In my father's name.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated January 22, 1902, identified by Norman H. Young as having been signed by him; the non-mineral affidavit of the same date, also identified by Mr. Young as his; the testimony taken on final proof of the witness, dated April 14, 1902, identified by Norman H. Young as having been signed by him; the cross-examination attached thereto; the testimony of the other witnesses given on final proof; the register's and receiver's certificates, dated July 16, 1902; and the deed made by Norman H. Young to A. E. Palmer, consideration \$1000, dated November 10, 1904, and ac-

(Testimony of Norman H. Young.)

knowledged November 10, 1903; certified copy of the patent, dated January 28, 1904; all to the south half of the northwest quarter of section 17, and the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section 18, township 7 north of range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 94C to 94P inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Young, you said you was born and raised in Idaho. A. Yes, sir.

Q. And lived, during your early life and most of your life, at or near Centerville. A. Yes, sir.

Q. For how many years prior to 1902 did you know John Kinkaid?

A. I can't say; four or five years possibly.

Q. During that time did you know him intimately and well? A. Yes, sir.

Q. He was doing business up in that country, was he? A. Yes, sir.

Q. What was his business? A. Mining.

Q. And John I. Wells lived in that country, did he not? A. Yes, sir.

Q. At or near Centerville? A. Centerville.

Q. And you had known him for a good many years? A. Yes, sir.

Q. More or less intimately, I suppose?

A. Yes, sir.

Q. And during that time were friendly to both of these men? A. Yes, sir.

(Testimony of Norman H. Young.)

Q. At the time Kinkaid visited you concerning the advantage of taking a timber claim, he thought he was going to take one at the same time?

A. Yes, sir.

Q. There was nothing said at that time with reference to what you were to do with it, was there?

A. No, sir.

Q. At the time Mr. Wells pointed out a certain tract which had once been entered and had been abandoned, and you went up there?

A. Yes, sir.

Q. And the piece was one near your home, and which you were entirely familiar with?

A. Yes, sir.

Q. It wasn't necessary for you to pay Pat Downs \$25 to be located in your own door yard.

A. No, sir.

Q. And as I understand it, you came back to the land office and paid certain land office fees and filed your first papers.

A. Yes, sir.

Q. At the time you filed your papers had you entered into any agreement, express or implied, written or oral, with any person, firm, or corporation whatever, by which you had agreed to turn over the title you might acquire from the United States to any person whatever?

A. No, sir.

Q. Or any interest in it? A. No, sir.

Q. Was that agreement in force at the time you made your final proof?

A. No, sir.

Q. Did you at any time before you sold this property enter into any agreement, express or implied,

(Testimony of Norman H. Young.)

by which the title you might acquire from the Government should inure to any person except yourself?

A. No, sir.

Q. It is charged in this complaint, Mr. Young, that you, together with other citizens in this locality, entered into a wicked and unlawful conspiracy with the defendants in this action, having for its purpose the defrauding of the United States out of certain lands. Is that allegation of the complaint true or false?

A. It is false as far as I am concerned.

Q. And it is alleged in that complaint in this action that the entry you did in fact make was made at the request of and for the benefit of the defendants in this action. Is that allegation true or false?

A. It is false.

Q. It is further alleged that you, at the solicitation and request of the defendants, went to the land office and testified falsely, for the purpose of procuring land from the United States to turn over to these defendants, or to such person as they should direct. Is that true or false?

A. It is not true.

Q. You have testified to John I. Wells having paid you \$400 in June, or about June, 1903, a short time before you resigned your employment here in the city and went back to Centerville. That was after you had made final proof, was it not?

A. Yes, sir.

Q. And they had issued to you a temporary receipt for this money? A. Yes, sir.

(Testimony of Norman H. Young.)

Q. And your final proof was then before the land office for approval, as you understood it?

A. Yes, sir.

Q. Did that \$400 have anything whatever to do with the entry of this land? A. No, sir.

Q. Was there any express or implied understanding at the time that was paid that you should convey this land to any person whatever? .

A. No, sir.

Q. It had nothing whatever to do with this transaction at all? A. No, sir.

Q. It was purely a collection on your own account? A. Yes, sir.

Q. As I understand it, you tried to get some money from Mr. Wells, and he advised you to sell your timber claim.

A. He said he couldn't pay me any money at that time, but if I was as hard up as I reported I could sell my timber claim.

Q. And subsequently he came and told you that you could get \$700 for it?

A. He told me at that time.

Q. Was it some few days subsequent to that that he brought you the deed? A. Yes, sir.

Q. And paid you \$700? A. Yes, sir.

Q. With the understanding that that was all he could pay, but if you could sell it for any more you could call the deal off? A. Yes, sir.

Q. As I understand it, that deed was probably dated the day it was acknowledged, in 1903.

A. Yes, sir.

(Testimony of Norman H. Young.)

Q. You carried that deed a year, and finally executed it and turned it over, and you yourself changed the date from 1903 to 1904.

A. In the body of the deed.

Q. Leaving the incorrect date as to the acknowledgment. A. Yes, sir.

Q. Did you acknowledge it at the time you made this correction in the deed?

A. Somewhere near that, yes.

Q. It hadn't been executed and acknowledged during all this time? A. No, sir.

Q. And carried by you as a prepared deed, but unexecuted? A. Yes, sir.

Q. Then recently comparatively, two or three years ago, you had a letter from somebody asking you to make a new deed to the Barber Lumber Company, so that the date of the deed and the acknowledgment would be correct? A. Yes, sir.

Q. You have been shown a document here, consisting of twenty-one typewritten pages—

Mr. KEIGWIN.—You haven't got it all yet, have you? You know there is a supplemental statement by the witness.

Mr. BUNDY.—Consisting of thirty-four typewritten pages, which has been shown you for the purpose of refreshing your recollection, the document I refer to being marked Plaintiff's Exhibit No. 94A. Did you ever see that document in your life, Mr. Young, before to-day? A. No, sir.

Q. Since you have been on the witness-stand?

A. No, sir.

(Testimony of Norman H. Young.)

Q. That is, you never saw it until here on the witness-stand? A. No, sir.

Q. Have you any means of knowing whether or not your answers, the questions which are submitted to you, and your answers to them, are correctly recorded here?

A. I have no way of telling whether they are or not.

Q. From your present recollection of the facts, what do you say as to whether they are correctly recorded or not? A. I can't say.

Q. Some of the things in here would appear to be a little different from your evidence on the stand.

A. I was misapprehended in some statements, I am sure, in regard to that typewritten copy of the deed. That is one mistake, I know.

Q. Were you—either they misunderstood you, or you misunderstood them, or else they put it down wrong? A. Yes.

Q. Your evidence to-day on the matter to which your attention has been called in this statement is the facts as you can best recollect them with reference to that fire? A. Yes, sir.

Q. I don't know what that has got to do with it anyway, but I got in the habit of following these gentlemen up. Your present recollection is that your entire arrangement for tending to fires was with Mr. Sharp, and you were reimbursed for funds paid out by Mr. Sharp? A. Yes, sir.

(Testimony of Norman H. Young.)

Redirect Examination.

(By Mr. KEIGWIN.)

Q. At the time, in September, 1903, was your father associated with you in the business that you were conducting?

A. The business was in my father's name.

Q. Was he personally assisting in conducting the business? A. Yes, sir.

Q. You and he together were both on the premises? A. Yes, sir.

Q. And the bank account was kept in his name?

A. Yes, sir.

Q. And your own personal finances were running through his bank account?

A. I had my own bank account separate.

Q. Were you entirely straight with your creditors at that time?

A. No, I had a judgment which I hadn't taken up.

Q. You were in no danger of attachment?

A. No, sir.

Q. You had a separate account of your own?

A. Yes, sir.

Q. Do you know whether or not any compensation on account of services for fighting fire was received by your father from Governor Steunenberg or from anybody else?

A. I can't say how I received the money.

Q. You misunderstand my question. It isn't what you received, but whether your father received anything on that account.

(Testimony of Norman H. Young.)

A. If I had brought my letter files down with me I could have enlightened you.

Q. Is your father still alive? A. No, sir.

Q. When did he die?

A. This last September.

Q. Let me show you again the same typewritten statement which has been marked Plaintiff's Exhibit No. 94A, and ask you to read on the twentieth page these questions which I indicate, beginning here (indicating), and see if that refreshes your recollection in any way.

The EXAMINER.—Do you refer to certain numbers on the paper?

Mr. KEIGWIN.—I refer to the page of the paper. The paper has been identified by exhibit number, and I am asking him about the twentieth page.

A. Why, I don't remember those amounts. I was shown the checks but I don't remember the amounts.

Q. I am not asking you particularly about the checks, but this is the question I will ask you: Do you remember whether or not, at the interview with the United States Attorney of which this paper, from which I read, and which you have examined, purports to be a report, these questions were put to you and these answers given by you which I now read: "Q. Your father was paid a check for the year 1903, wasn't he? A. I think probably they would all be drawn to my father on account of the banking account being kept in his name. Q. Do you recall getting a check for \$167, September 25, 1903, or \$108

(Testimony of Norman H. Young.)

and \$59, making \$167? A. That was an apportionment of the amount between the Government and the Barber Lumber Company. Q. In any event you received pay from the Barber Lumber Company through your father in September, or in the year 1903, for fighting those fires up there? A. Yes, sir, September."

A. I think they were—possibly they were given that way.

Q. And those answers were correct, were they not?

A. I think they are. I can't recall as to the correctness of those amounts. I tell you I had some mining claims that I was being represented by Mr. Steunenberg and received checks for that work, and I have the two items somewhat confused, it being so long ago.

Q. I show you check, dated Caldwell, Idaho, September 25, 1903. Read the check, Mr. Witness.

A. "Caldwell, Idaho, September 25, 1903. The Commercial Bank. Pay to the order of Capital State Bank (Boise) for Geo. T. Young, \$167.00. Frank Steunenberg, Agt."

Q. That dispenses with any endorsement, of course. That appears to have been deposited at the Capital State Bank to your father's credit. Is that correct?

A. I am trying to recall as to whether he had any written communication from the bank acknowledging the receipt of that credit. I can't say at the present time.

(Testimony of Norman H. Young.)

Q. This appears from the face of it to have been deposited in the Capital State Bank.

A. Yes, I see.

Q. Do you remember now anything about that circumstance, as to whether or not that payment was on your account?

A. That may have been for assessment work on some claims that I was having done for Mr. Steunenberg. I can't segregate those amounts without reference to some pay-rolls.

Q. In case it was on account of assessment work, would the payment be made to you through your father?

A. Just the same way.

Q. Do you know Governor Steunenberg's handwriting?

A. No, sir.

Q. You couldn't testify to it?

A. No, sir.

Mr. KEIGWIN.—We offer in evidence the stub from what purports to be a check-book of the late Frank Steunenberg, reading thus:

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and as not the best evidence of the fact, by reason of the fact that the stub of the check is not admissible or binding upon these defendants.

Mr. KEIGWIN.—The stub reading as follows: "September 25, 1903. To George T. Young, Center-ville, for fighting fire, \$108.00, \$59.00, total \$167.00."

Mr. BUNDY.—I object to it as incompetent, irrelevant and immaterial, and not properly identified, no proper foundation being laid for it, and for the further reason that the stub of the check is not ad-

(Testimony of Norman H. Young.)

missible in evidence to prove anything.

Mr. KEIGWIN.—It is understood that no objection is made to the admission of this stub on account of the failure to prove handwriting, counsel for the defendants reserving to themselves the right to object on that ground at a later time.

Mr. BUNDY.—No, that is not the arrangement. That isn't what I said. I said you could assume for the time being, with the understanding that you will prove that it is his handwriting later, so that this witness can testify on that assumption.

Mr. KEIGWIN.—He says he can't testify as to that. Mr. Young, do these papers, singly or collectively, refresh your mind in any way as to the fact of that remittance being for your services on account of fighting fire? A. No, sir.

Q. Now, one more point. You were a notary public in 1902, 1903, and 1904, were you not?

A. Yes, sir.

Q. And you did some considerable notarial work for Mr. Kinkaid? A. Yes, sir.

Q. And some also for Mr. Wells?

A. I believe so.

Q. Do you remember a case then in litigation in the land office here, involving some timber land entries made by Arthur Anderson, Abel E. Hunter, Harvey Wells, Albert Nugent and James T. Ball?

A. Yes, sir.

Q. Do you remember doing some notarial work in connection with some or all of those cases?

A. I remember taking their depositions or ac-

(Testimony of Norman H. Young.)

knowledgments to some papers for the land office.

Q. In some, or all, which was it?

A. I don't know, in all, two or three instances.

Q. Which ones do you remember?

A. Hunter and Anderson.

Q. Do you remember Ball?

A. I can't recall whether I did his work or not.

Q. Do you remember Harvey Wells?

A. No, sir.

Q. Do you remember Nugent? A. No, sir.

Q. Can you state under what circumstances the request came to you to act in these cases?

A. The papers were handed me by, I think, Mr. Martin.

Q. What Mr. Martin? A. Frank Martin.

Q. An attorney at law? A. Yes, sir.

Q. Former attorney general of this State?

A. Yes. He left them at my office and told me to get the signatures.

Q. You took the acknowledgments?

A. Some of them; I can't recall which ones.

Q. Those that you do remember, you took the acknowledgments? A. Yes, sir.

Q. Did they pay you for them?

A. Yes, sir.

Q. Do you mean that you got the money from the entrymen themselves?

A. I believe so; I don't remember as to those details.

Q. Do you remember whether or not you were paid for these things by Mr. Kinkaid?

(Testimony of Norman H. Young.)

A. I don't think I was.

Q. Mr. Young, will you look at this same typewritten statement, purporting to be a report of your interview with the district attorney in April, 1907, on page 1 of the supplemental part thereof, at the questions I indicate, and see if that refreshes your memory in any way.

Mr. BUNDY.—The defendants object to taking time for putting in evidence relative to the so-called Anderson, Hunter, Nugent, Wells and Ball entries, for the reason that it already appears that those entries were cancelled, and the Barber Lumber Company doesn't claim through them, never got any land from them, and as wholly immaterial. I will say on the record here now, for the purpose of saving time, not by way of stipulation, so that counsel may rely on it, that they needn't devote any time to showing that Governor Steunenberg was within his authority in representing the Barber Lumber Company, because he did pay out a little of their money and acted for them.

A. In a way, yes.

Mr. KEIGWIN.—Q. Are those answers correct as given here?

Mr. BUNDY.—I object to that way of putting in evidence.

Mr. KEIGWIN.—Q. I will put it this way: Do you remember whether or not, on the occasion of your interview with the district attorney, in April 1907, of which this typewritten statement purports to be a report, this question was asked you and this answer given by you which I now read: "Q. What do you

(Testimony of Norman H. Young.)

know about those papers that were sent to you on these Anderson contests, what conversation or letters did you receive from Kinkaid in reference to those papers that you signed as notary public? A. He wrote me to the best of my recollection in a general way to see these parties at as early a date as possible, and see that the papers were properly executed and returned to him at once, to the best of my knowledge." Was that answer given by you?

A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. But you don't now remember that you got any money on account of your notarial work in connection with any of those cases known as the Anderson cases, including the Nugent, the Ball, the Wells, and the Hunter cases, from John Kinkaid?

A. I can't recall.

Q. Or from Frank Martin? A. No, sir.

Q. Do you remember distinctly from whom you did get your pay in those cases?

A. No, sir; I can't recall at the present time whether the individual signers paid me or not.

Mr. BUNDY.—What papers were these you were acknowledging?

A. A relinquishment of their timber entry; they wanted to have their timber claim relinquished and get their money back; it was an endeavor to get their money back.

Q. This was after the cases had been tried and you were asked to act as notary public in signing

(Testimony of Norman H. Young.)

their relinquishment? A. Yes, sir.

Mr. KEIGWIN.—Q. Mr. Young, are you anything of a lawyer? A. I am not.

Q. Have you ever studied law? A. No, sir.

Q. Do you know what the law is as to the limitation of prosecutions in cases arising under this timber land law? A. No, sir.

Mr. BUNDY.—That is one thing that there aren't any lawyers that I know of that do know.

Mr. KEIGWIN.—When you gave this interview to Mr. Ruick, in 1907, were you apprehensive then of any prosecution for anything you had done or were supposed to have done? A. No, sir.

Q. Did you then understand that if you had committed any offense in making your entry it was too late to prosecute you for it? A. No, sir.

Q. Did you understand the contrary to be true, that you might then be prosecuted?

A. No, sir.

Q. You didn't understand at all then?

A. I had no knowledge on that point at all, had never taken it into consideration.

Q. Were you given to understand by Mr. Ruick, or by anybody else, that if you had made an unlawful agreement in the making of your entry you would then be liable to prosecution? A. No, sir.

Q. You knew there was some law on the subject?

A. Certainly, yes, sir.

Q. What do you know about it now, as to your liability to prosecution?

A. I don't know anything about it.

(Testimony of Norman H. Young.)

Q. Do you now understand that you would or you would not be liable to be prosecuted if you had committed an offense in this matter?

A. I would be liable to prosecution.

Q. That is your understanding at the present time?

A. Yes, sir.

Q. I think that I will have the approval of my brother Bundy in telling you that you are mistaken about that.

Mr. BUNDY.—I haven't heard of anything that Mr. Young could be prosecuted for yet.

Mr. KEIGWIN.—I am putting the question to him as to what he understands would be his liability if he had committed any wrong.

Mr. BUNDY.—Your evidence here as to the manner in which you made your entry and subsequently sold it, hasn't been controlled by any fear of prosecution, has it?

A. No, sir.

Q. You haven't done anything for which you think prosecution could lie, have you?

A. No, sir.

Mr. KEIGWIN.—But you do think that if you had done anything for which you could be prosecuted you might be prosecuted?

A. Certainly.

Q. Notwithstanding Mr. Bundy and I telling you you wouldn't?

A. Yes, sir.

(Check marked Plaintiff's Exhibit No. 94B.)

Mr. BUNDY.—Counsel for plaintiff having refused in open court to have the stub referred to by the witness Young identified and left with the reporter, counsel for the defendant move that all the

(Testimony of Norman H. Young.)

evidence of Mr. Young relative to such stub be struck from the record.

(Witness excused.)

[Testimony of John R. Gary, on Behalf of the Complainant.]

JOHN R. GARY, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John R. Gary?

A. Yes, sir.

Q. Where do you reside, Mr. Gary?

A. My residence is here in Boise, and I work out at the mines at Pearl.

Q. How long have you resided in Boise?

A. 1900, since I made my residence here.

Q. Do you remember what month it was in 1900?

A. No, I don't.

Q. Where did you come from to Boise?

A. Coeur d'Alenes.

Q. You had been in Idaho some years?

A. Yes, sir.

Q. What was your occupation in 1901?

A. Mining.

Q. Are you a mining engineer or just a worker in the mines?

A. Foreman of the Granite State Mines Company.

Q. What were you in 1901?

(Testimony of John R. Gary.)

A. Common miner.

Q. You entered a claim under the Timber and Stone Act in 1901, I believe.

A. 1901 or 1902, I have forgotten which.

Q. I show you timber and stone land sworn statement, dated December 19, 1901, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you testimony given on final proof by John R. Gary, dated March 7, 1902, and ask you if you signed that paper? A. Yes, sir.

Q. I show you deed, dated March 20, 1903, John R. Gary and Edith A. Gary, his wife, to A. E. Palmer, and ask you if you signed that deed?

A. Yes, sir.

Q. That is your signature? A. Yes, sir.

Q. And is that the signature of your wife?

A. Yes, sir.

Q. And did you both acknowledge it before L. M. Pritchard? A. Yes, sir.

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

A. I heard it talked of on the streets here in Boise; I know there was plenty of timber up there.

Q. Did you know of a market for it at that time?

A. No, sir.

Q. Did you know anybody that was buying timber at that time? A. No, sir.

Q. Did you know of a prospective market for it?

A. No, sir; I was taking it up on speculation.

Q. And did you know John I. Wells at that time, in December, 1901?

(Testimony of John R. Gary.)

A. I got acquainted with him after I had taken this up.

Q. Didn't you know him before?

A. No, sir.

Q. Did you know Patrick H. Downs before you took up the claim? A. No, sir.

Q. Did you know John Kinkaid before you took up the claim?

A. No, sir; I met him in the district in 1902 or 1903 experting, that is all. That is the only time I met Kinkaid that I know of.

Q. You didn't know him when you filed on your claim?

A. No, sir, I wouldn't know him to-day if I see him.

Q. Did you know Mr. Pritchard when you filed?

A. I think I had had a little business with him before that.

Q. Did Mr. Pritchard talk with you about taking up a claim? A. No, sir.

Q. Now, did you go to look at this claim?

A. Yes, sir.

Q. Did you go alone, or with whom did you go?

A. There was Mrs. Lelia Lee, a sister in law of mine.

Q. She is now Mrs. Butler? A. Yes, sir.

Q. And who else?

A. Jack Cassell, I believe his name is, and another lady that I can't recall her name—I haven't seen her since that I know of.

Q. Did you know anybody but your sister in law

(Testimony of John R. Gary.)

of that party before you started?

A. No, sir.

Q. Where did you start from?

A. Boise.

Q. What part of Boise?

A. I think the Pacific Hotel.

Q. Who arranged for the party?

A. Why, my sister in law told me that I had a chance to go up; she says "We can go up tomorrow"; she says, "We can get a team," and she says, "There is one or two others that wants to go up," and I says, "All right."

Q. She told you to meet at the Pacific Hotel?

A. Yes, she says we would meet there.

Q. Where did you go—to Centerville?

A. Beyond Centerville, up through Pioneerville—yes, Centerville—I was thinking you said Placerville.

Q. What time of day did you get to Centerville?

A. Why, I think about nine-thirty, as near as I remember, in the morning. We stopped at Placerville the first night—nine o'clock, somewheres along there.

Q. Did you go to the hotel?

A. We went right straight on into the timber—do you mean at Placerville?

Q. No, Centerville.

A. Went straight on into the timber.

Q. Did you know who was going to locate you before you started?

A. I knew there was a man up there; I didn't

(Testimony of John R. Gary.)

know who he was.

Q. Did you know you would have to pay him something? A. Yes, sir.

Q. Where did you learn that?

A. Here in town.

Q. Where from?

A. Mrs. Lee, I believe. I can't say for sure that she told me, but I knew there was a timber cruiser up there, and that I had to pay for locating.

Q. Did any of the party have a letter to this man?

A. Not to my knowledge.

Q. You don't know whether they did or not?

A. I don't know.

Q. Who was the man?

A. Patrick Downs.

Q. When you got there you inquired for the timber locator, or did you ask for Pat Downs?

A. For the timber cruiser, and they told me it was Pat Downs.

Q. He was the only one that was cruising and locating there at that time. Did you make any arrangements with him for locating you?

A. I did. I spoke to him about it, and he located me.

Q. Did you ask him how much it would cost?

A. Yes, sir.

Q. Did you pay him there? A. No, sir.

Q. He took the party out to locate them?

A. He did.

Q. Did he say that he had plenty of claims at that time?

(Testimony of John R. Gary.)

A. I didn't ask him anything about it; he didn't say anything about it.

Q. How far are these claims upon which you were located from Centerville?

A. Why, I should judge a couple of miles on Clear creek.

Q. Did you walk over there or ride?

A. We rode most of the way.

Q. What was the condition of the weather? Was there snow on the ground at that time?

A. Yes, there was snow on the ground; I guess there was a foot.

Q. Did you and the rest of the party go over the claims?

A. I went over mine, I and Jack Cassell. Pat showed us where we could locate, and we went over our claims.

Q. Went to all four of the corners?

A. Yes, sir.

Q. Did the ladies go along?

A. No, sir; they were on the claims.

Q. Who was the first of the party to be located?

A. I think I and Cassell.

Q. Did he take you out to a claim and say "This is the one for you?"

A. He said, "Here is a vacant quarter."

Q. And you took it? A. Yes, sir.

Q. Did he give you a description of the claim there? A. He told me how it laid.

Q. I mean, did he write a description from which you could have your papers prepared?

(Testimony of John R. Gary.)

A. Yes, sir.

Q. Did he give each one of you one of them, or was it all in one?

A. I think we each one had one.

Q. Did you offer to pay him there?

A. I spoke to him about it, yes, sir.

Q. What did he say?

A. He said I could leave it in Boise with John Wells.

Q. That was the first you knew of John Wells?

A. Yes, sir.

Q. And the rest of the party came back with you to Boise? A. Yes, sir.

Q. How long after that was it before you went to see Wells, after you returned to Boise?

A. A week or ten days, I don't know just how long it was. I went and filed on it first.

Q. And who prepared your sworn statement or your entry papers?

A. I don't remember. It was somebody on Grove street that my sister in law, someone there that she knew.

Q. Was he a lawyer?

A. He was a notary public.

Q. It wasn't John I. Wells that prepared your papers for you? A. No, sir.

Q. When you went to the land office you gave notice of publication, did you? A. I did.

Q. And you gave the names of your witnesses?

A. Yes, sir.

Q. I notice that John I. Wells is one of the wit-

(Testimony of John R. Gary.)

nesses. Did you name him? A. No, sir.

Q. Who went to the land office with you besides Mrs. Lee? A. Jack Cassell.

Q. Did you know Dora C. Burns at that time?

A. She is the lady that I couldn't remember the name of, Mrs. Burns.

Q. And she is the wife of Louis K. Burns, isn't she?

A. She is the wife of Burns; I don't know the man's name at all.

Q. Did you know her husband?

A. I have seen him.

Q. Did you know him before you went up there?

A. No, sir. I hadn't met him before I went up there, and I had met Mrs. Burns before that.

Q. I will ask you if the same person prepared that paper for you that prepared your sworn statement, notice of publication.

A. I got them papers mixed up, excuse me.

Q. I will explain to you. These two papers, the sworn statement, and this paper, you had prepared at the same time; you gave your notice of publication the same date. Do you know who prepared the second paper, the notice of publication? I will ask you if you know whether the same person prepared both of them.

A. I think he did—I am not sure—I didn't commit it to memory at all.

Q. And at the same time you filed a non-mineral affidavit. I will ask you if that is your signature to that, dated December 19, 1901? A. Yes, sir.

(Testimony of John R. Gary.)

Q. And did the same person that prepared the sworn statement and notice of publication prepare that same paper for you?

A. I think so, yes; he must have.

Q. Who suggested to you John I. Wells being a witness?

A. Is John I. Wells my witness?

Q. There is the paper, the notice of publication (hands witness paper).

A. I didn't know that John I. Wells was on there. Three witnesses was all I was supposed to furnish, wasn't it? That was Dora Burns, Patrick Downs and Lelia Lee.

Q. You didn't know John I. Wells?

A. No, sir, I didn't.

Q. And you had never seen him?

A. No, that must have been put in by mistake; I didn't know it was in there.

Q. Then you and Mrs. Lee filed the same day?

A. Yes, sir.

Q. And in the course of several months it came time for you to make your final proof. Is that right? A. Yes, sir.

Q. Do you remember the occasion of going to the land office and making your proof?

A. I was notified by the land office.

Q. Did you and Mrs. Lee go together on that occasion?

A. I don't think we were there together; I am not sure.

Q. Do you remember paying any money into the

(Testimony of John R. Gary.)

land office the day you made your proof?

A. Paying for the timber?

Q. Yes. A. I give him a check.

Q. How much was the check for?

A. \$400.

Q. And on which bank was it?

A. Capital State.

Q. Was it your personal check?

A. Yes, sir.

Q. Was it a certified check?

A. A check out of my check-book.

Q. I mean, did you take the check to the bank and have the bank certify it?

A. No, sir, I drew the check from my book and give it to the land office.

Q. Did you pay for Mrs. Lee's too?

A. No, sir.

Q. And they accepted your check at the land office, your personal check? A. Yes, sir.

Q. How long had you had the money in the bank that you drew that check against?

A. I couldn't say. I was building a house at the time, had been building a house, had been contracting in the mines, and had money in the bank there most of the time, and I also believe I had money in another bank.

Q. Do you know how much money you had in the bank at that time, approximately?

A. No, sir, I do not.

Q. Do you know how long you had had \$400 in that bank? A. No, sir, I couldn't say.

(Testimony of John R. Gary.)

Q. Had you put it in the day before?

A. No, sir.

Q. A week before? A. No, sir.

Q. How long before had you put it there?

A. I couldn't say; I don't know whether I have my stubs or not.

Q. This check you drew was on the Capital State Bank? A. I think it was, yes.

Q. Did you borrow this money to put in there?

A. No, sir.

Q. It was your own money?

A. It was my own money.

Q. And you worked for it?

A. And I worked hard.

Q. At the time you made final proof you didn't know of a market for this land? A. I did not.

Q. And nobody had suggested to you the sale of it? A. No, sir.

Q. How long after you made your proof was it that you began negotiations for the sale of this land?

A. After I made my proof. I couldn't say. I had two or three different letters written me from people wanting to buy it.

Q. Have you any of those letters now?

A. No, I haven't.

Q. Do you know who they were from?

A. No, sir.

Q. Did Mr. A. E. Palmer write to you about it?

A. Yes, sir, he is the man that got it; he was the highest bidder from the letters I got, and I sold to him quite awhile afterwards.

(Testimony of John R. Gary.)

Q. Where was it that Mr. Palmer wrote to you from? A. Spokane, I believe.

Q. Now, you have destroyed that letter, have you?

A. Yes, sir.

Q. What was the contents of that letter, as well as you can remember?

A. Making me an offer for my land.

Q. How much did he offer you for it?

A. I believe it was \$850.

Q. How long was that after you made your proof in the land office?

A. Quite a little while, I don't remember how long.

Q. A month, or six months?

A. Anywheres from two months to six months, maybe longer. You mean Palmer?

Q. Yes.

A. That was when I sold, quite a long time afterwards.

Q. And you answered Mr. Palmer's letter?

A. I did.

Q. What did you tell him?

A. That I wanted all I could get.

Q. And he again answered your letter?

A. Yes, sir.

Q. Have you that letter? A. No, sir.

Q. What did he say about it?

A. He said he couldn't give me more.

Q. Did you finally write to him and tell him you would accept his offer? A. I did.

Q. Did you ever see Mr. Palmer?

(Testimony of John R. Gary.)

A. Never.

Q. After you told him you would accept the \$850, did he write you a letter and tell you that he would pay that? A. He did.

Q. Have you that letter?

A. I haven't any of those letters.

Q. And with whom did you close the deal?

A. I believe it was a fellow by the name of Pritchard. I am not certain about it; I didn't pay much attention to it at the time, I didn't commit it to memory.

Q. How did you happen to go to see Mr. Pritchard? A. Mr. Palmer told me to.

Q. You mean in one of your letters he told you to go to see Pritchard? A. Yes, sir.

Q. So you hunted up Mr. Pritchard?

A. I did.

Q. What did you tell Mr. Pritchard when you went to see him?

A. I told him I had a letter from Mr. Palmer wanting my claim, and for him to make the deed out, and I guess probably he had corresponded with Mr. Pritchard. He seemed to know a whole lot about it.

Q. Did he have the deed made out when you got there?

A. He made it out while I was there.

Q. How many times did you go to see Mr. Pritchard?

A. As near as I remember, only once.

Q. You took your wife down there on that occasion, did you?

(Testimony of John R. Gary.)

A. My wife signed it over the telephone; my wife wasn't able to go down.

Q. And who wrote her name to the deed?

A. No, excuse me just a minute. This has been a long time ago, but the deed I taken it out to the house and she signed it out there, and Pritchard swore her over the 'phone in my residence.

Q. He called your wife up over the telephone and she acknowledged it over the telephone?

A. She acknowledged it there, she wrote it there in her own writing, right there. It has been a long while ago, and I never paid no attention to it what-ever.

Q. Now, you say you only remember of going to Pritchard's office once.

A. I had to go twice because I had to go there with the deed and take it back.

Q. That was all the same day? A. Yes, sir.

Q. When you came back, did he call your wife up while you were there and she acknowledged over the telephone? A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. Did you have a telephone in your house, or was it next door? A. My own house.

Q. That day was the only day you ever went to Mr. Pritchard's office? A. On that business.

Q. With reference to this deed?

A. Yes, sir.

Q. Do you remember what time of the day you went to Mr. Pritchard's office? A. I do not.

Q. Was it in the morning, or afternoon?

(Testimony of John R. Gary.)

A. I couldn't say.

Q. I notice that the deed is dated March 20, 1903, and I understood you to say that the deed was drawn while you were in the office that day. Is that correct?

A. That is what I suppose, my understanding is.

Q. Did you see Mr. Pritchard prepare this deed? Did you sit there while he did some writing on it?

A. He was doing some writing; I think it was on the deed.

Q. Was there anyone else in the office doing business with him but you at that time?

A. Not that I remember of.

Q. And then you signed the deed?

A. Yes, sir.

Q. And took it home? A. Yes, sir.

Q. And your wife signed it? A. Yes, sir.

Q. And then you returned the same day with the deed? A. I did.

Q. And then Mr. Pritchard called your wife up over the 'phone and she said that she would acknowledge it? A. Yes, sir.

Q. Now, I notice that there is a date put in here, April 7, 1903, that is seventeen days after the deed was drawn, that the acknowledgment is dated. Now, it appears that this "April" has been put in in the place where there is an erasure. Can you explain that? (Hands witness paper.)

A. No, sir, I cannot.

Q. Did Mr. Pritchard give you \$850 that day?

A. I believe it was that day; I believe it was \$850

(Testimony of John R. Gary.)

or \$800, I don't know which.

Q. Was it a check? A. Yes, sir.

Q. Did you get the check cashed, or deposit it to your credit in the bank?

A. I think I deposited it, I am not sure.

Q. Was it his personal check?

A. I think it was Palmer's check.

Q. Did you notice that the consideration in this deed was \$1,000? You read the deed?

A. I did.

Q. You didn't notice that it was \$1,000?

A. If it was I didn't know anything about it. \$850 was what I think I got.

Q. If you had noticed it would you have said anything about it?

A. I would have spoke about it, certainly.

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

Q. Were you ever requested to make a deed to correct any errors in this deed? A. No, sir.

Q. Now, you went to the land office and made your proof March 7, 1902; that was the day you paid your money, was it?

A. The day I proved up.

Q. Did they give you a typewritten receipt for that money?

A. I think so, yes, sir, as near as I remember.

Q. What did you do with that?

A. I don't know what I done with it.

Q. Did you give that to Mr. Pritchard?

A. I couldn't say.

(Testimony of John R. Gary.)

Q. Then you weren't given your final receipt for three or four months later, July 18, 1902. Do you know why the claim was held up? A. No, sir.

Q. Wasn't any explanation given at the land office for that?

A. I went there two or three times and asked about it, and he said "Oh, it would be along pretty soon." That was the only explanation I had. In fact, I wasn't in town all the time.

Q. Did you ever talk to Mr. Wells about selling this property? A. No, sir.

Q. Nor Mr. Downs? A. No, sir.

Q. And nobody but your correspondence with Palmer?

A. Well, there was two or three others had written to me, but I don't remember their names; I was in Thunder Mountain when I got one of the letters.

Q. But nobody wrote to you until after you got your final receipt?

A. I think I had letters before that, but I don't remember who they was from.

Q. Did you answer them? A. No, sir.

Q. Then Mr. Palmer's letter on the subject was the only one that you answered? A. Yes, sir.

Q. Was Mr. John I. Wells up to Centerville or up to the claim when you went there, when you went over this land? A. I couldn't say.

Q. Did you see him there? A. No, sir.

Q. Did you ask him to go over the claim with you? A. I didn't see him there.

Q. You didn't ask him to be a witness for you?

(Testimony of John R. Gary.)

A. Not as I remember of. I know I didn't, because I only had the three, Mr. Downs and Mrs. Lee and Mrs. Burns.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of December 19, 1901, identified by John R. Gary as having been signed by him, filed in the land office; notice of publication, dated December 19, 1901; non-mineral affidavit, which has been identified by the witness, also dated December 19, 1901; the testimony of witness given on final proof, identified as having been signed by him, dated March 7, 1902; the cross-examination attached; and the testimony of the other witnesses given on final proof; the register's and receiver's certificates, dated July 18, 1902; the deed, dated March 20, 1903, made by John R. Gary and Edith A. Gary, his wife, to A. E. Palmer, consideration \$1,000; certified copy of the patent, dated January 28, 1904; all to the southeast quarter of section 25, township 8 north of range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 95A to 95L, inclusive.)

Q. Did your wife take up a timber claim?

A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Gary, you testified to going up onto this land with a party, and being located, and returning to Boise, where you went to some office, I think you said on Grove street, and had your papers made out.

A. Yes, sir.

(Testimony of John R. Gary.)

Q. You don't recall the man's name that made them out?

A. I can't; I don't remember his name.

Q. Some notary public your sister in law suggested?

A. Yes, sir.

Q. Did you pay him for it? A. Yes, sir.

Q. And then you took your papers to the land office and filed?

A. Yes, sir.

Q. At the time you filed that first paper, had you any agreement, express or implied, in writing or oral, with the Barber Lumber Company, or Kinkaid or Wells, or anybody else, with reference to what you should do with that land when you got title to it?

A. No, sir.

Q. Did you have any agreement at that time by which you had promised to turn over or transfer to any person, firm, or corporation whatever any land you might acquire from the Government, or any interest in it?

A. No, sir.

Q. Did you have any such agreement as that at the time you made final proof?

A. I did not.

Q. It is charged in this complaint that you entered this land for the benefit of the Barber Lumber Company and the other defendants. Is that true or false?

A. It is false.

Q. And it is charged in this complaint that has been made by the United States Government in this case we are trying that you entered into an arrangement with the Barber Lumber Company and the other defendants, by which you would go and enter this land for their benefit, and that then you

(Testimony of John R. Gary.)

would go to the land office and testify falsely, and as soon as you got the land you would turn it over to them for a consideration. Is that true or false?

A. It is false.

Q. You didn't act for the Barber Lumber Company or anybody else in making your entry?

A. No, sir.

Q. After you had made this final proof, and you paid in your \$400, on March 3, 1902—at that time they gave you a temporary receipt, did they not, for the money you paid?

A. I believe so.

Q. Then the entry was held up, as a great many other entries were, until July 18, 1902, when final receipt was issued?

A. Yes, sir.

Q. Up to the time that final receipt was issued, on July 18, 1902, had you had any talk with anybody at all about selling this property, or selling it to them?

A. No, sir, not that I remember.

Q. Your deed is dated March 20, 1903, about a year after you had made your final proof and paid in the money. You had had some negotiations, I believe you said, for a little while before you made the deed?

A. I had.

Q. About how long prior to making the deed did those negotiations begin?

A. I couldn't say; it was some time before that.

Q. Would you say it was during the year 1903 some time, the deed being dated in March, 1903?

A. Somewhere along there. I don't know just when it was: I can't say it was or wasn't. I know it was long before I sold the property that I had

(Testimony of John R. Gary.)

these offers made, but I don't remember the dates.

Q. It was some time after you got your final receipt before you began negotiating the sale?

A. Yes, sir.

Q. I suppose the details of this transaction after seven years are not as clear as they were at one time?

A. No, indeed, it isn't.

Q. You testified that you thought Mr. Pritchard gave you a check, and that you thought it was A. E. Palmer's check. You are not very certain about that?

A. I am not, but I think it was Palmer's check.

Q. Are you very certain of that?

A. I am not sure of it, but I think it was.

Q. You also testified to having some letters from Mr. Palmer. Now, let's see if I can't refresh your recollection on that a little bit. Were those letters from people saying that Mr. Palmer was in the market to buy and making an offer in his behalf?

A. I think I had a letter from A. E. Palmer. I am sure I did.

Q. You don't recall whether you received some letters from other people saying that A. E. Palmer was buying timber claims, and if you desired to sell he would take it up?

A. I don't remember of it.

Q. And your recollection is that you had a letter directly from Palmer? A. Yes, sir.

Q. Written from Spokane? A. Yes, sir.

Q. You are not very certain of that, are you, Mr. Gary?

(Testimony of John R. Gary.)

A. I am not; I am not certain, my being out in the mining camps. I would come in here probably once every two or three months, and my wife might have a letter for me and she would hand them to me. My wife as a rule got the mail. I was away months at a time.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Did your wife open your mail?

A. Yes, sir, always.

Q. Did she answer letters for you?

A. She does, that is, to my relations.

Q. Did she open this letter from Mr. Palmer?

A. I don't remember if she did or not.

Q. Did she answer it? A. No, sir.

Q. Did you answer that yourself?

A. I think I did.

Q. And you got a letter from Mr. Palmer again telling you to go and see Mr. Pritchard?

A. That was one letter I got from him.

Q. You got four letters in all from Mr. Palmer?

A. Three or four, as well as I remember.

Q. When you made up your mind that you would take up a timber land claim, what caused you to think of this particular region up there? How did you come to fix upon that particular region?

A. I had heard it talked about here in town.

Q. Whom had you heard talk about it?

A. I don't remember who they were.

Q. Did you know Mr. Dean West?

A. I know of him.

(Testimony of John R. Gary.)

Q. Had you heard him talk about it?

A. I don't remember that I did, nothing more than being with the people in town here, and they were talking about timber claims, and they asked me why I didn't go up and get one.

Q. What did they say?

A. They said there was a chance to get some timber up there, that timber would be scarce, and that it would be a good speculation.

Q. Did you know of anybody that had sold any claims up there? A. No, sir.

Q. Did you know whether there had been any claims sold up there? A. No, sir.

Q. Did you make any inquiry to find out whether claims had been sold up there? A. No, sir.

Q. Did you find out that anybody was buying claims here in town? A. No, sir.

Q. Did anybody tell you that there was a market for timber here? A. I hadn't asked.

Q. You made no inquiry? A. No, sir.

Q. You simply went up there on the possibility that at some remote time in the future there would be a demand for timber in that region?

A. Certainly.

Q. How soon did you expect the timber to come into demand? A. I couldn't tell.

Q. A year, or twenty years?

A. I couldn't tell; I knew I could hold it for a good many years; I knew I could hold it as long as I wanted to hold it, and sell whenever I got a chance.

(Testimony of John R. Gary.)

Q. Do you know what the taxes were on one hundred and sixty acres of timber land?

A. No, I don't.

Q. Did you ever pay any taxes on this land?

A. Not as I remember of.

Q. Did you ever go to the tax office to see whether you were assessed for any taxes on that land?

A. No, sir.

Q. What is the usual rate of taxation in Boise county? A. I couldn't say.

Q. Do you own any property in Boise county?

A. No, sir.

Q. Did you ever pay any taxes there?

A. No, sir.

Q. You don't know what the annual tax rate is in Boise county? A. No, sir.

Mr. BUNDY.—I can tell you, Mr. Keigwin; it is \$14 a claim.

Mr. KEIGWIN.—During this time that you held this title didn't you get any tax notice?

A. Not to my memory.

Q. Did the assessor ever come to see you?

A. Not that I remember of.

Q. You didn't know at how much this property was assessed? A. Not that I remember of.

Mr. BUNDY.—If you will look at the dates, you will find that it wasn't assessed during the time he had it.

The WITNESS.—I don't think they could assess it; I don't know; I don't remember.

Mr. KEIGWIN.—Do you remember what time

(Testimony of John R. Gary.)

you went over this land to make an inspection of it?

A. Some time before I filed on it.

Q. About how long before you filed?

A. Possibly a couple of weeks; I couldn't say for sure.

Q. Do you remember how many times you were on the land? A. Only once.

Q. How many times did you go over it on that occasion?

A. I went around the corners and across it, and around on it that way; I might have been off it, for all I know. I made the one trip.

Q. How deep was the snow?

A. In places probably a foot, and other places where the sun would strike there wasn't any.

Q. How far was this from Centerville?

A. Somewheres about two miles; it might have been more.

(Witness excused.)

[Testimony of Mary A. Monroe, on Behalf of the Complainant.]

MARY A. MONROE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Mary A. Monroe?

A. I am.

Q. Where do you reside now?

A. 1217 West Bannock.

(Testimony of Mary A. Monroe.)

Q. Where did you reside in January, 1902?

A. Centerville, Idaho.

Q. How long had you resided there at that time?

A. I think about two years previous to that, somewhere along there.

Q. Were you married at that time?

A. Yes, sir.

Q. And your husband's name was John C. Monroe?

A. Yes, sir.

Q. Do you know where he is now?

A. No, sir.

Q. Mrs. Monroe, who first spoke with you about taking up a timber claim?

A. Mr. Monroe.

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

A. Yes, sir.

Q. Patrick Downs?

A. Yes, sir.

Q. And what did Mr. Monroe tell you about taking up one of these claims?

A. He just simply made the suggestion.

Q. Did you know who would locate you at that time?

A. I did not, just at the time.

Q. When you got ready to take the claim you learned who would locate you?

A. Yes, sir.

Q. Who was that?

A. Mr. Patrick Downs.

Q. Did you go to see Mr. Downs, or did he come to see you about it?

A. He didn't come to see me at all. I didn't see anyone until we got ready to locate.

Q. Did you make any arrangements with him to have him locate you?

(Testimony of Mary A. Monroe.)

A. Not any further than that he called at the house and said when we got ready to take up a claim he would locate us.

Q. You lived how far from the claim?

A. About four miles.

Q. Did you walk out or ride out?

A. Rode out.

Q. This was in January, 1902?

A. No, I believe it was in the latter part of December.

Q. I show you timber and stone land sworn statement, dated January 7, 1902, and ask you if you signed that paper? A. That is my signature.

Q. I show you the non-mineral affidavit of the same date, and ask you if you signed that?

A. I did.

Q. I show you the testimony given by Mary A. Monroe on final proof, dated April 7, 1902, and ask you if you signed that? A. Yes, sir.

Q. I show you deed, dated June, 2, 1903, made by John C. Monroe and Mary A. Monroe, to A. E. Palmer, and ask you if you signed that?

A. Yes, sir.

Q. And is that your husband's signature?

A. Yes, sir.

Q. Did you and your husband go to locate at the same time? A. Yes, sir.

Q. Who else were of the party?

A. No one else but Mr. Downs.

Q. Did Mr. Downs take you just to a certain claim and locate you on it, or did he walk you over

(Testimony of Mary A. Monroe.)

a number of claims? Did he ask you to take your pick of them?

A. No, there was no selection made whatever. We knew about where we wanted the claim, and so he took us as near the place as we wished, and then showed us the corners of it.

Q. Was there snow on the ground then?

A. Some.

Q. Mr. Monroe located at the same time?

A. Yes, sir.

Q. Did Mr. Downs give you the numbers of this claim?

A. If I remember correctly, he did.

Q. And was Mr. John I. Wells over the claim with you that day? A. No, sir.

Q. How long after you went over the claim did you file?

A. I couldn't tell you the exact time. I know we were on the claim the latter part of December, and filed the 7th of January, I did.

Q. Did you pay a locating fee?

A. I did not; my husband paid it for me, I presume.

Q. Do you know whether he did?

A. Oh, yes, he did; I know to my knowledge that he did.

Q. Did he pay it to Downs or someone else?

A. That I couldn't tell you, but I presume Mr. Downs.

Q. Did Mr. Downs tell you to go to see someone to have your papers made out?

(Testimony of Mary A. Monroe.)

A. No, he did not.

Q. Did you go to see someone?

A. I simply saw Mr. Wells.

Q. Where did you see Mr. Wells?

A. I believe he was located in the Peck building at that time.

Q. And he gave you these papers, this sworn statement?

A. I know he gave me some papers, whether those were the ones or not I can't say.

Q. Did he give you all the papers you filed in the land office the first time? A. Yes, sir.

Q. Did he have them there, or did he go out and get them for you?

A. He presented them to me himself.

Q. Did he have them there when you arrived?

A. Yes, sir.

Q. Had you had any understanding with Mr. Wells that you would come there after the papers?

A. No, sir, I did not.

Q. Did Mr. Wells go to the land office with you?

A. That I can't recall.

Q. The Mr. Wells that you refer to is Mr. John I. Wells, the gentleman present in the courtroom?

A. Yes, sir.

Q. I notice in this statement, your sworn statement, Mrs. Monroe, the certificate of the register, in which he has certified that the foregoing affidavit was read to affiant in my presence before she signed her name thereto, and that said affiant has been satisfactorily identified before me by John I. Wells. Does

(Testimony of Mary A. Monroe.)

that refresh your recollection? A. Yes, sir.

Q. You remember now that he went up there with you? A. Yes, sir.

Q. Did your husband go with you too?

A. No, sir, I don't believe he did.

Q. Do you know how much you paid in the land office that day you filed?

A. I couldn't tell you exactly.

Q. And then you remember the time that you made your final proof? A. Yes, sir.

Q. And do you remember who was at the land office with you then?

A. I cannot recall who all were there, but I am certain Mr. Downs was, and I believe Mr. Wells.

Q. Did you know of a market for this land at that time? A. No, sir.

Q. Did you know of anyone that was selling claims at that time in that locality? A. No, sir.

Q. You didn't know of anyone that was purchasing claims either? A. No, sir.

Q. Had you heard of any claims being sold at that time? A. No, sir.

Q. When you went to the land office to make your proof and paid the \$400, did you pay that in check or in cash?

A. I went there with a check, with part of the amount, and the check was refused, and I had to go out and cash it.

Q. Whose check was it?

A. My husband's check.

Q. Do you remember where you got it cashed—

(Testimony of Mary A. Monroe.)

which bank?

A. It was issued on the Capital State Bank.

Q. Your husband had an account there at that time?

A. Yes, sir.

Q. Do you know how long he had had an account there?

A. We had had an account there ever since we had been in the state; the year I couldn't tell you.

Q. Do you remember when your husband gave you that check? Did he give it to you the day you made your proof?

A. No; I think he drew it the 5th.

Q. Two days before?

A. Yes, sir, something like that.

Q. And then you took that check and went to the bank and got it cashed, and then went back to the land office?

A. Yes, sir.

Q. Do you remember being asked some questions when you made your final proof?

A. Yes, sir, I remember; but what they were I couldn't tell you.

Q. See if you remember this one which I read: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer: "My husband gave it to me. Since April 5, 1902." That is correct, is it?

A. Yes, sir.

Q. How long after that did you start negotiations for the sale of this property?

A. About six months; somewhere along there.

Q. With whom did you negotiate?

(Testimony of Mary A. Monroe.)

A. In fact I didn't do that part of it; my husband did it.

Q. This deed that you have identified, where did you sign that?

A. In Mr. Pritchard's office, if I recall correctly.

Q. You made your proof in April, 1902?

A. Yes, sir.

Q. And you got your final receipt in August, 1902?

A. Yes, sir; I couldn't say whether it was August.

Q. I was reading from the receipt. Did you negotiate for the sale of that that summer, or how much later?

A. It was only a matter of a few days from the time we took a notion to sell it till we made the sale.

Q. When did you take the notion, how long after you had proved up and got your final receipt?

A. About three days before we sold it.

Q. Can you remember when you sold it?

Mr. BUNDY.—The deed is right there.

Mr. GORDON.—The deed has been changed in dates. The date has been changed both in the acknowledgment and the deed. What is your best recollection of how long after August, 1902, you sold this, or had an offer to sell?

A. Well, sir, I couldn't tell you that.

Q. Was it a month?

A. I have no recollection, I assure you.

Q. Was it a year? A. It was not a year.

Q. Was it six months?

A. In the neighborhood of six months from the time we got the land that we thought of selling it.

(Testimony of Mary A. Monroe.)

Q. Did you come to Boise to sign the deed?

Q. We were residing here at the time; we had left the Basin.

Q. Do you remember whether it was before or after Christmas, the Christmas following the time you got your final proof, that you sold this?

A. Yes.

Q. Which?

A. I couldn't tell you what month it was in.

Q. Was it before Christmas or after Christmas of 1902?

A. It was in 1902, before Christmas.

Q. You are sure of that, are you?

A. Yes, sir.

Q. What makes you remember that?

A. Because I filed on the land the 7th of April, and I know I sold it that year some time.

Q. When did you move to Boise from Center-ville? A. Some time in June, 1902.

Q. And in whose office did you sell this property, or sign the deed? A. Mr. Pritchard's office.

Q. Had you ever met Mr. Pritchard before?

A. No, sir.

Q. And do you know how you happened to go to Mr. Pritchard's office?

A. Only through my husband instructing me to go there.

Q. And you went with your husband?

A. Yes, sir.

Q. Did you ever make more than the one deed to this property? A. No, sir.

(Testimony of Mary A. Monroe.)

Q. And your husband sold his claim at the same time?
A. Yes, sir.

Q. Did you see any money paid on that occasion?

A. Yes, sir.

Q. How much was it?

A. That I cannot recall.

Q. How much did you get of it?

A. That I cannot recall.

Q. Did you get any of it?

A. I got my portion of it.

Mr. BUNDY.—Are you sure you didn't get any more?

Mr. GORDON.—Do you know whether it was paid you in cash or by check?

A. That I cannot recall, but I believe it was cash.

Q. How much do you think it was?

A. I couldn't tell you.

Q. Three hundred dollars?

A. I couldn't tell you.

Q. Two hundred and fifty?

A. I couldn't tell you.

Q. You have no recollection?

A. I have no recollection what the amount was.

Q. Was the deed made out when you arrived at Mr. Pritchard's office, or did you wait for him to prepare the papers for you to sign?

A. That I cannot recall.

Q. You don't remember?

A. I don't remember.

Q. And you never were asked to make any other deed except on that one occasion?
A. No, sir.

(Testimony of Mary A. Monroe.)

Q. And you were never asked to acknowledge a deed to this property on any other occasion but that one time? A. No, sir.

Q. Did I ask you what Mr. Monroe's occupation was in 1902? A. You did not ask me that.

Q. Did you tell me? If you haven't told me, will you tell me now?

A. Yes, sir. He was constructing engineer for a mining concern in the Basin at the time, and we were also in business there.

Q. What kind of business?

A. General merchandise.

Q. Were you carrying on a store or tending to the store while he was out in the mining business?

A. Yes, sir.

Q. I understood you to say that you had a check that you went out and had cashed the day that you made your final proof?

A. I couldn't say whether it was that very same day, but I know it was that same date.

Q. I understood you to say that you took it to the land office and that they declined to take it?

A. Yes, sir.

Q. Whose check was that?

A. My husband's check—not for the full amount.

Q. Do you know how much?

A. I couldn't tell you the amount.

Q. Do you know on what bank it was drawn?

A. Capital State.

Q. Was your husband at the land office at the same time and made his final proof?

(Testimony of Mary A. Monroe.)

A. I couldn't tell you how that was.

Q. Will you state whether or not your husband is out of the state?

A. He is out of the state to my knowledge, but his whereabouts I could not say.

Mr. KEIGWIN.—Q. Where was Mr. Monroe when you last heard of him?

A. He was in Nevada.

Mr. GORDON.—You know Mr. Monroe's signature, do you? A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated December 31, 1901, signed John C. Monroe, and ask you if that is your husband's signature?

A. That is his signature.

Q. I show you the non-mineral affidavit of the same date, signed John C. Monroe, and ask you if that is your husband's signature? A. Yes, sir.

Q. I show you the testimony of John C. Monroe given on final proof, dated March 21, 1902, and ask you if that is his signature? A. Yes, sir.

Q. You have already identified his signature to the deed I showed you a few moments ago?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mrs. Mary A. Monroe, dated January 7, 1902; the non-mineral affidavit of the same date, both identified as having been signed by Mrs. Mary A. Monroe; the notice of publication, dated January 7, 1902; testimony of the witness, dated April 7, 1902, and identified by Mrs. Monroe as having been signed by her; the cross-examina-

(Testimony of Mary A. Monroe.)

tion attached; the testimony of the other witnesses on final proof; the register's and receiver's final receipts, dated August 1, 1902; certified copy of patent, dated March 17, 1904; and the deed, dated June 2, 1903, by John C. Monroe and wife, Mary A. Monroe, to Albert E. Palmer, consideration \$1600, which has been identified by this witness as having been signed by herself and husband, and acknowledged by them; all to the southeast quarter of section 24, township 7 north of range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 97A to 97L inclusive.)

Mr. GORDON.—We also offer in evidence the timber and stone land papers of John C. Monroe, the sworn statement, dated December 31, 1901; the notice of publication of the same date; the non-mineral affidavit of the same date; and the testimony taken on final proof, dated March 21, 1902, all identified by Mrs. Mary A. Monroe as having been signed by John C. Monroe, her husband; the cross-examination attached to the testimony on final proof; the register's and receiver's certificates, dated July 29, 1902; certified copy of the patent, dated February 1, 1904; and the deed, which has been identified, all of which papers have reference to the northeast quarter of section 25, township 7 north of range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 96A to 96N inclusive.)

(Testimony of Mary A. Monroe.)

Cross-examination.

(By Mr. BUNDY.)

Q. Calling your attention to this deed, and to some apparent erasures, or something, in the deed, the second of June, and also in the acknowledgment, I suppose you don't know whether those were in there at the time you executed it or not?

A. I could not say.

Q. Mrs. Monroe, you testified that your recollection was that at the time you went to see Mr. Wells after you had been up to view the land, and at the time you went to Mr. Wells' office to get the first paper prepared, that you thought he had them there. Do you mean that you thought he had them already prepared, or what?

A. They were prepared, I think, after I came there, but that I could not say.

Q. At the time you made your original application and filed your first paper in the land office, had you entered into any agreement of any kind or character, express or implied, written or oral, with any person, firm, or corporation, by which you had agreed to turn over to any person the title which you might acquire from the United States, or any interest in it? A. No, sir.

Q. Did you have any such agreement at the time you made your final proof? A. No, sir.

Q. Up to the time you made your final proof, had you had any negotiations with anybody with reference to selling this land? A. No, sir.

Q. It is stated in this complaint in this lawsuit

(Testimony of Mary A. Monroe.)

we are trying, Mrs. Monroe, in which the United States is plaintiff and the Barber Lumber Company and others are defendants, that you made your timber and stone entry for the express benefit of the Barber Lumber Company and the other defendants. Is that true or false?

A. It is false, to my knowledge.

Q. And it is also stated in this complaint by the Government that you entered this land pursuant to an agreement with the Barber Lumber Company, and under an agreement, by which you went to the land office and testified falsely, for the purpose of procuring the land to be turned over to the Barber Lumber Company. Is that true or false?

A. That is false.

Q. Mrs. Monroe, did you have a little experience with the Government of the United States in what is known as the sweat-box a year or so ago?

A. No, sir.

Q. Did they ever have you in one of the district attorney's rooms here and question you as to what your evidence would be in this case on some other occasion?

A. The only experience I ever had was something like a year ago, the special agent of the Government here I gave him some sort of a hearing, but that is all the hearing I have had.

Q. Did that special agent go over the evidence in this case substantially as we have gone over it today?

A. Very similarly.

Q. Have any trouble with him?

(Testimony of Mary A. Monroe.)

A. No difficulty.

(Witness excused.)

At this time an adjournment was taken until ten o'clock A. M., Friday, February 19, 1909, at which time the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Irving W. Hart, on Behalf of the Complainant.]

IRVING W. HART, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Irving W. Hart? A. Yes, sir.

Q. How long have you resided in Boise, Mr. Hart? A. About thirteen years.

Q. What is your present occupation?

A. I am clerk of the Supreme Court.

Q. What was your occupation in 1902?

A. I was stenographic reporter of the Third Judicial District.

Q. Is that the district in which Boise is situated?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 9, 1902, and ask you if that is your signature to that paper. A. Yes, sir.

Q. You filed that in the land office?

A. I did.

Q. I show you non-mineral affidavit of the same date. Did you sign that paper?

(Testimony of Irving W. Hart.)

A. I signed that, yes, sir.

Q. And filed it in the land office?

A. Yes, sir.

Q. I show you deed, dated March 12, 1903, made by Irving W. Hart, and Fannie R. Hart, his wife, to Horace S. Rand. Is that your signature to that deed? A. Yes, sir.

Q. And is that also the signature of your wife?

A. It is.

Q. And you acknowledged that before John L. Niday? A. Yes, sir.

Q. Mr. Hart, this sworn statement that I have shown you, the notice of publication, and the non-mineral affidavit, will you state who prepared those papers?

A. Well, now, at this length of time I couldn't state positively.

Q. Do you remember whether Mr. Kingsley prepared them for you?

A. He very likely did, and it is my impression that he did, but I couldn't state. I wouldn't want to make a statement in regard to that, because I can't remember.

Q. Did you know Mr. John Kinkaid at that time?

A. Yes, sir.

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

A. Not personally; I came in contact with him in that transaction.

Q. That is the gentleman now present?

A. Yes, sir.

Q. Who first spoke with you about taking up a

(Testimony of Irving W. Hart.)

timber claim, Mr. Hart? A. Mr. Kinkaid.

Q. Did you meet him casually, or were you at his office?

A. I met him in the first place on the street, when he first spoke to me about it.

Q. What did he say?

A. He called my attention to the fact that the timber lands in the Basin were becoming accessible to filing at that time, and advised me to make a filing.

Q. Did he give any reason or any of the advantages that it would be to file?

A. He stated, as I remember, that things were in such shape, or getting in such shape, that those timber lands would have a market value. That was, as I remember it, the substance of any representation he made in regard to reason for filing.

Q. Did he give you to understand that there would be a market for them in the near future?

A. Yes, sir.

Q. Did he indicate to you that he knew of some persons that would purchase that in the near future?

A. No, he didn't.

Q. Did you make any inquiry of him as to the manner in which they would become valuable?

A. I think I did. I had a little curiosity to know whom he represented, and I think I did ask him a question or two, but I couldn't get any information out of him.

Q. Was he secretive?

A. Well, I don't know as you would put it that way, but he didn't seem to be inclined to give me

(Testimony of Irving W. Hart.)

any details, nor to mention any names.

Q. Did he give you a description of the land that he suggested that you file on?

A. Not at that time.

Q. Did he later?

A. Well, some time later I called at his office. In the meantime he hadn't communicated with me about it. I think this when he first spoke to me was about the middle of that summer, as near as I recollect, and the time went by, and it was nearly time for the fall term of the district court, and I knew that I couldn't very well get away while court was in session, and so, a short time before court began, I went to his office to find out in what shape matters were, and he said at that time that he was glad I called because he was just about to call me up and tell me that things were in such shape that arrangements could be made for a party of us to go up and make filings on those lands; and within two or three days thereafter such arrangements were made.

Q. At that time did he give you a description of one of those claims that he thought would be a good claim to locate on?

A. I don't know about that; I couldn't state that positively, whether it was at that time or later.

Q. Did he give you one before you located?

A. I don't think he did. My impression is that we didn't decide what we were going to file upon until we got up there and saw a list of what had been filed on and what still remained for filing. I

(Testimony of Irving W. Hart.)

don't think Mr. Kinkaid was sure down here in Boise just what remained to be taken; that is my impression at this time.

Q. Did he have a list of what had been filed on?

A. I don't think so; at any rate I don't remember his showing it to me.

Q. Who showed you the list?

A. I think Mr. Downs showed us the list of what had been filed on.

Q. Did you ask Mr. Kinkaid anything about what property would be a good claim to file on?

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

Q. Did Mr. Kinkaid direct you to go to see Downs or anyone else?

A. He directed me first to see Mr. Wells, as I remember.

Q. John I. Wells?

A. I understood that Mr. Wells had the making of the arrangements in regard to details, that is, at this end.

Q. Who arranged for the party that went with you?

A. I think Mr. Kinkaid had the arrangement.

Q. Who were of that party?

A. Mr. and Mrs. Kingsley, and Mrs. Hart and myself.

Q. Did you have a driver for the conveyance, or did you do the driving?

A. Mr. Kingsley did the driving.

Q. You went to see Mr. Wells before you went

(Testimony of Irving W. Hart.)

to locate this land then? A. Yes, sir.

Q. What did you have to say to Mr. Wells, and what did he say to you?

A. Well, sir, I don't remember anything about it. I know that I paid Mr. Wells \$50.

Q. Did you pay that before you went up?

A. I don't remember now whether I paid it before or after. My impression is that I paid it after, but I am not sure about it.

Q. Did he give you a letter to Mr. Downs?

A. Well, sir, I can't remember; I don't remember that he did.

Q. You didn't know Mr. Downs?

A. No, sir, I never had met him.

Q. What town did you go to from here?

A. We went to Idaho City and spent the night there at the hotel.

Q. Then you went on where?

A. Went on to the Mose Kempner ranch.

Q. Did you meet Mr. Downs at the Kempner ranch? A. Yes, sir.

Q. You told him what you wanted?

A. Yes, sir.

Q. What did he say?

A. He showed us the list of the lands that had been filed on, and that still remained, and provided saddle horses for us to go out to the lands.

Q. And you went out to the land?

A. Yes, sir.

Q. It was decided then before you left Kempner's which claim you would locate on?

(Testimony of Irving W. Hart.)

A. Yes, sir.

Q. How far did you go from Kempner's?

A. I think we went about five or six miles.

Q. And you went over the land?

A. Yes, sir.

Q. Now, did you get the description of that land from Mr. Downs, or did you get it when you returned either from Kinkaid or Wells?

A. We got it from Mr. Downs.

Q. Then did you go back and see Mr. Wells when you returned?

A. I don't remember whether I paid Mr. Wells after we returned or not. I don't remember that I had any further business with him except possibly that I did go and pay him that \$50.

Q. You said that Mrs. Fannie R. Hart is your wife?

A. Yes, sir.

Q. And she located a claim at the same time?

A. Yes, sir.

Q. And you tended to all of the details of what you have spoken of here for her?

A. I did, yes, sir.

Q. And all of that part that you have spoken of that she knows she got from you?

A. Yes, she didn't know anything about the details of the business, except as I might have mentioned it to her at the time.

Q. Then the time came for you to make your proof?

A. Yes, sir.

Q. Did you know Mr. Edward H. Starn?

A. I don't recall the name now.

(Testimony of Irving W. Hart.)

Q. Mrs. Mary Starn? A. No, sir.

Q. I notice that they are witnesses that you gave in your notice of publication. Do you know who furnished those names for you?

A. No, sir, I have no recollection.

Q. Did you go back to Mr. Kinkaid's office before you made your filing?

A. I don't think so.

Q. Do you remember how much money you paid when you made your proof? A. Yes, sir.

Q. How much was it? A. \$400 each.

Q. You paid for your own and your wife's?

A. Yes, sir.

Q. And where did you get that money, Mr. Hart?

A. I had the money at the time; as I remember, I had made provision for that payment; that is, I knew I would have to make it some time previously, and I had the money when the time came to make the payment.

Q. Did you borrow it? A. No, sir.

Q. You mean you saved it? A. Yes, sir.

Q. Did you pay for it by check or in cash?

A. I think I gave a check for it.

Q. Do you remember the bank?

A. I believe I kept my account in the Capital State Bank at that time, and if so, of course I gave a check on that bank.

Q. I think I did not show you your testimony given on final proof, and I will ask you if that is your signature to the testimony given by Irving W. Hart, December 22, 1902. A. Yes, sir.

(Testimony of Irving W. Hart.)

Q. And is that your signature to the cross-examination attached? A. It is.

Q. Now, had you heard of any market for the sale of this at this time, at the time you made your proof?

A. Well, I hadn't heard definitely anything except rumors.

Q. Did you talk to Mr. Kinkaid about it?

A. No, sir.

Q. Had you ever seen Mr. Kinkaid between the time you made your original entry and the time you made your proof?

A. I don't remember about that. I can't recall that I did, but I may have done so.

Q. How long after you made your proof and received your final receipt did you start negotiations for the sale of this property?

A. Well, I didn't make any negotiations myself. I might say in answer to that question that Mr. Kingsley and myself had an understanding that we would not sell separately; we believed that the investment was a good one, and that the lands would be valuable, and that it would pay to hold on to them, and that we possibly would get a better price by selling all together, and so far as any negotiations were conducted they were made by Mr. Kingsley.

Q. And you did sell those? A. Yes, sir.

Q. And all negotiations up to the time you got the money and made the deed were conducted by Mr. Kingsley? A. Yes, sir.

Q. That is Mr. Charles S. Kingsley?

(Testimony of Irving W. Hart.)

A. Yes, sir.

Q. An attorney here? A. Yes, sir.

Q. And in whose office did you first see this deed that you have identified?

A. Well, now, I don't remember whether that was in Mr. Kinkaid's office or Mr. Kingsley's.

Q. Do you know who prepared this deed?

A. No, sir.

Q. Do you know whether it is in Mr. Kinkaid's handwriting?

A. I don't know Mr. Kinkaid's handwriting.

Q. What is your best recollection as to whose office you saw it in?

A. I really don't remember; I couldn't state anything in regard to it.

Q. Were you paid at the time you first saw this deed the purchase price of the property?

A. Either then or soon after.

Q. Who paid that to you?

A. I think that was paid by Mr. Kinkaid by check; that is my recollection.

Q. Does that transaction refresh your memory as to whether or not you signed this deed in Mr. Kinkaid's office? A. No, sir, it doesn't.

Q. You went to Mr. Kinkaid's office to get the check, did you?

A. I don't think I did; my recollection is that the check was handed to me by Mr. Kingsley. Mr. Kinkaid might have given it to me, but I don't think I went to his office.

Q. It was Kinkaid's check, was it?

(Testimony of Irving W. Hart.)

A. I think so.

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Q. Had you ever heard of him before?

A. No, sir.

Q. And the sale of your wife's property was conducted by you at the same time and in the same manner?

A. Yes, sir.

Q. In other words, all she had to do was to execute the deed?

A. Yes, sir.

Q. And I understood you to say you got the money?

A. Now, I didn't want you to understand that I got the money for my wife, that is, it wasn't my money. She had money of her own. She had an uncle in California whose estate at that time had just been settled, and she had money of her own with which to make that payment. I didn't make it for her.

Q. I meant the \$1600 that you got?

A. Oh, yes.

Q. You kept this money your wife had received from her uncle's estate you kept in the bank to your credit?

A. Yes, sir.

Q. Mr. Hart, I have what purports to be a stenographic report of an interview you had on March 27, 1907, with one of the representatives of the district attorney's office. Do you remember having a conversation at that time?

A. Yes, sir.

Q. In reading this over I read one of the statements that purport to be made by you and ask you

(Testimony of Irving W. Hart.)

whether or not that refreshes your recollection. You had been replying very extensively here to a question with reference to a conversation you had had.

Mr. BUNDY.—If you are going to refresh the witness' recollection with a statement you had better show it to him.

Mr. GORDON.—If you have any objection you had better object.

Mr. BUNDY.—That is what we are trying to do.

Mr. GORDON.—You say, "I called as a party was just being made up to go up to the Basin to locate some claims and I could make arrangements for myself and wife to join that party and make the locations, and he put us in communication with a Mr. Wells, who told us that Mr. Downs would meet us up in the Basin and show us the locations that we were recommended to file on, and in accordance with that we made a trip up into the Basin in the first days of September, myself and wife and Mr. and Mrs. Charles Kingsley made these locations.

Mr. FRASER.—We object to it as tending to impeach the witness in the first place, and it is incompetent to refresh his memory for the reason that the statement isn't shown to the witness, and it isn't shown that he ever signed the statement or ever made the statement, and no foundation whatever has been laid for asking such question.

Mr. GORDON.—Counsel for the Government disclaims any intention whatever of impeaching the testimony of this witness, and merely asked a simple

(Testimony of Irving W. Hart.)

question to know whether or not he made that statement.

A. I don't remember the language of that statement, but as a statement of fact I think it is substantially correct. Of course one's memory of these things grows dimmer with time, and I wouldn't remember now whether I made exactly that statement or not, but I think it is substantially correct.

Q. That had reference to a conversation you were having with Mr. Kinkaid?

A. Yes, sir, I think so.

Q. The next question is: "He gave you a description of the land, did he?" Answer: "Yes, sir." Do you remember that?

Mr. FRASER.—Same objection to the answer of that question is noted by counsel for the defendants, on the same grounds.

A. I don't know; I don't remember just what kind of answers I gave to those questions.

Mr. GORDON.—Q. I am just asking simply as I said, not to attempt to contradict or to impeach you, but to see if that would refresh your memory as to what was said on that occasion. Was this question asked you: "Did Mr. Kinkaid in the course of any conversation give you to understand who he was representing?" Answer: "No, he was very careful to avoid that."

A. Yes, I think I stated that.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated September 9, 1902, identified by Irving W. Hart as having been

(Testimony of Irving W. Hart.)

signed by him; the non-mineral affidavit, also identified by Mr. Hart, of the same date; notice of publication of the same date; the testimony of the witness given on final proof, dated December 22, 1902, and the cross-examination thereto, both identified by the witness as having been signed by him; the register's and receiver's certificates, dated December 22, 1902; patent dated May 13, 1904; and the deed heretofore identified by the witness as having been signed by himself and wife, Fannie R. Hart, dated March 12, 1903, running to Horace S. Rand, consideration \$1600, all to the northwest quarter of section 11, township 7, north of range 8 east, Boise Meridian. The deed also contains a description of, and conveys, the southwest quarter of section 11, township 7, north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 98A to 98L, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. As I understand you, Mr. Hart, this first talk you had with Mr. Kinkaid relative to this land was some time prior to your filing, on September 9, 1902?

A. Yes, sir.

Q. Some time, I think you said, during that summer?

A. Yes.

Q. And that conversation was the time when Mr. Kinkaid stated to you, in substance, that he had no doubt, or thought these timber lands were going to be valuable?

A. Yes, sir.

Q. You have said here, Mr. Hart, that Mr. Kin-

(Testimony of Irving W. Hart.)

kaid didn't state to you who he was representing, and you have said that you answered a question in this statement purporting to have been made by you to the effect that he was very careful about saying who he represented. Mr. Hart, do you know that Mr. Kinkaid represented anybody but himself in that transaction? A. No, I do not.

Q. Don't you know or do you know anything about him representing a firm of locators known as Downs & Wells?

A. No, I had no knowledge whether he represented anybody at all, except, of course, conclusions I might draw.

Q. When he commenced buying claims subsequently you perhaps assumed that he wasn't financially capable of buying them himself and assumed for that reason that he was buying for somebody else, but at the time these locations were made you had no reason, and have none now, to think that he was buying for anybody?

A. I had no knowledge of any facts?

Q. You knew Mr. Kinkaid?

A. I had a casual acquaintance with him.

Q. You said you thought Mr. Kinkaid arranged this party to go up there. Do you know whether Mr. Kingsley negotiated for the team?

A. Yes, I know that Mr. Kingsley, who is a very good driver, went and engaged the team himself.

Q. So that you didn't mean by that that Mr. Kinkaid arranged for the team? A. No, sir.

Q. What did you mean by that? ...

(Testimony of Irving W. Hart.)

A. I meant that he arranged for the time of going.

Q. You and Mr. Kingsley paid your own traveling expenses, including livery hire?

A. Yes, sir.

Q. Paid your own filing fees? A. Yes, sir.

Q. Paid your own purchase price?

A. Paid every cent, and everything connected with the transaction.

Q. And sold your claim in due course of business without any prior agreement? A. We did.

Q. Mr. Hart, the Government charges in this action we are trying here, and it is alleged in the complaint, that you and your wife and others, of course, made entry under the Timber and Stone Act of the lands in question, at the instance of, and at the request of, and for the benefit of the Barber Lumber Company and the other defendants in this action. So far as you and your wife are concerned, is that true or false? A. It is entirely false.

Q. And it is alleged in this complaint, and charged by the Government, that, pursuant to that agreement made with the defendants, you and your wife made your entry and deliberately went to the land office and testified falsely, at the procurement and at the request of the defendants, for the purpose of defrauding the Government. Is that true or false? A. No, sir; it is an unmitigated lie.

Q. It is alleged in this complaint that you and your wife and others, at the time of making your original filing, had an agreement in this case by

(Testimony of Irving W. Hart.)

which the defendants were to furnish you all the necessary money for filing, and that your entry was made pursuant to that agreement. Is that true or false?

A. I never heard of it; there is no word of truth in it.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Hart, so that there would be any inconsistency between your wife's sworn statement and your own, I understood you to say that the money that you paid for her was her own, and that it had come from her uncle in California. Was her uncle a trustee for her father's estate?

A. No; her uncle had died a good many years before that, and his estate had been a long time in process of settlement.

Q. Was your wife's father settling that estate?

A. No; he had died a long time prior to that too. My recollection may not be wholly right in regard to saying that that money came from her uncle's estate, because her father's estate was in process of settlement too.

Q. On cross-examination of your wife's final proof, there is a statement of this kind: "My father left it to me. The estate was settled a few days ago." And I wanted to know if you knew—

A. That is just a matter of recollection, and one forgets those details, so that I am glad that you called that to my attention.

(Testimony of Irving W. Hart.)

Recross-examination.

(By Mr. BUNDY.)

Q. Calling your attention to the original paper you filed in the land office, dated September 9, 1902, you say, among other things: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States ma inure in whole or in part to the benefit of any person except myself." That statement was true at the time you filed it, wasn't it, Mr. Hart?

A. Perfectly true.

Q. And the same thing was true at the time you made your final proof? A. Yes, sir.

Q. Did you ever at any time have any negotiations, any agreement, express or implied, written or oral, by which you agreed or undertook to transfer this land, prior to the time of selling?

A. Never an agreement, or even an understanding to that effect.

Q. So that you entered the land for your own sole benefit? A. Yes, sir, as an investment.

Q. Without any conception of who you were going to sell it to when you filed?

A. None whatever.

(Witness excused.)

[**Testimony of Fannie R. Hart, on Behalf of the Complainant.**]

FANNIE R. HART, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Fannie R. Hart? A. Yes.

Q. And you are the wife of Mr. Irving Hart, who has just testified? A. I am.

Q. You took up a timber and stone claim at the same time he did? A. Yes, I did.

Q. I show you, Mrs. Hart, a non-mineral affidavit, dated September 9, 1902, and ask you if you signed that? A. Yes, that is my signature.

Q. I show you timber and stone land sworn statement of the same date, and ask you if you signed that? A. That is my signature.

Q. I show you the testimony given by Mrs. Fannie R. Hart on final proof, dated December 22, 1902, and ask you if you signed that?

A. That is my signature.

Q. The cross-examination attached—you signed that?

A. That is my signature, at least it looks like it.

Q. I show you deed, dated March 12, 1903, which has been identified by your husband, and ask you if you signed and acknowledged that deed?

A. That is my signature; I don't remember anything about the dates.

(Testimony of Fannie R. Hart.)

Q. Mrs. Hart, you knew nothing of the preliminary steps leading up to the taking of this land other than that you went with your husband and located on the land?

A. No; I know we looked at it, partly as a pleasure trip, and partly as a means of taking up a claim to make an investment.

Q. You went to the land office and filed on this claim?

A. Some time after we came back; I don't remember when.

Q. And you made your final proof?

A. Yes.

Q. Now, do you remember where the money came from with which you made your final proof?

A. Yes, I remember that. My recollection is that my father's estate had just been settled; my uncle's estate was in process of being settled, but my recollection is that it hadn't been, and I received money from both quarters, but I think it was from my father's estate. I know I had the money myself, because I remember very distinctly that that question was asked me.

Q. After you made your final proof and the sale was made, you had nothing to do with that other than signing the deed and receiving the money?

A. I had nothing to do with it, but I am very sure I asked my husband at the time—I had heard rumors of things not being just straight and I remember distinctly asking him if he was sure it was all right, and we were doing what was right, and he

(Testimony of Fannie R. Hart.)

assured me we were in every way from a moral standpoint.

Mr. GORDON.—We offer in evidence the sworn statement identified by the witness; and the non-mineral affidavit, also identified by the witness; and the notice of publication, all dated September 9, 1902; the testimony of the witness given on final proof; and the cross-examination thereto, which have been identified as having been signed by Mrs. Fannie R. Hart, dated December 22, 1902; the receiver's receipt and the register's certificate, dated December 22, 1902; certified copy of patent, dated May 13, 1904; all to the southwest quarter of section 11, township 7 north of range 8 east, Boise Meridian, the deed having been offered in evidence with the testimony of the former witness.

(Marked Plaintiff's Exhibit No. 99A to 99L, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Hart, I take it from your evidence that at the time you filed your original papers, you had not entered into any agreement with anybody to sell or dispose of this land, to any person, firm, or corporation?

A. I had not, nor heard anything about it.

Q. And had not at the time you made your final proof?

A. Never had.

Q. So that the charge which the United States has made against you that you entered this land and testified falsely before the land office for the benefit

(Testimony of Fannie R. Hart.)

of the Barber Lumber Company is not true?

A. I would say that if I have done anything dishonest or morally wrong I don't know it; I certainly have not.

Q. The question relates to an agreement. Is the charge in the complaint that you entered this land for the Barber Lumber Company or the other defendants true or false?

A. We had no agreement with anybody at any time, no agreement in the world.

(Witness excused.)

[Testimony of Charles H. Eagleson, on Behalf of the Complainant.]

CHARLES H. EAGLESON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Eagleson, where do you reside?

A. I reside three miles south of town.

Q. South of Boise? A. Yes, sir.

Q. How long have you resided at Boise or in this vicinity? A. Since '92.

Q. What part of '92?

A. I came here in May, 1892, if I remember correctly.

Q. What was your occupation in 1902?

A. I was opening up some farm lands.

Q. Did—what would you call that—farmer or real estate man?

A. Farmer, I suppose, and I was doing a little

(Testimony of Charles H. Eagleson.)

surveying, too. We will call it farming. That has been my occupation principally since that time, since 1901.

Q. You took up a claim under the Timber and Stone Act in 1902? A. Yes, sir.

Q. Do you know who suggested to you taking up a claim? A. Yes.

Q. Who was it? A. My brother.

Q. What is your brother's name?

A. Harry Eagleson.

Q. At that time did you have the money with which to purchase a timber claim? A. No, sir.

Q. Did you know of a market for timber claims at that time? A. No, sir.

Q. Did you know of a prospective market for timber claims in the vicinity where you located at that time?

A. Nothing more than the fact that my father had been in the timber and lumber business for ten years previous to that time, and through that why we were more or less interested in timber.

Q. How far was this timber claim from Boise? How far is it?

A. Well, it must be sixty miles, I should judge; that would be my judgment of it, over the road.

Q. What was the nearest market for it at that time? A. Boise.

Q. Was there a railroad running up there?

A. No, sir.

Q. Did you know of a railroad to run up there?

A. No, sir; this timber laid close to streams, and

(Testimony of Charles H. Eagleson.)

it would be possible and practicable to float it down the river, as had been done by other people here.

Q. Can you float timber down the stream on which this timber lies all the year?

A. Not all the year, no, I wouldn't judge so; during the flood season you can.

Q. After your brother spoke to you, you made up your mind that you were going to take up a timber claim? A. Yes, sir.

Q. Who did you see about it besides your brother—anyone? A. No, sir.

Q. Did you go to view this land with a party or by yourself? A. Yes, sir, with a party.

Q. Who were of the party?

A. Well, I am not positive that I can remember all of them. There was my brother Harry, and his wife, and I think his mother in law, Mrs. Alexander—I wouldn't be positive, but I think she was along—Mr. Sensenig and his wife, and Mr. Nusbaum and his wife, and Mr. Clyde Eagleson. That is all I remember; I don't remember whether there was one or two more in that crowd or not, but I don't think there was.

Q. Who arranged for that party?

A. Harry.

Q. Where did you start from? A. Boise.

Q. What part of Boise?

A. Started from our home, 1510 Jefferson street, if I remember right.

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

A. No, sir.

(Testimony of Charles H. Eagleson.)

Q. Mr. Patrick Downs?

A. Well, I met Mr. Downs when we got up into the mountains.

Q. You didn't know him before that?

A. No, sir, never had seen him.

Q. Do you know whether or not your brother Harry had made arrangements for the locator?

A. So far as I know, yes; I didn't help make any of the arrangements.

Q. He made all the arrangements for you?

A. Yes, sir.

Q. And what place did you go to? Name the town.

A. It wasn't a town—I have forgotten that man's name.

Q. Kempner's ranch?

A. Yes, that is the place.

Q. Mose Kempner's?

A. Yes, Mose Kempner's place.

Q. Did you stay there all night?

A. Yes, sir.

Q. Was there where you met Mr. Patrick Downs?

A. Yes, sir.

Q. Do you know whether your brother had a letter that he gave Mr. Downs? A. No, I don't.

Q. And you were all taken out and located by Mr. Downs? A. Yes, sir.

Q. Did you know what property you were going to locate on before you went away from Kempner's ranch? A. Nothing definite.

Q. Did you have any talk with Downs about the

(Testimony of Charles H. Eagleson.)

land? A. No, I didn't.

Q. And you went out and he located you on a piece?
A. Yes, sir.

Q. Or claim? A. Yes, sir.

Q. And he showed you a claim, and did he say "That is the one for you," or how did he do?

A. Well, if I remember correctly, the men of the party went out together, and there was quite a lot of vacant timber in that neighborhood at that time, and we naturally tried to get the best.

Q. Did Mr. Downs have a plat there showing what was vacant and what had been taken?

A. I couldn't say.

Q. Did you know what had been taken and what hadn't been taken? A. No.

Q. Did you point out a piece to him that you would like to have, and did he tell you that had been taken?

A. I think that was the case one time, either that it had been taken or something to that effect. I know we found one piece of timber that looked awful good, and there was some restriction on it.

Q. Was that the only piece?

A. That is all I remember of.

Q. The rest of it you took as he gave it to you?

A. I believe so.

Q. Did he give you a description of that land?

A. Well, I suppose he did describe it, but we were at the corners, and I know how to read the corners.

Q. I mean, did he give you a written description

(Testimony of Charles H. Eagleson.)

by which you could have your papers made out?

A. I don't remember as to that.

Q. He didn't give you one? A. No, sir.

Q. Did you pay him a locating fee there?

A. No; I didn't pay him anything at any time.

Q. Did you pay a locating fee?

A. Yes.

Q. When?

A. I believe that was after we came home.

Q. Who did you pay it to?

A. Well, I didn't actually pay the money. I borrowed the money from my brother Harry to make this claim, and in our settlement why of course that came out. When I actually paid it was when we made the final settlement.

Q. How much did you get personally out of your claim when you sold it? A. I got \$850.

Q. Did your brother collect that money for you?

A. Yes.

Q. Then how much did he actually give you?

A. Well, it is my impression that I got paid between three and four hundred. I can't remember exactly the amount, but it was somewhere in that neighborhood, between three and four hundred, I believe.

Q. And all the expenses of locating and filing in the land office, and the final proof, were taken out by your brother? A. Yes, sir.

Q. Did you meet Mr. John I. Wells at any time with reference to any of these transactions?

A. I never did meet him.

(Testimony of Charles H. Eagleson.)

Q. Do you know him now?

A. I know him now; when I say I never did meet him, I meant at that time.

Q. Did you ever talk with him about this case?

A. No, sir.

Q. Did he ever talk to you? A. No, sir.

Q. Do you remember after you came back to Boise after viewing this land you filed some papers in the land office? A. Yes, sir.

Q. Do you know who prepared those papers for you? A. I prepared them myself.

Q. I am speaking about your sworn statement and the non-mineral affidavit.

A. Possibly Mr. Garrett; he was in the land office at that time.

Q. I show you these papers. Did you know Mr. John Kinkaid at that time?

A. I met him, that is all, just met him.

Q. Did you meet him before you filed?

A. No, sir.

Q. I show you timber and stone land sworn statement, dated September 19, 1902, and ask you if you signed that paper.

A. Yes, I signed it, I guess; that is my writing all right. It is possible that that part of that "Charles"—I usually sign my name "Chas."; I don't know whether I put that "rles" on there or not, but this other part is all right.

Q. I show you non-mineral affidavit, dated September 19, 1902, and ask you if you know who prepared that paper for you?

(Testimony of Charles H. Eagleson.)

A. I only know from this signature here.

Q. He certifies that—

A. (Interrupting.) I should judge that it was Ed Garrett that possibly made some of those papers out.

Q. You don't know whether Mr. Kinkaid made those papers out? A. Not to my knowledge.

Q. You didn't get them from Mr. Kinkaid?

A. No, sir.

Q. I show you testimony given by Charles H. Eagleson on final proof, dated January 29, 1903, and ask you if you signed that? A. I did.

Q. And the cross-examination attached. Is that your signature to that? A. Yes, I think it is.

Q. Do you know where you received these papers I have shown you, the sworn statement, non-mineral affidavit, and notice of publication?

A. To the best of my memory, it was in the land office when we went to make proof.

Q. Do you know whether your brother brought them to the land office for you?

A. No, I don't; I just know that is where I got them, to the best of my memory, right in the land office.

Q. And your brother paid the filing fees at the land office, did he? A. Yes.

Q. Do you remember who was at the land office besides yourself and brother at that time that were of your party that went up there and looked at this land?

A. No, I don't. It is my impression though that

(Testimony of Charles H. Eagleson.)

there was at least one other person there at that time, but I don't remember who it was. I am not positive about whether there was or not, but I think there was.

Q. In the notice of publication that you gave at that time, I notice that the witnesses are Jacob V. Nusbaum, Emerson S. Sensenig, Patrick H. Downs, and John I. Wells. Who named those witnesses for you?

A. I think I must have named three of those myself, but I don't remember of ever meeting John I. Wells previous to our trip up there.

Q. Did you know John I. Wells then?

A. No, I don't remember that I knew him then.

Q. Well, if you didn't know him you couldn't have named him? A. No.

Q. Without somebody told you to name him?

A. It is possible that Harry supplied those names, but, of course, I know the other three, but I don't remember that I knew John Wells until after we came back.

Mr. BUNDY.—Three is all you had to name.

Mr. GORDON.—Q. Then the time you made your final proof, do you remember that occasion?

A. Just as far as I spoke a minute ago with regard to those present; I thought possibly there was another member of our party there, but I didn't remember who it was.

Q. Now, where did you get the money with which you made your final proof?

A. I borrowed it from my brother Harry.

(Testimony of Charles H. Eagleson.)

Q. When did you borrow it from him?

A. Well, I don't remember the date; it was before we made final proof, or before the money was required.

Q. Did your brother give you the money in cash or by check?

A. It is my impression that he gave a check to cover the land office fees, etc. It is my impression that he gave them a check at the land office covering both, but I wouldn't be sure of that. That is the way I remember it, either gave them a check or paid them the money.

Q. Do you remember making this affidavit I show you, dated January 29, 1903, before the receiver of the land office, Mr. Garrett?

A. Yes, I signed that.

Q. And swore to it? A. Yes, sir.

Q. You expected to borrow the money from your brother and he didn't get the money, and therefore you had to get it somewhere else. Is that right?

A. If I remember right, he borrowed the money at the Capital State Bank, yes, sir.

Q. Did you join in the note with him?

A. I believe I signed the note with him, he as principal of the note, and I endorsed it; that is my memory about it.

Q. On your cross-examination at the land office, do you remember this question being asked you: "Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own

(Testimony of Charles H. Eagleson.)

money?" Answer: "Yes."

A. I don't remember about that. I wouldn't remember any of those questions.

Q. "Where did you get the money with which to pay for this land and how long have you had same in your actual possession?" Answer: "I borrowed the necessary amount on my personal note from Capital State Bank, Boise, Idaho, to-day. Tract of land applied for in no way involved as security." Was that question asked you and that answer given?

A. I don't remember any of those questions, but it is possible they were.

Q. Do you know whether or not your brother ever took up that note that you gave at the bank for this money?

Mr. BUNDY.—He didn't testify that he gave any note; his brother gave the note.

Mr. GORDON.—Q. I will ask you this question then, number 17, of the cross-examination: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Did you make this answer: "I borrowed the necessary amount on my personal note from the Capital State Bank, Boise, Idaho, to-day." Did you borrow that money on your own note that day?

A. Well, I can't answer that any better than I did before, that it is my recollection that it was my brother that borrowed the money as principal and I endorsed the note, but it is possible that that is right; I don't remember.

(Testimony of Charles H. Eagleson.)

Q. Did you take up this note, or don't you know anything about it?

A. If I borrowed the money on my personal note, I took it up.

Q. I mean, did you take it up, or did your brother take it up for you?

A. If I borrowed it, I took it up.

Q. If your brother kept out of the final settlement the amount you borrowed from him, would you have taken it up anyway?

A. I gave you that answer with reference to this other; as I understood it, there would be that difference. If I gave a personal note, when we settled at the bank, when we settled for the timber claim, I must have taken up the note myself, and the \$300 or whatever the amount was, he wouldn't have kept.

Q. Up to the time you made your final proof had you met Mr. John Kinkaid?

A. No, sir; I met him once, and I don't know when it was.

Q. Did you meet him with reference to this property?

A. Yes, sir.

Q. Where was that?

A. That was in an office in the Pierce building, if I remember rightly.

Q. Did you go there to see him, or did you just meet him there casually?

A. No, sir; I think that was after we proved up on our claims, some little time, that I met Kinkaid.

Q. Did you meet him by appointment, or did you go there to see him, or how?

(Testimony of Charles H. Eagleson.)

A. I believe we went there to sell him the timber claims.

Q. Do you know who told you to go there?

A. I went with Harry.

Q. And you sold that day?

A. I wouldn't say whether we sold that day or some other day, but I remember being in his office one time.

Q. Do you remember the day you signed this deed I showed you?

A. I remember signing the deed.

Q. Do you remember in whose office you signed it?

A. Yes, I guess that was the day I was there.

Q. Do you remember meeting Mr. L. M. Pritchard that day? A. No.

Q. Did you acknowledge this deed before a notary public? A. Yes.

Q. Do you know who that was?

A. I don't remember.

Q. Mr. Pritchard's name is signed to it. That is the reason I asked you if you met him.

A. I am not personally acquainted with him, no.

Q. Was the deed there already prepared when you went to Mr. Kinkaid's office?

A. I wouldn't say; it is my best recollection though that we made that thing out after we came in there.

Q. Did Mr. Kinkaid make it out?

A. He may have written the body of it, yes.

Q. Do you know whether he did or not?

(Testimony of Charles H. Eagleson.)

A. No, I don't.

Q. Do you know whether it was made out when you got there?

A. I wouldn't say whether it was or wasn't, but it is my impression that it was made out after we got there.

Q. It is your impression that it wasn't made out when you arrived there, and that the body of the deed was filled in after you arrived there, and that Mr. Kinkaid did it? A. Yes, sir.

Q. Did your brother sell his claim at the same time? A. Yes, sir.

Q. Did any of the others?

A. I believe all the parties sold at the same time.

Q. Were they all there, the best you can remember?

A. Part of them were anyway at the time I was there; I don't think they were all there at that time.

Q. Did you know Mr. Horace S. Rand?

A. No, I don't know him.

Q. You read this deed before you signed it?

A. Yes, sir.

Q. Did you notice that you weren't conveying it to Mr. Kinkaid? A. Yes, sir.

Q. You said nothing about it? A. No, sir.

Q. You were selling it, and didn't care who you sold to. Isn't that right? A. Yes, sir.

Q. How long before you made that deed were negotiations started for the sale of this property?

A. I couldn't say; Harry done all the business.

Q. Did you ever make any other deed but this one

(Testimony of Charles H. Eagleson.)

for this claim? A. No, sir.

Q. Were you ever requested to make another deed? A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, dated September 19, 1902; the testimony of Charles H. Eagleson, given on final proof, dated January 29, 1903; the affidavit of Charles H. Eagleson, dated January 29, 1903; notice of publication, dated September 19, 1902; the cross-examination of claimant, given on final proof, all of which papers have been identified by the witness as having been signed by him; the other proof papers of the other witnesses given on final proof; the receiver's receipt and the register's certificate, dated January 29, 1903; certified copy of the patent, dated March 24, 1904; and the deed, dated February, 16, 1903, made by Charles H. Eagleson to Horace S. Rand, consideration \$800, identified by the witness as having been signed by him; all to the south half of the southwest quarter, and the south half of the southeast quarter of section 25, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 100A to 100N inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. I notice, among the papers to which your attention has been called, Mr. Eagleson, John I. Wells was not a witness on your final proof. His name is mentioned in the notice, as it was in a good many instances, but he did not testify on your final proof.

(Testimony of Charles H. Eagleson.)

Mr. Eagleson, at the time you filed your first papers in the land office and applied to purchase the land upon which you entered, had you at that time made any agreement, express or implied, in writing or verbal, by which the interest or title you might acquire from the United States under that entry should inure in whole or in part to the benefit of any person, firm, or corporation other than yourself?

A. No, sir.

Q. Had you made any such agreement as that at the time you made your final proof?

A. No, sir.

Q. Did you exercise your right as a citizen in making this entry for the benefit of any person, firm, or corporation other than yourself?

A. No, sir.

Q. Did your brother Harry acquire any right, title, or interest in the land you entered, or the timber upon that land, by reason of the loan he made to you? A. No, sir.

Q. It is charged in this complaint, Mr. Eagleson, that you, together with a great many other people of this vicinity, entered into an unlawful conspiracy for the purpose of defrauding the United States out of certain of its lands. Is that true or false, as far as you are concerned? A. It is not true.

Q. It is charged in this complaint that, pursuant to that agreement, you went to the land office at the request of the Barber Lumber Company and some of the other defendants in this action, and made this entry. and then, at their request, testified falsely for

(Testimony of Charles H. Eagleson.)

the purpose of procuring title to this land. Is that true or false? A. It is false.

Q. And that you did all of this at the solicitation and request of, and for the benefit of, the Barber Lumber Company and the other defendants named in this action. Is that true or false?

A. It is not true.

Q. Do you recall that the party you went up with, of which your brother Harry K. Eagleson was rather the leader, I think, entered into what has been spoken of as a kind of a pool, to the effect that you would not sell individually but collectively?

A. We did.

Q. And that, by a sort of mutual consent, you put the negotiations for the sale of your claims in your brother's hands? A. Yes, sir.

Q. With the view of getting a higher price?

A. Yes, sir.

Q. And I believe as a result you did get a higher price than other entrymen up in that country?

A. Yes, sir.

(Witness excused.)

**[Testimony of Benjamin C. Eagleson, on Behalf of
the Complainant.]**

BENJAMIN C. EAGLESON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mr. Eagleson?

(Testimony of Benjamin C. Eagleson.)

A. 1120 State Street.

Q. How old are you?

A. Going on thirty-one.

Q. Are you a brother of the young man that just left the witness-stand? A. No, a cousin.

Q. Are you a relative of Mr. Harry Eagleson?

A. A cousin also.

Q. What is your occupation at present?

A. I am keeping books at Eiler's Piano House.

Q. What was your occupation in September, 1902?

A. I think I was with the Randall or Dixon Lumber Company—which it was I couldn't say now. I had charge of a lumber yard on south Eighth street.

Q. You took up a claim under the timber and stone act in September, 1902, did you?

A. Yes, sir.

Q. At that time did you have the money with which to purchase a timber claim?

A. Yes, sir.

Q. And who first suggested to you taking up a timber claim? A. Harry Eagleson.

Q. That is your cousin? A. Yes, sir.

Q. And he arranged for the party that you went with?

A. We all helped that. We rustled around for horses and wagons.

Q. I mean there were a certain number of people that were going.

A. Just the same bunch that went; we talked together before we went.

(Testimony of Benjamin C. Eagleson.)

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

A. No, sir.

Q. Mr. Patrick H. Downs?

A. No, sir.

Q. Mr. John Kinkaid? A. No, sir.

Q. Mr. Louis M. Pritchard?

A. No, sir.

Q. Where did you go from here—to Kempner's ranch? A. Yes, sir, on Crooked River.

Q. How far was the claim you located on from Kempner's ranch?

A. I couldn't tell you.

Q. Was it half a mile, or ten miles?

A. It was more than that; it was a good long ways, quite a ride.

Q. What is your best judgment as to how far it was?

A. I couldn't tell you, because we was out all day.

Q. Then you don't know exactly how far?

A. No, sir.

Q. Where did you meet Mr. Downs?

A. At Kempner's ranch.

Q. And did you have any talk with him about taking up a timber claim?

A. Not any more than the general conversation, meeting him there.

Q. Did you ask him how much it would cost you?

A. No, sir.

Q. Did you pay him?

A. As far as location fee, I asked.

(Testimony of Benjamin C. Eagleson.)

Q. You asked him personally?

A. Yes, sir.

Q. How much did he tell you? A. \$25.

Q. Did you pay him there? A. No, sir.

Q. Whom did you pay?

A. I paid Patrick Downs.

Q. When?

A. After I filed, when I seen him in Boise.

Q. Did he tell you not to pay him then?

A. No, I don't remember anything like that, but I didn't until I got the claim.

Q. Do you mean you didn't until you had filed?

A. Yes, sir.

Q. Before you left Kempner's did you go over a plat with him and pick out the quarter section you desired to locate on?

A. He had a plat there.

Q. You wouldn't know much about the plat, would you?

A. No, I wouldn't, although I could read the corners a little, and knew something about timber at the time.

Q. Did you go through the claims and tell him the one you wanted, or did you leave it to him to locate you on one he thought was best?

A. That was left to him.

Q. And he came to a claim that he thought would be best for you, and he said this was your claim, and so you located it?

A. I couldn't say; we was over all of them.

Q. You don't know which claim he located you

(Testimony of Benjamin C. Eagleson.)

on?

A. I knew the corners, and we was over all our party was located on.

Q. You don't understand me. I mean, did he take you to one claim and go over it, and when you went over that claim you knew that was the claim you were to locate on, or did you go over all of them, and it was afterwards decided which one you were to locate on? A. I think that is nearer.

Q. Did he give you a description of the claim, or did he give it to Harry Eagleson?

A. I don't know who brought it in; I didn't have it.

Q. Then you returned to Boise?

A. Yes, sir.

Q. How long after you returned did you make your filing?

A. If I remember right, it was the next morning. It might have been a day later, but I couldn't say positively.

Q. That has been a long time ago, and I just want your best recollection. I show you timber and stone land sworn statement, dated September 19, 1902, and ask you if you signed that paper.

A. It looks like mine.

Q. I show you testimony given on final proof by Benjamin C. Eagleson, dated January 21, 1903, and ask you if that is your signature to that paper.

A. It looks like it.

Q. Is that your signature to the cross-examination attached? A. It is, yes, sir.

(Testimony of Benjamin C. Eagleson.)

Q. I show you deed, dated 1904, by George C. Eagleson and M. Laeta Eagleson, to A. E. Palmer, consideration \$700, conveying the south half of the northeast quarter, and the northwest quarter of the southeast quarter of section 8, township 7 north of range 5 east, Boise Meridian, and ask you if you and your wife signed that deed.

A. That is my wife's deed to her land. It looks like my signature, and I know we signed the deed.

Q. Is that your wife's signature?

A. Yes, sir.

Q. And you acknowledged it before John J. Blake? You acknowledged it on the 23d of May, 1904?

A. Yes, sir, it was acknowledged before Mr. Blake.

Mr. BUNDY.—You can consider that he deeded to Rand on February 16, 1903.

Mr. GORDON.—I will have the deed in a minute.

Mr. GORDON.—Q. Mr. Eagleson, who prepared this sworn statement for you that you have identified? A. I think Mr. John Kinkaid did.

Q. Did you go to Mr. John Kinkaid's office to get that paper? A. No, sir.

Q. Where did you first see it?

A. I saw it the morning we filed; I think Harry got it; at least he said he would hire the papers made out.

Q. And that notice of publication I showed you, was that made out by the same person?

A. I couldn't say anything about that.

(Testimony of Benjamin C. Eagleson.)

Q. The non-mineral affidavit, dated September 19, 1902, is that your signature to that?

A. It looks like it.

Q. That means that it is, doesn't it?

A. I guess it does.

Q. Did you get that from Mr. Harry Eagleson at the same time?

A. I must have, because I got all those papers, and that was the time the application was made, wasn't it?

Q. Yes. Do you remember how much you paid into the land office when you filed these papers?

A. I bought a \$7.50 money order and took it up there for advertising, and whether I paid other fees I couldn't say.

Q. Then the time came for you to make your final proof. Do you remember that occasion, that is the time you paid \$400?

A. I remember that I paid for it and got final receipt.

Q. Do you remember who went to the land office with you to make proof?

A. No, sir, I couldn't tell you.

Q. Did Harry Eagleson go with you?

A. I couldn't tell you that.

Q. Was this young man who testified just preceding you at the land office when you made your proof?

A. Well, sir, I have forgotten who were my witnesses.

Q. At this time did you know of any market for

(Testimony of Benjamin C. Eagleson.)

this land? A. No, sir.

Q. Did you know how much it was worth?

A. Well, we had been in the timber business here a good many years.

Q. What did you think it was worth?

A. It was worth anyway \$1 a thousand.

Q. How much would that be, from your estimate of the timber? A. Probably \$1500.

Q. What was the nearest market at that time for timber?

A. Boise, unless it would be some mines up there, and then Boise would really be the market.

Q. This money you paid into the land office, did you pay it in check or in cash?

A. I paid it in cash.

Q. Where did you receive that money?

A. Capital State Bank.

Q. When did you draw it out of the bank?

A. I believe I drew it the night before and put it in the safety deposit box, or drew it that morning early.

Q. Do you know how long you had had that money at the bank? A. No, I don't.

Q. I mean, as near as you can remember.

A. I know I had an account at the Capital State ever since I have been in Boise.

Q. How long prior to that—what length of time prior to making final proof had your bank account at that bank been \$400 or more?

A. You have got me. I can look at the record.

Mr. BUNDY.—What is your bank account to-day,

(Testimony of Benjamin C. Eagleson.)

Gordon?

Mr. GORDON.—I haven't any.

Mr. BUNDY.—Did you ever have any?

Mr. GORDON.—No, sir.

Mr. BUNDY.—I would judge as much from the questions you are asking.

Q. (By Mr. GORDON.) Do you remember making a deposit any time shortly before this?

A. No, sir.

Q. And this money you earned yourself?

A. Yes, sir.

Q. Didn't borrow it from anybody?

A. No, sir.

Q. Who was the first person that spoke with you about buying this land?

A. I don't know; I probably was the instigator of selling it in one way, because I tried to swing the deal myself to sell all I could get an option on.

Q. Who did you try to sell it to?

A. Portland people.

Q. And you couldn't make the deal?

A. I would have made it if I had had the money a couple of days sooner.

Q. You hadn't made any attempt to sell this land before you made your final proof?

A. No, sir.

Q. How long after you made your final proof did you actually sell it?

A. I couldn't say, Mr. Gordon.

Q. I think Mr. Bundy read some date there, the date of the deed. I haven't it here at present.

(Testimony of Benjamin C. Eagleson.)

Mr. BUNDY.—February 16, 1903.

Mr. GORDON.—Q. And between the time you made your final proof and the time you did sell you had tried to negotiate for the sale of this and other claims to some Portland firm?

A. Yes, sir, I saw there was a chance to make a bunch of money then.

Q. And was the representative of the Portland firm here? A. They had a cruiser here.

Q. Was that the gentleman you talked with about the sale of this?

A. It was just this cruiser. Mr. Jack Darcy was with me on getting it through.

Q. Who was Mr. D'Arcy?

A. He was with the Capital News at that time, a stockholder.

Q. Then after you couldn't make the deal with the Portland people, did you take it up with Mr. Kinkaid?

A. No, sir, I didn't try to make a deal with the Portland people; I didn't have time. My party got split when the other side got started to buying, and I couldn't hold them because I had no money to buy with.

Q. And that was the first time you had heard of Mr. Kinkaid buying any property?

A. Yes, sir.

Q. Then did you go to see Mr. Kinkaid?

A. No, sir, I didn't, because I was trying to hold the bunch together until I got my money.

Q. Who went to see Mr. Kinkaid?

(Testimony of Benjamin C. Eagleson.)

A. I don't know.

Q. How did you happen to see Mr. Kinkaid?

A. Because the rest of the bunch went there, and I had to go with them, because if I hadn't it would have left my claim alone.

Q. Did you have any offer from the Portland people? A. We had an offer in a way.

Q. They wanted you to guarantee how much timber there was on it?

A. No, their cruiser went over it.

Q. Did their cruiser go over it after you made your final proof? A. Yes, sir.

Q. And he had reported, I assume, to his people?

A. He didn't have much time to report; he had just got back and hadn't had time to get his report into Portland.

Q. Did you meet Mr. Kinkaid with reference to this property?

A. Not until we went up to sell it to him.

Q. Do you know who arranged for the sale of it to Mr. Kinkaid?

A. The rest of our party there was all together, and wasn't going to sell unless they all did, because we would be left alone, and we also believed if we couldn't sell it we could hold it, and use it in Boise, and the party wouldn't wait, and Mr. Nusbaum particularly wanted the money, and we all had to go.

Q. Did you all sell to Mr. Kinkaid?

A. Yes, sir.

Q. And the day you sold to Mr. Kinkaid was the first day you had any communication with him with

(Testimony of Benjamin C. Eagleson.)
reference to the sale of this property?

A. It was.

Q. Did you talk to Mr. Kinkaid about what you were to get from him?

A. It was the understanding that we was to get \$850 apiece.

Q. Where did you get the understanding from?

A. I don't know; we were all talking together there.

Q. Did Mr. Kinkaid say he would give you \$850 for yours, or was that understanding had before you went there?

A. There was an understanding, but who said it I don't know.

Q. But you went there and Mr. Kinkaid carried out that understanding and gave you \$850 for your claim? A. Yes, sir.

Q. Had your wife taken up a claim at that time?

A. No, sir.

Q. Did Mr. Kinkaid pay you in check or in cash?

A. Paid me in check.

Q. And you deposited it in your bank?

A. No, I didn't, because I was busy, and I happened by the First National Bank, and I put it in there and transferred it back later.

Q. And later you put the proceeds of that check in your own bank? A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mr. Eagleson, dated September 19, 1902; notice of publication of the same date; non-mineral affidavit, also of the same

(Testimony of Benjamin C. Eagleson.)

date, all identified by Mr. Eagleson as having been signed by him; the testimony of the witness, given on final proof, dated January 21, 1903; and the cross-examination attached, both of which have been identified by the witness as having been signed by him; the testimony of the other witnesses on final proof; the receiver's receipt and the register's certificate, dated January 21, 1903; certified copy of the patent, dated July 2, 1904; all to the north half of the southwest quarter, and the north half of the southeast quarter of section 25, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 101A to 101M, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Eagleson, you said that after you got up to Kinkaid's office there was an understanding that you was to have \$850, and that pursuant to that understanding you was paid \$850. A. Yes, sir.

Q. When was that understanding had, when was it arrived at—that day or some other day?

A. Maybe a day or two before we went up there.

Q. Was that understanding subsequent to final proof?

A. It was just a day or two before we sold.

Q. It hasn't appeared here yet just when you sold, so if you will put that understanding with reference to final proof—

A. It was after I proved up, because I didn't know there was a buyer until after I proved up.

(Testimony of Benjamin C. Eagleson.)

Q. It was a long time after you proved up?

A. I couldn't tell you how long.

Q. Do you recall that Mr. Harry K. Eagleson was the man that negotiated with Kinkaid for the bunch?

A. He was rather the leader; of course, the bunch all went together, and all of them agreed to sell that way.

Q. You testified that you thought that that property was worth \$1,500? A. Yes, sir.

Q. And you sold for \$850? A. Yes, sir.

Q. Do you mean to say that you thought there was anyone in the market that would pay that for it?

A. I said it ought to be worth that; that was what timber was selling for at that time, \$1 a thousand.

Q. Was there any sale for that here?

A. Up close around the mills here, twenty or twenty-five miles.

Q. What I am trying to get at is, did you mean that it would be worth that price?

A. It ought to be worth that; what it really was worth was what you could get, and I thought I got all I could get.

Q. You didn't sell at \$850 because of any agreement you had? A. No, sir.

Q. You didn't have to sell for that?

A. No, sir.

Q. There was not contract or agreement outstanding by which you couldn't have held it if you wanted to? A. No, sir.

(Testimony of Benjamin C. Eagleson.)

Q. You testified that you tried to swing a deal yourself after final proof had been made. Do you remember that there was a kind of a gentleman's and ladies' agreement that you would form a pool and one wouldn't sell until you all sold?

A. There was such an agreement.

Q. And the purpose of that was to get the best price for the timber?

A. Yes, sir, not only that, but it was so that every fellow would be protected.

Q. In other words, if a lumber company or anybody else owns all the lumber around there and leaves his claim there he would be at the mercy of the company? A. Yes, sir.

Q. So as a matter of mutual protection you formed this little agreement among yourselves?

A. Yes, sir.

Q. At the time you proved up Mr. Kinkaid, as I understood, had not commenced buying at all, had he? A. No, sir, not to my knowledge.

Q. At that time you undertook yourself to find a purchaser for these lands? A. Yes, sir.

Q. Those negotiations were pending when John Kinkaid commenced buying? A. Yes, sir.

Q. When John Kinkaid commenced buying there was a general stampede to sell, was there not?

A. Yes, sir.

Q. Which made it impossible for you to go any further? A. I couldn't.

Q. Your deal, of course, depended on your ability to turn over a large tract? A. Yes, sir.

(Testimony of Benjamin C. Eagleson.)

Q. And when the rest of them agreed to sell out you had to join the procession? A. Yes, sir.

Q. At the time you filed your original papers applying to purchase this land, was there any agreement, of any kind, in existence between you and any person, firm, or corporation, by which you had obligated yourself, or promised, to turn over this property when you acquired title to any person?

A. No, sir.

Q. Was there any such agreement in existence when you made your final proof? A. No, sir.

Q. Was there ever, at any time, any agreement on your part that you were to turn this over to any person, firm, or corporation when you got title?

A. No, sir.

Q. Mr. Eagleson, the Government has seen fit to charge you in this complaint in this action we are trying against the Barber Lumber Company and others with having entered this land for the benefit of, and at the request of, the defendants in this action. Is that true or false? A. It is false.

Q. And they have charged that you so entered it under an agreement, and that pursuant to that agreement you made this entry and went to the land office, and, at the request of, and for the benefit of, these defendants testified falsely for the purpose of defrauding the United States of America. Is that true or false? A. It is false.

Q. Is there any truth whatever in the allegation of the complaint that you, in making this entry, or in making final proof, either acted for anyone else

(Testimony of Benjamin C. Eagleson.)
or testified falsely? A. I did not.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. You say that at the time you made this entry timber was selling at \$1 a thousand?

A. It was worth about \$1 a thousand, that is, stumpage.

Q. Who was buying at that price?

A. I think that was what Woods was buying at, over on Clear creek.

Q. How far is that from here?

A. Twenty-five or thirty miles.

Q. You say Mr. Woods? A. Yes, sir.

Q. Is he a sawmill man? A. Yes, sir.

Q. Do you know of any other sawmills in this neighborhood that were buying timber?

A. They was pretty near all at that time cutting Government timber, stealing timber.

Q. Weren't paying for it at all?

A. No, sir.

Q. But where you had standing timber for sale you could get \$1 a thousand for it?

A. You could if you had it where there was a mill close; and the mill men were getting scared about that time.

Q. You mean they were getting afraid to cut Government timber and were looking for private timber?

A. Yes, sir.

Q. How far was the land you entered from Boise?

A. It must be over fifty miles, fifty or sixty.

Q. How far was the nearest sawmill from the

(Testimony of Benjamin C. Eagleson.)

tract which you entered?

A. I couldn't tell you where the closest one was, because there have been little ones scattered through this country, through the Basin.

Q. Were there several sawmills in that neighborhood? A. No, sir.

Q. There were mills in that region, were there not?

A. There had been, but whether there were at that time I couldn't say. I know a mill we sold was running up over the hill here.

Q. How far is that? A. Twenty miles.

Q. That is the only mill you know of?

A. Joe Schlesky had one.

Q. How far was Mr. Schlesky's mill?

A. On Dagget creek, this side.

Q. How far is that?

A. It must be probably sixteen miles from Boise.

Q. Did you ever try to negotiate a sale of your land to any of these millmen, or any other millman that you knew of?

A. The only one I talked to, negotiated a sale with, was the Portland outfit, tried to.

Mr. BUNDY.—These mills were little bits of mills, cutting for the mines, were they not?

A. Especially that far away. That was all they were doing, cutting for mines.

Mr. KEIGWIN.—Q. Were these millmen that you speak of willing to buy timber land from private persons, or did they continue cutting from Government land?

(Testimony of Benjamin C. Eagleson.)

A. They didn't have much resources to buy with; they usually bought and paid as they cut.

Q. But they were generally cutting Government timber? A. That was years ago.

Q. And at the time you made your entry, you said about that time they began to be scared of cutting Government timber.

A. That is true, because there was suits here in the Federal Court about it.

Q. For cutting timber on Government lands?

A. Yes, sir.

Recross-examination.

(By Mr. BUNDY.)

Q. You have testified here about some mills. Those were little small mills, cutting for mines, were they not? A. Mines and hauling it into Boise.

Q. There were none of those people that had money enough to be in the market to buy timber lands outright? A. They couldn't buy.

Q. They simply bought logs as they used them?

A. That is all.

Q. And none of them were tributary to this land you entered up on Crooked river?

A. No, sir.

Q. And from your knowledge of the country up there, the only way they could handle the timber up there was either to build a railroad up there or fix the river so as to float the logs out?

A. At the time us fellows thought we could float the logs down, but we found out we couldn't, be-

(Testimony of Benjamin C. Eagleson.)

cause it would take a whole lot of money to fix the river.

Q. What I am trying to get at is, the price you learned that these mills were paying wasn't any criterion as to what stumpage was worth up there on the Crooked river.

A. That was all I knew of, and this was a good long ways from a market at even \$1 a thousand.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. You say these small mills were cutting for the Boise market?

A. They were cutting for what was sold up through that country, and it was hauled into Boise here and sold, lots of it.

Q. Where did the lumber come from that was used in Boise?

A. It mostly came from those mills, outside of what Ridenbaugh and Rossi floated down the river, and Oregon shipped in a lot.

Q. Boise was then growing rapidly?

A. Yes, sir, but nothing like it is to-day.

Q. You think that most of the local supply of lumber came from these mills around here?

A. I can't say that, because there was thousands of carloads of lumber shipped in here from Oregon.

Recross-examination.

(By Mr. BUNDY.)

Q. You are a lumberman, Mr. Eagleson, so I will ask you: The local retail market here at Boise

(Testimony of Benjamin C. Eagleson.)

wouldn't afford market enough to warrant the investment of building a railway to handle this timber up here in the Basin, would it? A. No, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Are you in the lumber business?

A. No, sir.

Q. You were then? A. Yes, sir.

Q. You knew something about the lumber market at that time?

A. I thought I knew something.

(Witness excused.)

At this time an adjournment was taken until two o'clock, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Bertha Martin, on Behalf of the Complainant.]

BERTHA MARTIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Bertha Martin? A. Yes.

Q. What is your husband's name, Mrs. Martin?

A. Thomas L. Martin.

Q. What is his occupation? A. Attorney.

Q. What was his occupation in 1905?

A. Real estate business, I think, at that time.

Q. You were living in Boise in the years 1904

(Testimony of Bertha Martin.)

and 1905? A. Yes.

Q. You took up a claim under the Timber and Stone Act in that year, did you, 1905?

A. I don't just remember the year; we took the claim.

Q. Do you know Thomas B. Martin?

A. Yes.

Q. Is he a relative of yours?

A. He is my father in law.

Q. Is Mr. Frank Martin an uncle of yours?

A. Yes.

Q. I show you timber and stone land sworn statement, dated January 25, 1905, and ask you if that is your signature? A. Yes.

Q. I show you the non-mineral affidavit of the same date, and ask you if that is your signature?

A. Yes.

Q. I show you testimony given by Bertha Martin on final proof before the land office, April 13, 1905, and ask you if you signed that paper?

A. Yes.

Q. I show you the cross-examination attached, and ask you if you signed that? A. Yes.

Q. Mrs. Martin, who located you on this timber claim? A. Mr. Patrick Downs.

Q. Did you go up alone or with someone?

A. No, there was a party of us.

Q. Who were of the party?

A. My husband, and Mr. Will Noble, and Mr. and Mrs. Clyde Eagleson, and there was another lady, but I have forgotten her name.

(Testimony of Bertha Martin.)

Q. Where did you meet Mr. Downs?

A. We met him after we left Idaho City, I don't know just where.

Q. Did you go to Kempner's ranch?

A. No.

Q. Did you know who you would meet—did you know you were going to meet Mr. Patrick Downs there before you left Boise? A. Yes.

Q. Had you seen Mr. Patrick Downs with reference to taking up a timber claim?

A. I hadn't seen him personally.

Q. Did you pay Mr. Patrick Downs anything for locating you? A. Yes.

Q. How much? A. I think it was \$25.

Q. Did you pay him yourself, or did your husband pay him? A. My husband paid him.

Q. How long before you filed your first papers in the land office did you view this land on which you located?

A. I don't remember; I couldn't say.

Q. You went up there for the purpose of being located, up to Idaho City? A. Yes, sir.

Q. How far from Idaho City did you go to look at this land?

A. We went over near Pioneerville, I don't know how far, that is, from Idaho City, quite a ways.

Q. Did you go through Pioneerville?

A. Yes, sir.

Q. How far beyond Pioneerville did you go?

A. I couldn't say, but I imagine it must have been two or two and a half miles.

(Testimony of Bertha Martin.)

Q. And you went there solely for the purpose of locating a timber claim? A. Yes, sir.

Q. How long after that did you return to Boise?

A. Immediately after that.

Q. How long after you returned did you file?

A. I know it was some time, but I don't remember whether it was next day or not.

Q. Was it within a week? A. Oh, yes.

Q. Did you stay at Pioneerville over night?

A. No, we stayed at Centerville over night.

Q. Did Mr. Downs take the entire party that went with you out to this land together, or did he take you separately?

A. No, I think there was four of us went to my claim.

Q. And was your claim on the road or off the road?

A. I couldn't say. The ground was covered with snow; I don't know.

Q. How deep was the snow?

A. It must have been all of two feet.

Q. Did he take you to one of the corners and then point off your land to you?

A. Well, I was over more than that, I don't remember just how, but we drove over it quite a bit, so it must have been off the road, because we drove quite a ways to the claim.

Q. Did you get out the conveyance to walk over it? A. No.

Q. Was there much timber on this claim?

A. Well, it seems to me there was quite a bit.

(Testimony of Bertha Martin.)

Q. Was it such that they could drive a wagon through all the trees?

A. Part way; of course part of it was so steep that we couldn't drive over it.

Q. Did you get out and walk over most of it?

A. No, I didn't climb any hills.

Q. Didn't get out of the wagon? A. No.

Q. Did I understand you to say that part of the claim they located you on was on a hillside and you couldn't drive up that? A. Yes, sir.

Q. Do you know how much of your claim was on the hillside, half of it, or three-fourths of it, or how much?

A. I presume the most of it was on hills, but it was very rough all through there.

Q. How much of this claim did you go over?

A. I couldn't tell. We just drove around the canyons and where we could drive.

Q. That was the only time you went to that claim?

A. Yes.

Q. Do you remember the year that you went there? A. No, I don't.

Q. Was it the day before New Year's?

A. I don't know; I don't think so.

Q. Were you given a description of this land by Mr. Downs? A. Yes, sir.

Q. Did he give it to you personally?

A. Well, I don't remember whether it was given me or my husband.

Q. Did you have any arrangement or talk with Mr. Downs before you went out to this claim as to

(Testimony of Bertha Martin.)

what claim he would locate you on? A. No.

Q. Did he show you more than the one claim?

A. No.

Q. He showed you one claim and said "This is the claim you are to be located on"?

A. Yes.

Q. And then you returned to Boise and filed on this claim? Do you remember how much money you paid in the land office the day you filed?

A. No, I do not.

Q. Did you pay any?

A. I suppose I did. I think it cost me something; I don't remember.

Q. Did you go by yourself or with your husband?

A. My husband was with me.

Q. Then whatever you paid, either you or your husband paid it? A. Yes.

Q. Did you know of a market for selling timber land at that time?

A. No, not at that time.

Q. Did you know of anybody that was buying timber claims at that time?

A. No.

Q. Hadn't heard of anybody? A. No.

Q. Did you have your own money at that time with which to buy a timber claim?

A. My husband gave me the money.

Q. When did your husband give you the money?

A. I don't remember.

Q. Was it the day you made your final proof and used it in the land office?

(Testimony of Bertha Martin.)

A. I don't remember now.

Q. What is your best recollection of when he gave it to you?

A. I don't remember whether I paid it personally, or whether he did, I couldn't say.

Q. Which do you think paid it?

A. I haven't any idea; I don't remember.

Q. Did you have a bank account of your own?

A. Not then, no.

Q. And if your husband had given you between four and five hundred dollars do you think you would remember it?

A. I don't know.

Q. If you had had four or five hundred dollars cash at that time do you think you would remember it?

A. If I had had it some time I might.

Q. But if he had given it to you just for that one occasion you wouldn't remember it?

A. I don't remember whether I had the money or not.

Q. Do you remember whether you paid the money into the land office or whether your husband paid it in the land office?

A. No, I don't remember.

Q. Haven't you any idea which one paid it?

A. Not now, no.

Q. Did you have any money of your own besides what your husband gave you?

A. Nothing in my name, I didn't.

Q. I will ask you if this question was asked you the day you made your final proof: "Did you pay

(Testimony of Bertha Martin.)

out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?"

Do you remember that question being asked you?

A. No, I don't remember.

Q. Do you remember some questions being asked you?

A. I know there was questions asked me; I don't know as I could repeat any of them.

Q. Do you remember whether or not you made this answer; "Yes, sir," to both questions?

A. No, I don't remember a thing about the questions.

Q. Did you read that paper over before you signed it?

A. I suppose I did; I usually do.

Q. And this question was asked you: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer: "I received the money from my husband originally. A few days only." Do you remember that question being asked you and that answer made?

A. No.

Q. Did you expect to pay for this land out of your own individual funds?

A. After he gave it to me I considered it mine.

Q. He gave it to you for that purpose, didn't he?

A. Yes.

Q. I understood you to say you didn't know of a market for this land, and you didn't know of anybody that was purchasing timber claims. Is that

(Testimony of Bertha Martin.)

right? A. That is right.

Q. How long after you made your final proof did you start negotiations for the sale of this property?

A. I don't remember.

Q. Was it a week or six months?

A. I couldn't say.

Q. You haven't an idea? A. No.

Q. And do you know to whom you sold it?

A. Yes.

Q. To whom?

A. The Barber Lumber Company.

Q. Through whom did you sell it?

A. My husband did the business for me.

Q. And you signed a deed for it?

A. Yes.

Q. And do you remember that the deed ran directly to the Barber Lumber Company?

A. If I remember correctly, it did. I don't remember much about the deed.

Q. Do you remember where you signed that deed?

A. No.

Q. Don't remember whether you went to someone's office to sign it?

A. I don't remember.

Q. Did anybody speak with you about selling this land? A. No.

Q. Did anybody ask you to sell it?

A. I don't think so, not that I remember of.

Q. Do you know Mr. E. J. Phelps?

A. Yes, I know Mr. Phelps.

Q. Did he take the acknowledgment of the deed

(Testimony of Bertha Martin.)

you signed?

A. I couldn't say; I don't remember.

Mr. BUNDY.—Show her the deed.

Mr. GORDON.—I haven't it. Now, haven't you any recollection whatever about signing the deed?

A. I suppose I signed it, but it has been so long I wouldn't try to remember it.

Q. Do you remember whether a deed was brought to you to sign or whether you went somewhere else to sign?

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

Q. Do you know whether or not you signed a deed? A. I suppose I did.

Q. Do you know?

A. I could tell if I saw the deed.

Q. Is that the only recollection you have?

A. I know I sold my claim and gave a deed for it.

Q. To whom did you sell it?

A. I sold to the Barber Lumber Company.

Q. How do you know you sold to the Barber Lumber Company?

A. I know it the same as I know anything else; I have no particular reason for knowing it.

Q. Because you remember selling it to the Barber Lumber Company?

A. I certainly do.

Q. Do you remember when it was?

A. No, sir, I do not.

Q. Do you remember the occasion of your selling it to the Barber Lumber Company?

A. No, I don't; I didn't transact the business

(Testimony of Bertha Martin.)

myself, my husband transacted it for me.

Q. Did he sign the deed for you?

A. I suppose not.

Q. Do you remember seeing Mr. Phelps with reference to the sale of that property?

A. Not at that time, I don't remember.

Q. Did you ever see him with reference to the sale of this property?

A. I never talked to him, if that is what you mean.

Q. Did he ask you if you acknowledged the deed?

A. I don't know whether he took the acknowledgment, or who did it.

Mr. KEIGWIN.—Q. Do you remember in what month you went up to look at the land?

A. Why, I think it was in February.

Q. Was it shortly before you made your first application, or a considerable time before?

A. I don't know.

Q. To put it the other way, did you make this application shortly after you came back from the land, or did you wait some time?

A. I don't think I waited more than a week; I am sure I didn't.

Q. You don't remember that you went up there on the 31st of December?

A. No, I know I didn't; I am sure I didn't.

Q. If it had been that day, the day before a holiday, you would probably remember it?

A. I had it in my mind it was in February, but I may be mistaken.

Mr. GORDON.—We offer in evidence the timber

(Testimony of Bertha Martin.)

and stone land sworn statement of Bertha Martin, dated January 25, 1905; the notice of publication of the same date; the non-mineral affidavit, dated January 25, 1905; the testimony of the witness on final proof, dated April 13, 1905, and the cross-examination attached, all of which papers have been identified by the witness as having been signed by her; the receiver's receipt and the register's certificate, dated April 13, 1905; certified copy of the patent, dated December 30, 1905; all to lots 1 and 2, and the south half of the northeast quarter of section 1, in township 7 north, of range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 102A to 102N, inclusive.)

Mr. KEIGWIN.—I think I understood, Mr. Bundy, that you will stipulate that the deed was dated May 1, 1905, to the Barber Lumber Company directly.

Mr. BUNDY.—Yes, we will stipulate that that is the date, May 1, 1905, and recorded May 3, 1905.

Cross-examination.

(By Mr. BUNDY.)

Q. The matter of carrying out the details of this entry, so far as paying the expenses, was tended to, as I understand, by your husband.

A. Yes, sir.

Q. And getting the necessary papers together, and paying the fees and expenses of the location, I suppose.

A. Yes.

Q. After you had made final proof the negotiations, whatever they were, which led up to the ulti-

(Testimony of Bertha Martin.)

mate sale to the Barber Lumber Company were also, as I understand it, carried on by your husband?

A. Yes, everything was done by my husband.

Q. You were asked as to the time you went up there to make your filing, Mrs. Martin. You stated that your recollection was that it was in February. The first paper you filed in the land office—

Mr. GORDON.—I will state what I was trying to find out.

Q. (Continued.) —was on January 25, 1905. Now, you viewed this land, your trip up there was some time prior to that.

A. Yes, sir.

Q. Can you state approximately how long prior to that?

A. I don't know, because I was thinking I was there in another month, and I don't remember now.

Q. Was it after Christmas that you went up there?

A. I am sure it was. You know I went up there, and I didn't get my claim for it must have been a year and a half anyway, because I was up there in February, and then I didn't get my claim then.

Mr. KEIGWIN.—It must have been the following January.

A. It must have been.

Mr. BUNDY.—You must have advertised again. Now, that seems to be so. It seems that in your statement here on final proof, dated in April, 1905, you say that you made the inspection personally, and that it was made on the 31st of December, 1903. "I went with a party to look up some land and then went over the tract. In the party were my husband and

(Testimony of Bertha Martin.)

P. H. Downs, Mr. B. C. Eagleson, Mr. William Noble, and myself." Is it possible that you waited thirteen months before making the filing?

A. I don't know; I don't remember.

Q. Now, I think maybe I can refresh your recollection. This is one of the claims that was in the Andersen matter, isn't it. This is one of the claims that wasn't contested because the fellow didn't take any appeal. Does that refresh your recollection any as to waiting quite a long time before you filed your papers?

A. I can't remember; I only know I was quite a while getting the claim.

Q. This was Nugent's claim you know. He never took an appeal, and it was cancelled. She went up and viewed it in 1903, and waited for the relinquishment. Mrs. Martin, your husband is T. L. Martin, a practicing lawyer here in the city at present?

A. Yes.

Q. At the time you filed this first paper, on January 25, 1905, at that time had you entered into any agreement of any kind, with any person, firm, or corporation whatever, by which you had agreed to transfer the title which you might acquire from the United States, by which any person, firm, or corporation was to acquire any interest in the land you were entering?

A. No, I had not.

Q. Had you any such agreement as that at the time you made your final proof?

A. No, I never did.

Q. Did you ever, at any time, have any under-

(Testimony of Bertha Martin.)

standing, express or implied, in writing or verbal, by which they were to have any interest in the land you were acquiring? A. No.

Q. Did you enter and pay for this land for your own personal benefit solely? A. I did.

Q. It is charged in this complaint that you entered this land for the benefit of the Barber Lumber Company. Is that true or false?

A. I did not, no sir.

Q. And it is charged by the Government that you entered into an agreement with the Barber Lumber Company and the other defendants in this action, by which you agreed that you would enter the land for them, at their request and for their benefit, and would go to the land office and testify falsely so as to get the land to turn over to them.

A. No, I had no agreement with them; I don't know as I knew of the Barber Lumber Company at that time.

Q. So that allegation is not true?

A. No, sir, it is not true.

Mr. GORDON.—Mr. Bundy, I forgot to include in that the testimony of the other witnesses before the land office.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mrs. Martin, did Mr. Martin make a timber land entry about the same time you did?

A. No, I don't think anywhere near that time.

Mr. GORDON.—I will ask you if you signed that

(Testimony of Bertha Martin.)

affidavit, dated November 14, 1905. (Showing witness paper.)

A. Yes, that is my signature.

Mr. GORDON.—We offer in evidence the affidavit made November 14, 1905, signed Bertha Martin, subscribed and sworn to before the register of the land office November 13, 1905. It is dated the day after it was sworn to. I suppose that is a clerical error. The affidavit is identified by Mrs. Martin as having been signed by her.

(Heretofore marked Exhibit No. 102J.)

Recross-examination.

(By Mr. BUNDY.)

Q. I see by this affidavit that some time after you had made your final proof the Government wanted to know whether your husband was interested in your claim or not.

A. Yes, sir.

Q. And you made affidavit that he was not. That is a fact, that it was made for your benefit?

A. Yes, sir.

Q. And had your husband any interest whatever in the claim you were making?

A. No, sir.

(Witness excused.)

[**Testimony of Samuel E. Vance, on Behalf of the Complainant.**]

SAMUEL E. VANCE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Samuel E. Vance?

A. Yes, sir.

Q. Where do you reside, Mr. Vance?

A. 510 South Thirteenth Street, Boise.

Q. How long have you resided in Boise?

A. Since 1893.

Q. What time in '93, what month?

A. October.

Q. Did you reside in Idaho prior to that time?

A. No, sir.

Q. What is your occupation?

A. Surveyor.

Q. What was your occupation in August, 1903?

A. The same.

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

A. I did, sir. I think that was the year.

Q. I will show you timber and stone land sworn statement, dated August 10, 1903, and ask you if you signed that paper.

A. That is my signature.

Q. I show you the non-mineral affidavit of the same date, and ask you if you signed that.

A. Yes, sir.

Q. I show you the testimony of Samuel E. Vance

(Testimony of Samuel E. Vance.)

given on final proof, dated November 10, 1903, and ask you if that is your signature to that.

A. Yes, sir.

Q. I show you the cross-examination attached, and ask you if you signed that. A. Yes, sir.

Q. I show you deed, dated December 16, 1903, and made by Samuel E. Vance and Mollie L. Vance, his wife, to Horace S. Rand. I will ask you if that is your signature to that deed. A. Yes, sir.

Q. Is that the signature of your wife, Mrs. Vance? A. Yes, sir.

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

A. I spoke to Mr. Patrick Downs myself, brought up the subject myself, asked him if he had any timber claims to locate, that I wanted to take one up, some time before this transaction took place.

Q. How long before, Mr. Vance?

A. Probably two or three months. Pat was in the timber business and I told him I wanted to take a claim.

Q. And what did Mr. Downs tell you?

A. He said he had some claims and was getting up a party, and would let me know.

Q. You knew Mr. Downs before that?

A. Yes, sir.

Q. Did he tell you later, when he had gotten up his party?

A. Yes, he notified me when they was ready to go.

Q. How long was that after you spoke with him?

A. Might have been a couple of months or so; I

(Testimony of Samuel E. Vance.)

don't know just as to the time. Every time I would come into town—I was out on a job of surveying, and when I would come in I would generally see Pat around town here.

Q. And he arranged a party and notified you, and you joined the party?

A. I joined the party, yes, sir.

Q. Where did you meet the party in Boise?

A. I didn't meet the party in Boise at all. We all got together at Kempner's ranch. The party that Pat took up went ahead of me three or four hours.

Q. And you went later? A. Yes.

Q. Do you remember who was of your party?

A. I think it was Mr. Hobbs and me took a rig and drove through ourselves.

Q. What Mr. Hobbs?

A. He was an assayer at that time.

Q. Do you remember his name—Mr. John E. Hobbs?

A. I don't know his name; it was Hobbs we always called him. He was the assayer.

Q. Who else was of that party?

A. When we got up there there was five or six, and I actually couldn't name the parties.

Q. Can you name any of them?

A. I think there was a man by the name of Allen, and then there was an old gentleman, it seems to me, by the name of Maynard; I don't know what his front name is.

Q. Can you think of any of the others?

(Testimony of Samuel E. Vance.)

A. No.

Q. Was that Mr. Homer Allen?

A. I couldn't say.

Q. Benjamin R. Allen?

A. I wouldn't know; I didn't know the man, wouldn't know him if I see him, to tell the truth, but I recollect that there was a man by the name of Allen along with us. They was all strangers to me except Hobbs.

Q. How far did you go from Kempner's to view this land?

A. We got to Kempner's in the evening late, and was on the road—we started out the next morning and was on the road I guess four or five hours on foot, going south, over across the country. I don't know just how far we did go in miles.

Q. Did Mr. Hobbs go along with you?

A. Yes.

Q. To where they were located?

A. Yes, the whole bunch was together.

Q. And you were shown a particular piece of land upon which you were to locate?

A. No, sir.

Q. Were you shown a claim that day that you were to locate on?

A. No, sir. However, I had seen the land myself before. I had been on this piece of land that I took up about three or four years before this.

Q. Who gave you the description of it?

A. Mr. Downs.

Q. Did you go with Mr. Hobbs everywhere he

(Testimony of Samuel E. Vance.)

went that day?

A. I think we was pretty close together that day.

Q. Mr. Allen too?

A. The crowd scattered some, but we wasn't very far apart. I don't think, at any time.

Q. Did you know where Mr. Hobbs' claim was?

A. His claim joined mine.

Q. I will ask you if Mr. Allen's and Mr. Maynard's claims were contiguous to yours.

A. I don't think they were; I couldn't tell.

Q. But, as you remember, Mr. Hobbs' claim adjoined yours?

A. Yes, I think that is right. The plat will show.

Q. Did you or Mr. Hobbs go with Mr. Downs to where Mr. Hobbs' claim was that day? A. No.

Q. How near to it did you go?

A. I should judge we was three miles from the ground. We could see quite a distance, probably eight or ten miles beyond where we were, looking down across the country.

Mr. BUNDY.—I ask that the evidence of the witness with reference to Hobbs not going upon his claim be stricken out as incompetent, irrelevant, and immaterial, no charge being made in the complaint of any failure on the part of the entryman to visit the claim.

Mr. GORDON.—Q. Mr. Vance, did the party that you went with return as a body? Did you come back with Mr. Hobbs?

A. I came back with Mr. Downs. We left the party there at Kempner's. I don't know whether

(Testimony of Samuel E. Vance.)

Hobbs was with us or not; I couldn't say as to that.

Q. Was anything said there about paying the locating fee?

A. Yes, it was understood that Pat was to have his fee.

Q. Did you pay it there? A. No, sir.

Q. When did you pay it?

A. I paid it after I filed on the claim.

Q. Before you made your final proof?

A. Yes.

Q. To whom did you pay it?

A. Pat Downs.

Q. Now, when you returned to Boise you had this non-mineral affidavit made out, and this notice of publication, and your sworn statement, the papers you filed in the land office, when you made your entry, the first papers? A. Sure.

Q. Do you know where you went to get them?

A. No, I don't know, but we went up to the land office, I think.

Q. These are the papers I refer to. Do you remember who made those papers out for you? (Showing witness papers.)

A. No, I don't, but I think Mr. Pritchard made those out. They seem to be in the same handwriting, all of them. It is not my handwriting. I don't know, but I think Mr. Pritchard made them out.

Q. Do you remember going to Mr. Pritchard's office?

A. No, sir. Oh, I have been to his office, yes.

Q. I meant on the occasion that you filed.

(Testimony of Samuel E. Vance.)

A. No, I didn't, I don't think. Mr. Downs brought me the papers himself, already filled out.

Q. To the land office?

A. I don't know whether it was at the land office, or I saw him in town; he handed me the papers.

Q. Do you remember whether or not he was at the land office when you went there, or whether he went with you?

A. I don't think he did. He might have been there, however. He didn't go with me, I don't think, specially.

Q. And after you filed these papers, in several months it came time to make your final proof?

A. Yes, sir.

Q. Do you remember that occasion?

A. Yes.

Q. Do you remember how much you paid in the land office when you made your proof?

A. I paid \$2.50 an acre, for a hundred and sixty acres.

Q. Something over \$400?

A. Yes, and the expenses of advertising, I paid that also.

Q. Do you remember whether you paid that money in cash or check? A. I paid it in cash.

Q. Was that your own money, or did you borrow it? A. It was my own money.

Q. It was money that you had earned and hadn't borrowed? A. Yes, sir.

Q. I ask the question that way because some people think that if they have money in their pocket

(Testimony of Samuel E. Vance.)

for an hour that somebody has loaned them that it is theirs, and in one sense of the word it is.

Mr. BUNDY.—I have often wondered what you thought when a man borrows money whether it is his money or somebody else's. If it wasn't his he would be in a bad fix.

Mr. GORDON.—Q. Mr. Vance, how long after you made your final proof did you start negotiations for the sale of this?

A. Well, I was anxious to sell it. It was some little time after I got my final receipt before I undertook to do anything with it. I was pretty busy out on the survey, and I didn't have much time to negotiate, but I met Mr. Kincaid one evening here in the Idanha hotel one evening, and I asked him if he was in the timber business, if he knew where I could sell that claim up there, and he says: "No, I don't know anything about it," and he gave me such a cold cheek that I didn't bother him any more. Then I had occasion to go and see Mr. Pritchard, to see what I could do with him, and he said possibly he might find a buyer for me. That was at my own solicitation. Nobody else solicited me to sell it at all.

Q. At that time did you know of any market for timber claims?

A. No, sir, if I had, I would have went certainly and found out what I could sell mine at.

Q. You never knew of any when you entered it?

A. No.

Q. Never knew of any until you finally sold to

(Testimony of Samuel E. Vance.)

Pritchard? A. That's right.

Q. What did Mr. Pritchard tell you—that he would try and find you a purchaser?

A. Yes, sir.

Q. What did Mr. Pritchard tell you you could get for the claim?

A. I don't know that he ever told me; he says he might get me a couple of hundred dollars, and I wanted to hold onto the land and sell him the timber, and I wanted to get my \$400 out of it—\$450 was about what I put into it, and I sold it for \$750, or whatever the consideration in the deed was. What was the consideration?

Q. \$800.

A. I think I got \$750, if my recollection is right.

Q. Did he tell you who he was representing, or who you was going to sell to? A. No, sir.

Q. You read the deed he gave you?

A. Yes, sir.

Q. And you knew it ran to Horace S. Rand?

A. Yes, sir.

Q. You had known Mr. Rand, hadn't you?

A. Yes, some thirty years ago I was acquainted with him. I have never met him, however, since I left Burlington.

Q. He wasn't buying timber was he then when you knew him?

A. Him and I was schoolmates in the same class in high school in Burlington.

Q. And Mr. Pritchard paid you for this?

A. Yes.

(Testimony of Samuel E. Vance.)

Q. Do you know whether it was his check or somebody else's check? A. It was cash.

Q. Did you pay him the expense of preparing the deed, or did you pay anybody for preparing the deed?

A. I think he charged me a dollar and a half for the darned deed; I don't recollect now—I had to pay I think though \$1.50, acknowledgment at least.

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

Q. Were you ever asked to make another deed to it? A. No.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated August 10, 1903; the non-mineral affidavit of the same date; the notice of publication of the same date; the testimony of the claimant given on final proof; dated November 10, 1903; and the cross-examination attached, all identified by Mr. Vance as having been signed by him; the testimony of the other witnesses given on final proof; the receiver's receipt and the register's certificate, dated November 10, 1903; certified copy of the patent, dated September 9, 1904; and the deed, dated December 16, 1903, made by Samuel E. Vance, and wife, Mollie L., to Horace S. Rand, consideration \$800, which has been heretofore identified by Mr. Vance as having been signed by himself and wife, and acknowledged by them; all to the north-west quarter of section 29, township 6 north, of range 8 east, Boise Meridian.

(Testimony of Samuel E. Vance.)

(Marked Plaintiff's Exhibit No. 103A to 103L, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Do you remember, Mr. Vance, that Mr. Hobbs was in a great hurry on that trip to get back?

A. Yes, I think he was.

Q. The rest of the party, as I understand it, left Boise earlier in the day, and you and Mr. Hobbs started about three in the afternoon?

A. Yes, it was after dinner we left.

Q. You stayed some place that night, Centerville, I think?

A. No, sir, we drove through, I think, to the ranch.

Q. It was the next day then that you went out in the timber? A. Yes.

Q. Do you remember whether it was Sunday or not? A. No, sir, it might have been.

Q. How long were you and Hobbs out that day?

A. Out all day.

Q. Got back about what time?

A. About sundown, about time for supper.

Q. Did you stay there that night?

A. No, we hitched up and come on in, Downs and me, and I wouldn't be certain whether Mr. Hobbs came with us or not. I don't know whether he come or not. I couldn't swear to it.

Q. You got up to some place where you could see eight or ten miles, and could see the particular tract you located on, you had been on it before?

(Testimony of Samuel E. Vance.)

A. Yes, sir.

Q. So you was familiar with it as soon as you got the description?

A. Yes, sir, in fact I had prospected in there.

Q. So, of course, it wasn't necessary for you to make any further investigation. Do you remember that Mr. Hobbs laid down on you that day, refused to go any further?

A. I know there was some kick, that they had gone as far as they wanted to.

Q. Don't you remember, Mr. Vance that Pat insisted on taking him on through?

A. Yes, and so did I.

Q. What I wanted to get at, it wasn't Downs that was instrumental in not taking him on the land?

A. No, sir, I know it was contrary to that.

Q. You say when you got down here Mr. Downs gave you the original filing papers. That was included, of course, in the location fee; he prepared the papers, did he not?

A. Yes, he was to prepare the papers.

Q. And you paid him the \$25 after you found that the land was vacant?

A. It was either \$25 or \$50; I am inclined to think it was \$50, I am inclined to think it was; I know my expenses run a little over \$450 for the proposition.

Q. You, of course, didn't pay Downs until after you knew whether you could get a filing?

A. No, sir.

Q. After you made your filing and before final

(Testimony of Samuel E. Vance.)

proof you paid him? A. Yes.

Q. Mr. Vance, at the time you made your original filing, had you entered into any kind of contract with Downs or Wells, or Kinkaid, or the Barber Lumber Company, or any other person, firm, or corporation, by which you were to turn this property over to them, or to anybody they should direct, as soon as you got title?

A. No, sir, no agreement of that kind whatever.

Q. Was there any such agreement at the time you made your final proof? A. No, sir.

Q. It is charged in the complaint in this action we are trying that you entered this land at the request of, and for the benefit of the Barber Lumber Company and the other defendants. Is that true or false? A. It is false.

Q. And it is further alleged that you entered into an agreement whereby you undertook to enter some land for them and go to the land office and testify falsely for them, at their request, and when you got title turn it over to them, or to some other person they should direct. Is that true or false?

A. That is false, most emphatically so, as far as I am concerned.

Mr. GORDON.—Mr. VANCE, did your wife take up a timber claim? A. No, sir, not yet.

(Witness excused.)

[**Testimony of Elvie M. Butler, on Behalf of the Complainant.**]

ELVIE M. BUTLER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Elvie M. Butler?

A. Yes, sir.

Q. What is your husband's name?

A. Edward E. Butler.

Q. Where do you reside, Mrs. Butler?

A. I reside about fourteen miles down the valley. I don't know just how to locate it.

Q. Where did you reside in 1902?

A. 716 Fort street.

Q. In Boise? A. Yes, sir.

Q. What was your husband's occupation then?

A. He was in the ice business and sprinkling business.

Q. You took up a claim under the Timber and Stone Act in 1902?

A. Yes, sir, I guess that was the year.

Q. I show you timber and stone land sworn statement, dated September 15, 1902, and ask you if that is your signature? A. Yes, sir.

Q. I show you the non-mineral affidavit of the same date, and ask you if that is your signature?

A. Yes, sir.

Q. I show you the testimony of Elvie M. Butler,

(Testimony of Elvie M. Butler.)

given on final proof, dated January 8, 1903, and ask you if that is your signature to that.

A. Yes, sir.

Q. Is that your signature to the cross-examination attached? A. Yes, sir.

Q. I show you deed, dated February 12, 1903, by Edward E. Butler and Elvie M., to Horace S. Rand, and ask you if that is your signature to that deed.

A. Yes, sir.

Q. And that is your signature and that—is that the signature of your husband attached, Edward E. Butler? A. Yes, sir.

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

A. I didn't remember the notary public's name.

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

A. I don't remember, but there was a good many people talking about it, and my husband I guess was the first one that had spoke about it; I was at home most of the time, and I guess he was the first one.

Q. Did you know of any market for timber claims at that time? A. No, sir, I did not.

Q. Did you know of anybody that was purchasing timber claims at that time? A. No, sir.

Q. And hadn't heard of anybody?

A. No, sir.

Q. With whom did you go to locate this claim?

A. I went with my husband and my sister and sister in law.

Q. Tell us who they are.

(Testimony of Elvie M. Butler.)

A. Mr. Edward E. Butler, Mrs. Louisa E. Butler, and Mrs. Alice Fordney.

Q. Where did you go?

A. We went up through Idaho City, and then we went the next day on to Mr. Kempner's place, and from there Mr. Downs took us out and located us, I think it was probably three miles from Mr. Kempner's.

Q. Did you know Mr. Patrick Downs before that?

A. No, sir.

Q. Did you know Mr. John I. Wells?

A. No, sir.

Q. Mr. Louis M. Pritchard?

A. No, sir.

Q. Mr. John Kinkaid?

A. No, sir.

Q. Did you have any talk with Mr. Downs about what he would charge you for locating you?

A. No, sir, I didn't; my husband tended to the business part of it for me, and I didn't have anything to say to him about what he would charge us for the locating fee. My husband paid whatever was paid, and, I guess, to Mr. Downs; Mr. Downs located us.

Q. Now, did you have any talk with Mr. Downs about where he would locate you, or did you just leave it to his judgment?

A. No, sir, he just took us and showed us where our claims would be, and gave us the numbers of them; I suppose he did, because I know I had my numbers for a long while, and after I sold it I destroyed them.

Q. And you all returned in a party?

A. Yes, sir.

(Testimony of Elvie M. Butler.)

Q. And how long after you returned to Boise did you file your first papers in the land office?

A. I don't remember that. We went to a building—it was up over the Coffin Hardware store—and there was where I first met Mr. Kinkaid, and he fixed our papers, and I don't know, I suppose we left right away, but I don't remember; I don't know whether we did or not.

Q. Was that the day after you returned from Kempner's?

A. Well, I couldn't be sure whether it was the day after or the next day; it was right soon afterwards.

Q. To whose office did you say you went?

A. It was over the Coffin Hardware Company and I supposed it was the gentleman's office that fixed the papers, and that was Mr. Kinkaid.

Mr. BUNDY.—Sonna Building?

A. No, sir.

Q. Pierce Building?

A. No, sir, in the old Coffin Building, Pioneer Building, I think it is called.

Mr. GORDON.—Q. Who went to Mr. Kinkaid's office with you?

A. I think my sister and sister in law, I think we was all there at the same time.

Q. Do you remember who told you to go there?

A. No, I don't.

Q. Then you went to the land office together?

A. Well, I don't remember whether we did or not.

Q. And this sworn statement that I have shown

(Testimony of Elvie M. Butler.)

you, and this non-mineral affidavit, and this notice of publication, being the three papers that you filed in the land office when you made your entry, you received those papers at Mr. Kinkaid's office?

A. Well, I don't remember. I suppose—I don't know.

Q. What is your best recollection of it?

A. Well, I know we went up there, and he fixed some papers for us, but I don't know whether they was what he fixed. I supposed they must have been the papers he was fixing for us, or why should we have had to go there?

Q. And you went directly from Kinkaid's office to the land office?

A. I don't remember whether we did or not.

Mr. BUNDY.—I think she is talking about the deed; I think they went there to make the deed.

Mr. GORDON.—Q. And you paid some money in the land office when you filed your first papers?

A. Yes, I think we did, but I don't remember how much.

Q. Then it came time for you to make your final proof. Now, during this time, did you know of anybody that would buy this land?

A. No, sir, I did not.

Q. Do you remember how much money you paid in the land office the day you made your final proof?

A. I am not positive, but I think about \$400.

Q. Do you remember who went to the land office with you on that occasion?

A. No, I don't.

Q. Did you go alone?

(Testimony of Elvie M. Butler.)

A. Well, I wouldn't say whether I did or not, because I don't remember.

Q. Do you remember whether you paid the money in check or in cash?

A. I think it was the money, but I wouldn't be positive.

Q. And do you know where you received the money you paid in the land office?

A. It was money my husband and myself had; it was money we had saved from the business we were in.

Q. Did you keep it in the bank jointly, or did you keep it at home?

A. Sometimes in the bank, and sometimes at home. Of course we didn't keep always all we had at home, but oftentimes we had all of it at home.

Q. Do you remember whether you kept this particular money at home, or whether you drew it out of the bank the day you paid it?

A. I don't remember.

Q. Do you know how long you had had this money?

A. No, I don't. He was in the ice business, and of course there were collections each month, and they are always paying out money and taking it in.

Q. Did your husband give it to you in a lump sum with which to pay for your claim, or had you been saving it a few dollars at a time yourself?

A. No, of course I hadn't been saving it a few dollars at a time myself. Of course I always thought what was his was mine, and I considered it was mine.

(Testimony of Elvie M. Butler.)

Q. Did he give you the money, or did you have it jointly in a safe box, or in the bank?

A. Well, I don't remember. As I said, when we went that morning, I don't remember whether we had had that money at home, or whether he went to the bank and got it.

Q. Do you remember whether your husband gave it to you that morning?

A. Yes. I say I think he did; as near as I remember, he did.

Q. How long after you paid that money into the land office did you find a purchaser for this land?

A. I don't just remember when. You say I took my claim in September?

Q. And you got your final receipt on January 8, 1903; that was the following January.

A. I can't just remember, but I think it was some time in January that I sold my claim.

Q. How long was it before you sold it that you started negotiations for the sale of it?

A. I don't remember that. My sister was awfully sick at the time, and she died just a day or two afterwards, and I don't remember.

Q. To whom did you talk about selling this land?

A. Well, the only one that I ever talked to was the man I went to and had the papers fixed up, and I don't know who that was; I know what building it was in.

Q. What building?

A. Up over where the Pierce Building is now; I don't know what the building was called.

(Testimony of Elvie M. Butler.)

Q. The man you sold to was a different man from the man who prepared your first papers?

A. That is what I think it was; I was not sure, but I thought it was.

Q. Do you know whether his name was Pritchard?

A. No, I couldn't say.

Q. Did he prepare the deed while you were there that you signed?

A. I don't remember.

Q. Did you receive any money while you were there?

A. Well, I know he paid us for it, but I don't remember whether it was money or check.

Q. Do you remember how much it was, whether it was money or check?

A. I think it was \$850, if I remember right, but I won't say whether it was money or check?

Q. You didn't owe him any money out of that, did you?

A. No, sir.

Q. Whatever he gave you, it was \$800 or \$850?

A. Yes, whatever it was, I don't just remember exactly.

Q. Was your husband with you at that time?

A. He was with me when I sold it, yes, sir.

Q. And when you went in there did this gentleman know what you came for?

A. I think he did, because I think my husband spoke to him before I saw him.

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

A. No, sir, I never was acquainted with him, I don't think.

(Testimony of Elvie M. Butler.)

Q. Had you ever heard of him?

A. I don't remember whether I had or not.

Q. And you made only this one deed to this property?

A. Yes, sir.

Q. You never were asked to make another deed?

A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mrs. Elvie M. Butler, dated September 15, 1902; the non-mineral affidavit of the same date; the testimony of Elvie M. Butler, given on final proof, January 8, 1903; the cross-examination attached thereto, all of which papers have been identified by Mrs. Butler as being signed by her; the notice of publication, dated September 15, 1902; the register's certificate and the receiver's receipt, dated January 8, 1903; the deed, dated February 12, 1903, made by Elvie M. Butler and Edward E., her husband, to Horace S. Rand, consideration \$800, identified by Elvie M. Butler as having been signed by her and her husband, and acknowledged by them; certified copy of the patent, dated May 4, 1904; all to lot 4 and the southwest quarter of the northwest quarter, and the west half of the southwest quarter of section 2, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 104A to 104I, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Butler, in the matter of negotiating the sale and agreeing upon the price, and all that sort of

(Testimony of Elvie M. Butler.)

thing, was attended to by your husband, as I understand. A. Yes, sir.

Q. So that when you went up to the office all you had to do was to sign the deed and get the money?

A. Yes, sir.

Q. And there were a number of your friends selling at about that same time.

A. Yes, I think they were; I know my sister sold hers at about the same time.

Q. At the time you filed your first papers in the land office, Mrs. Butler, had you any agreement of any kind, written or oral, express or implied, with anybody, any person, firm, or corporation by which you had promised to turn this land over to them as soon as you got title? A. No, sir.

Q. Did you have any such agreement as that at the time you made your final proof?

A. No, sir, I did not.

Q. Did you ever, at any time, have any agreement of that kind with any person? A. No, sir.

Q. Did you make this entry for your sole benefit?

A. Yes, sir, I did.

Q. Was your husband individually interested in the claim you were getting, or in the proceeds you would derive from it, or was it yours?

A. It was mine.

Q. It is charged in the complaint here by the United States that you entered this land at the request of, and for the benefit of, the Barber Lumber Company and the other defendants named. Is that true or false? A. No, sir, it is not.

(Testimony of Elvie M. Butler.)

Q. Is it true or false? A. It is false.

Q. And it is also alleged in this complaint that you were induced by the Barber Lumber Company and the other defendants to enter this land for them, and to go to the land office and testify falsely on that subject. Is that true or false?

A. It is false; I never did.

(Witness excused.)

[**Testimony of Louisa E. Butler, on Behalf of the Complainant.**]

LOUISA E. BUTLER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Mrs. Louisa E. Butler?

A. Yes, sir.

Q. What is your husband's name, Mrs. Butler?

A. George W. Butler.

Q. Where do you reside?

A. South Boise.

Q. How long have you resided there?

A. Twelve years.

Q. What was your husband's business in 1902?

A. He was in the ice and sprinkling business, I think.

Q. You took up a claim under the Timber and Stone Act in 1902, did you? A. Yes, sir.

Q. I show you timber and stone land sworn statement dated September 15, 1902, and ask you if you

(Testimony of Louisa E. Butler.)

signed that paper.

A. That is my handwriting, yes, sir.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that?

A. Yes, sir.

Q. I show you testimony of Louisa E. Butler, given on final proof, January 8, 1903, and ask you if you signed that.

A. That is my signature, but I thought we had this proof earlier than that; I thought it was in December, but I guess I was mistaken.

Q. Is that your signature to the cross-examination attached? A. Yes, sir.

Q. I show you deed dated February 12, 1903. George W. Butler and Louisa E., his wife, to Horace S. Rand. Is that your signature to that deed?

A. Yes, sir.

Q. And is that your husband's signature?

A. Yes, sir.

Q. And you acknowledged that deed before Louis M. Pritchard?

A. I don't remember, but we acknowledged the deed, I think, in the same building that we signed the other papers.

Q. Mrs. Butler, who first spoke with you about taking up a timber claim?

A. It was about a year and a half before I took my claim; there was a man worked for us that took a claim.

Q. What was his name?

A. His name was Smith Barker.

(Testimony of Louisa E. Butler.)

Q. And just before you took it up did anybody speak with you about locating?

A. My husband was gone away from home at the time, and my sister and her husband come to my house one evening, and we were talking about the people that was taking timber claims and I told him I would like to take a claim if I ever got a chance. He told me I might go with him and his wife if they had a chance, and about a week after that I went with them.

Mr. BUNDY.—Is your sister Mrs. E. Butler?

A. Yes, sir.

Q. Two brothers married two sisters?

A. Yes, sir.

Mr. GORDON.—Q. And your brother in law and sister told you later that they were going to take up a claim, and you went along with them. Is that right?

A. This was on Sunday evening they told me, when we got in conversation about it, and I think it was about a week afterwards they said they had a chance to go, and I could go with them if I wanted to go.

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

A. No, sir.

Q. Did you ever meet him?

A. I never met him until about a year ago.

Q. Did you meet him about this property?

A. No, sir.

Q. When did you meet him?

A. I met him on the road in South Boise, and my

(Testimony of Louisa E. Butler.)

husband told me that was Mr. Wells, just met him on the road.

Q. Where did you go to locate on this land?

A. My claim, I think, is about a mile east of Mr. Kempner's.

Q. That is Mose Kempner's ranch?

A. Yes, sir, on the north side of Crooked River.

Q. Did you know Mr. Downs before then?

A. No, I don't remember meeting him until I went up there.

Q. Did you have any conversation with Mr. Downs about locating you? A. No, sir.

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

A. I paid my brother in law, and I suppose he paid him; that was what I give him the money for.

Q. How much did you give your brother in law?

A. \$20.

Q. When was that?

A. I don't know. We settled up between ourselves at that time, but I couldn't say when he give Mr. Downs this money, whether he paid it then or when we returned.

Q. Did you know what land Mr. Downs was going to locate you on before you left Kempner's ranch?

A. We went out over the land and he showed me which was my place; that was as near as I knew.

Q. You left it to him to select a piece for you?

A. We went out with him, and I guess you would call it selecting it for us.

Q. Did he give you the description of the prop-

(Testimony of Louisa E. Butler.)

erty? A. Yes, sir.

Q. Did he tell you where to take that to have your papers made out?

A. He didn't tell me, but my brother in law did when we got back to town.

Q. Did you have them made out the day after you returned to Boise?

A. I am not sure it was the next day, but it was shortly afterwards.

Q. Who made out the first papers for you?

A. Mr. John Kinkaid.

Q. Did you pay Mr. Kinkaid anything for making the papers out for you?

A. I don't remember paying him.

Q. Mr. Kinkaid made out the sworn statement I have shown you, and this notice of publication, and this non-mineral affidavit, the three papers you filed in the land office the first day you went there?

A. Yes, that was the first man we had any business with, was Kinkaid.

Q. How much did you pay at the land office when you made your entry? A. \$7.50.

Q. Anything else?

A. Not that I remember.

Q. Now, this man that you spoke of that worked for you who had told you about timber claims, had he taken up a timber claim?

A. The way I heard it was when they was sitting at the table talking about taking up timber claims; they didn't come directly to me and tell me about it; he drove sprinkling wagon for us.

(Testimony of Louisa E. Butler.)

Q. Had he taken up a claim?

A. I think he did.

Q. Had he sold his? A. I don't know.

Q. Did you know of anybody that had sold a claim at that time? A. No, sir.

Q. That conversation at the dinner table was at your own home?

A. No, sir; it was at my sister in law's.

Q. Who is that?

A. Mrs. Fordney—her name was Fordney—her name is Gregory now, I think. She was a widow lady at that time. She is married since that time. She kept boarders.

Q. Is she here to-day?

A. Yes, sir; she is here in the hall.

Q. Did I ask you if she had taken up a claim at that time?

A. No, you didn't ask me that, but she hadn't.

Q. Did I ask you if you knew of anybody that was purchasing timber claims at that time?

A. No, sir.

Q. Did you know of a market for timber claim when you made an entry? A. No, sir.

Q. Did you know of a prospective market?

A. No, sir.

Q. Did you know the value of the timber on the claim on which you were located?

A. No, I didn't know the exact value; it had quite a nice lot of timber on it, but I didn't know the exact value of it.

Q. In your final proof, I notice you said it was

(Testimony of Louisa E. Butler.)

worth about \$1500. Did somebody tell you it was worth that?

A. I don't know whether they did or not.

Q. Did I understand you to say that you had never met Mr. John I. Wells until you met him on the road?

A. Yes sir; I never met him until about a year ago.

Q. And you have never been in Mr. Wells' office?

A. No, sir.

Q. You remember this paper I showed you, the cross-examination which you said you signed, I will ask you if this question wasn't asked you when you made your final proof, and this answer which I shall read given by you:

Mr. BUNDY.—I object to it as incompetent, irrelevant and immaterial, and an attempt to impeach their own witness.

Mr. GORDON.—“Did you pay or agree to pay anything for this information? If so, to whom, and the amount”? Answer: “I paid \$25 location fee to Mr. Wells, partner of P. H. Downs.”

A. No, I never paid Mr. Wells any \$25.

Q. Do you remember that question being asked you?

A. No, sir; I don't remember that question being asked me.

Q. Do you remember the occasion of making your final proof? A. I remember part of it.

Q. Do you remember who went to the land office with you?

(Testimony of Louisa E. Butler.)

A. I don't think there was anybody, unless it was my sister. There was other people there that I was acquainted with at the land office, but there was nobody went with me.

Q. Did your husband go with you?

A. No, sir.

Q. Do you remember whether you paid for this land by check or in cash?

A. I think I paid for it in cash.

Q. How much was it that you paid?

A. I think it was \$400 and some dollars, a few dollars over \$400.

Q. Did you get that money from your husband?

A. I got it out of the bank.

Q. Which bank? A. Bank of Commerce.

Q. And whose check was it that you got it on?

A. I had him to go there and get it, but it was my money when it was put in there.

Q. Do you know how long it had been in the bank?

A. It hadn't been in there very long.

Q. How long?

A. I don't exactly remember.

Q. A week, or had it been in there longer than that—two weeks?

A. I don't remember exactly how long, but it was for baled hay that was sold off of a desert claim I had.

Q. Was it in your husband's name, or in your name? A. It was in his name in the bank.

Q. The Bank of Commerce? A. Yes, sir.

(Testimony of Louisa E. Butler.)

Q. And you went with your husband and he drew it out?

A. I think I have the old bank-books at home, if you want me to bring them, if they will be of any help, I am almost sure I have them.

Q. I would like to have them if it won't be too much of an inconvenience to you.

A. All right.

Q. At this time had you heard of anybody purchasing land, when you proved up?

A. I don't think I had, not at that time, when I proved up.

Q. And you didn't know anybody at that time that had sold a timber claim? A. No, sir.

Q. And how long after that—that was January 8th—did you start negotiations for the sale of your timber claim, or did somebody offer to purchase it from you? How long after you paid your money in the land office and made your final proof and got the final receipt did you hear of somebody who wanted to purchase this land?

A. Well, it was quite a little while after I made the final proof at the land office, but it wasn't very long after I got the papers that there was a man in town that wanted to buy them, after I got the last papers. But I didn't sell at that time, because I didn't think he offered enough, and I think it was in less than two weeks Mr. Butler came home one day and asked me what I was going to do, if I intended to sell my timber claim. I told him I supposed I would if everybody else sold theirs around it.

(Testimony of Louisa E. Butler.)

He said he had heard there was a good many selling them, so it wasn't but a few days till I sold mine.

Q. And to whom did you sell?

A. You said there on the paper it was Horace S. Rand.

Q. Yes, that was to whom the deed was made, but I mean the gentleman you conducted the business with?

A. Mr. Kinkaid.

Q. Had you ever met Mr. Kinkaid before?

A. I met him when I first came down from the hills and got the papers from his office.

Q. Did he have the deed prepared when you went there, or did he draw the deed after you went there?

A. I don't remember.

Q. You and your husband went together?

A. Yes, sir.

Q. And do you remember how much he paid you that day?

A. I think it was \$800 or \$850, I am not sure which. I think he paid it in check.

Q. Was it his check or somebody else's check?

A. I am not sure.

Q. Did your husband sell his claim the same day?

A. No, sir.

Q. You say you got \$800 or \$850?

A. I think so; I don't remember which it was, but it was one or the other, either \$800 or \$850.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, dated September 15, 1902, of Louisa E. Butler; the non-mineral affidavit of the same date; the testimony of Louisa E. Butler

(Testimony of Louisa E. Butler.)

given on final proof, dated January 8, 1903, all identified by Louisa E. Butler as having been signed by her; the notice of publication, dated September 15, 1902; the cross-examination of Louisa E. Butler, given on final proof, and identified by her; the receiver's receipt and the register's certificate, dated January 8, 1903; the deed, made by Louisa E. Butler and George W. Butler, February 12, 1903, to Horace S. Rand, consideration \$950, identified by Louisa E. Butler as having been signed and executed by herself and George W. Butler; certified copy of patent, dated May 24, 1904; all to the north half of the southwest quarter, and the north half of the southeast quarter, section 4, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 105A to 105P, inclusive.)

Q. Did you ever make any other deed for this property?

A. No, sir, I never made but the one deed that I know anything about. They told me my deed called for \$900, but I never got \$900 for it.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Butler, at the time you said you didn't know of any market at the time you filed on this land and at the time of proving up, you hadn't heard of any market. Did you mean that you didn't know of anyone that was buying it? A. No, sir.

Q. You entered with the view, or thought that there would be some time somebody that would want

(Testimony of Louisa E. Butler.)

to buy it?

A. I took it with the intention of using it for my own welfare and as an investment.

Q. At the time you filed your original papers, you said at that time that you had not entered into any agreement with any person, firm, or corporation by which any such person, firm, or corporation would acquire any interest in the land that you were then entering. That was true at that time, was it not?

A. Yes, sir.

Q. And you had not made any such agreement as that at the time you made your final proof?

A. No, sir.

Q. Did you ever make any agreement by which anybody had any interest in this land except yourself?

A. No, sir.

Q. No one else suggested it or had any interest in it?

A. No, sir.

Q. Your husband or anybody else?

A. My husband wasn't here at that time; he was in Oregon.

Q. The United States has seen fit to charge you in this complaint with having entered this land at the request of, and for the benefit of, the Barber Lumber Company and the other defendants in this action. Is that true or false?

A. I had never heard of the Barber Lumber Company when I took up my claim.

Q. It says the Barber Lumber Company and others. Did you take it for anyone, the Barber Lumber Company or anyone else?

A. No, sir.

(Testimony of Louisa E. Butler.)

Q. Is that allegation true or false? Is that allegation that you entered that land for the benefit of the Barber Lumber Company and the other defendants named, is that true or false?

A. It is false.

Q. It is further alleged in that complaint that you had an agreement that you would enter this land and go to the land office and testify falsely, at the request of the Barber Lumber Company and the other defendants, and that as soon as you got title you would turn it over to the defendants or such person as they should direct. Is that true or false?

A. It is false.

Q. Then the substance of your evidence is, Mrs. Butler, that you entered this land at your own expense? A. I did.

Q. And for your own benefit? A. I did.

Q. And up to the time and until after you had made final proof you never had any agreement, express or implied, with anybody, by which anyone other than yourself had any interest in the land. Is that correct? A. That is correct.

(Witness excused.)

[Testimony of Mrs. Alice Gregory, on Behalf of the Complainant.]

MRS. ALICE GREGORY, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is what?

(Testimony of Mrs. Alice Gregory.)

A. Mrs. Alice Gregory now.

Q. And you were Mrs. Alice Fordney in September, 1902? A. Yes.

Q. Where did you reside in September, 1902?

A. In Boise.

Q. And your husband was living at that time?

A. No, my husband was dead.

Q. How long had you lived in Boise in 1902?

A. That would be about seven years ago?

Q. Yes.

A. Well, I had been here between a year and a half and two years, I believe, before that.

Q. You took up a claim under the Timber and Stone Act in September, 1902, did you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 15, 1902, and ask you if that is your signature? A. Yes, sir, that is mine.

Q. I show you non-mineral affidavit, dated September 15, 1902, and ask you if that is your signature? A. Yes, sir.

Q. I show you affidavit, dated January 8, 1903, and ask you if that is your signature? A. Yes.

Q. I show you the testimony of Alice Fordney given on final proof, dated January 8, 1903, and ask you if that is your signature? A. Yes.

Q. I show you the cross-examination attached, and ask you if that is your signature? A. Yes.

Q. I show you deed, dated February 12, 1903, made by Alice Fordney to Horace S. Rand, and ask you if you signed that paper? A. Yes, sir.

(Testimony of Mrs. Alice Gregory.)

Q. And acknowledged it before L. M. Pritchard? I mean, did the notary public, Mr. Pritchard, ask you if you acknowledged that to be your signature and that to be your act when you signed it?

A. Yes.

Mr. BUNDY.—The deed is the best evidence of that. You might think you were trying the validity of these deeds.

Mr. GORDON.—Q. Who was the first person that spoke to you about taking up a timber claim?

A. That asked me to take it up, you mean?

Q. Yes.

A. I don't know as anyone asked me to take up a claim. I heard that claims were to be taken up, and I thought I would take up a claim, but I remember I kept boarders at the time, and I think one man I remember that took up a claim,—

Q. Who was he?

A. —before we did, and his name is Barker, and after he came back from up there why I began to think then about taking up a claim.

Q. And you talked to your brother in law, Mr. Edward Butler, about it?

A. He is my brother, yes.

Q. You talked to him? A. Yes.

Q. Had this Mr. Barker sold his claim at that time?

A. I don't know. No, I don't think he had sold. I don't know, I am sure. But he just told me that he had taken up a claim, so I don't know whether he ever sold it or not.

(Testimony of Mrs. Alice Gregory.)

Q. Did he tell you who he had seen with reference to taking up the claim? A. No.

Q. Did he tell you where you could go to take up a claim? A. No, but I knew where he went?

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

A. No, sir.

Q. Did you ever meet Mr. John I. Wells?

A. No, I never saw him that I know about until to-day I saw Mr. Wells, but whether it is the same man or not I don't know.

Q. The gentleman sitting here in the courtroom?

A. I saw that gentleman in the hall about an hour ago, and they told me it was Mr. Wells, and that is the only time I ever saw him that I remember of.

Q. How long after you talked to Mr. Barker about this did you make up your mind to take up a claim?

A. We took up our claims in September, I believe, and that was real early in the spring before that Mr. Barker took his claim up.

Q. Who arranged for the party you went with?

A. My brother.

Q. Did you know any of the people that went with you before you went?

A. In the same conveyance, you mean?

Q. Yes.

A. Yes, my two sister in laws and my brother, and I went together.

Q. Did anybody else go along in the party?

A. Not with us, but we got with other people on the road and after we got up there, people we knew.

(Testimony of Mrs. Alice Gregory.)

Q. Did you know the other people were going that day? A. No.

Q. Where did you go, whose place?

A. It was near Kempner's place, beyond Idaho City.

Q. Did you meet Mr. Patrick Downs there?

A. Yes.

Q. Did you have any talk with him about locating you on a claim? A. Yes, he located us.

Q. Did you ask him to locate you, or hire him, or what? A. Yes, we hired him.

Q. Did you have any talk with him?

A. Yes.

Q. Did you ask him how much he would charge you to locate you? A. Yes.

Q. How much did he tell you?

A. I think it was \$20; it might have been \$25. I think it was \$20 or \$25, I don't remember.

Q. Did you pay Mr. Downs that money that day, or did you pay someone else later?

A. Why, I think we paid him; I am most positive I paid him there.

Q. You had your \$25 with you?

A. Yes; I didn't take it with me, but my brother had money with him, and I was working for my brother at the time. I was keeping boarders and boarding his men, and he paid me the first of every month, and that money was deducted from what he should have paid me for the men's board.

Q. Then you went out and viewed this land. Did you have any understanding with Mr. Downs as to

(Testimony of Mrs. Alice Gregory.)

the piece of land he was to give you, before you started from Kempner's, or did you leave it to him and take the piece he selected?

A. He took us up on a high hill back of Mr. Kempner's place and showed us the land. No, I don't know as there was anything said about selecting any certain claim.

Q. Did he take you out and show you a claim and say that was the one you were to locate on?

A. I think he did. I am not positive, but he showed me the land; I was on the land.

Q. Did you go all over the land?

A. Not all over it, no.

Q. Did you just go to one of the corners and he pointed that out to you?

A. I believe that is the way; I am sure I didn't go all over the land.

Q. Did the rest of them go, or did they do just as you did?

A. No, they went; I stayed and waited awhile and the rest of the party went somewhere.

Q. Did Mr. Downs give you a description of that land? A. Yes.

Q. Did he tell you to take it to any person to have the papers prepared? A. No.

Q. Then you returned to Boise with the rest of the party, and how long after you returned did you have your papers prepared and filed in the land office, file on the land?

A. I don't remember how long it was.

Q. Was it a day, or two days, or a week?

(Testimony of Mrs. Alice Gregory.)

A. It seems that it was soon after we came that the papers were made out; I don't remember exactly.

Q. Did you and your sisters in law go together to have your papers made out?

A. No, I think I went alone.

Q. Who prepared your first papers for you?

A. I don't know—someone in the land office.

Q. I show you this non-mineral affidavit, and the sworn statement, and ask you if you received those papers in the land office, or did you go to some lawyer's office and get them prepared before you went to the land office?

A. If I could see some of the questions I think I could remember. I remember them asking me a lot of questions.

Q. You don't know where you got those two papers?

A. It was at the land office, I am most positive.

Q. Do you remember who took them to the land office for you? A. No, I don't.

Q. Now, you and the two ladies who have just testified preceding you all filed the same day in the land office. Do you remember whether they were at the land office with you when you made your filing?

A. I don't remember. I don't believe they were. They wasn't with me. They might have gone the same day.

Q. Did you ever meet Mr. John Kinkaid?

A. I don't know whether I did or not. I think I did, but I am not positive, but I don't know the

(Testimony of Mrs. Alice Gregory.)

gentleman didn't at the time. I have heard of him, but I don't know him.

Q. Do you know whether or not he prepared those papers for you? A. No, I don't.

Q. Do you know Mr. Louis M. Pritchard?

A. No.

Q. Then you went to the land office and filed those papers. Do you remember whether you paid any money in the land office on that occasion?

A. Yes.

Q. How much?

A. It seems to me like it was \$7 or \$7.50, or something like that.

Q. Did you pay that yourself, or did your brother pay it? A. I paid it.

Q. Did your brother give you the money to pay it? A. No.

Q. Do you remember who named the witnesses, the persons who would be your witnesses?

A. No, I don't remember anything about the witnesses.

Q. Did you know Mr. Henry Bayhouse?

A. Yes, sir.

Q. And Mr. Alfred Bayhouse? A. Yes.

Q. And Mr. Merritt Twogood? A. Yes.

Q. Do you remember whether or not you gave their names as persons who would be your witnesses?

A. Yes, I think I did; I am most positive I did.

Q. Mrs. Gregory, you were employed by your brother at that time, were you?

(Testimony of Mrs. Alice Gregory.)

A. Yes, I kept a boarding-house and was boarding his men for him.

Q. And he gave you \$20 a month?

A. No, I boarded the men, and he give me just whatever I charged the other men. I had other men boarding with me.

Q. Do you remember when you made your final proof this question being asked you: "What has been your occupation during the past year, and where and by whom have you been employed, and at what compensation?" A. Yes.

Q. Answer: "Have been keeping boarders. Income past year net about \$20.00 per month." Was that right?

Mr. BUNDY.—The question is, do you remember being asked that question and answering it that way.

A. No, they never asked me that I remember of how much I received a month, but I remember answering about the occupation, but not about what I received. I might have told them \$20 a month, but I didn't get that much from the sprinklers, so I don't hardly think I said that.

Q. This is net; that means over and above your expenses? "Income past year net about \$20, per month."

A. Probably I did, but I don't remember.

Q. Was this question asked you, number six in the cross-examination: "How did you first learn about this particular tract of land, and that it would be a good investment to buy it?" Answer: "Mr. Patrick H. Downs located me." Is that right?

(Testimony of Mrs. Alice Gregory.)

A. Yes, he located me. -

Q. "Did you pay or agree to pay anything for this information? If so, to whom, and the amount?"

Answer: "Paid Mr. John I. Wells location fee of \$25." Was that question asked you and did you make that answer?

A. I don't remember anything about that. I didn't pay it to Mr. Wells, or I didn't talk to him about it, because I didn't know him.

Q. As a matter of fact didn't you give it to your brother and he told you he paid it to Mr. Wells?

A. Probably he did; but I don't remember; I didn't know Mr. Wells had anything to do with it.

Q. Now, Mrs. Gregory, it came time for you to make your final proof. Do you remember that occasion? A. Yes.

Q. Now, when you entered this land did you have the money with which to complete the purchase of it at that time?

A. When I proved up on it?

Q. No. I mean when you first entered it?

A. I had some money, but I didn't have the whole amount I don't think at that time.

Q. How much did you have at the time you made your entry? A. I don't know.

Q. Did you know of a market for this claim at that time? A. No.

Q. Did you know of any persons who were buying timber at that time or timber claims?

A. No.

Q. Had you heard of any parties who would buy

(Testimony of Mrs. Alice Gregory.)

them? A. No, I hadn't heard.

Q. Then you didn't know when you could sell it?
A. No.

Q. Do you remember when you made your final proof how much money you paid in the land office?

A. I think it was \$400.

Q. Where did you get that money from?

A. I got some from my brother, and I had some money.

Q. Which brother did you get it from?

A. Both of the boys then were partners in business, and they both owed me.

Q. That is Edward and George?

A. Yes, and I had some money, and some money was due me at that time from them for boarding the men that worked for them.

Q. How long before you paid that money in the land office did you get it from them?

A. I got it, I think, the day before.

Q. How much did you get from them?

A. I got \$400, I think.

Q. Did they give you a check for it, or did they give it to you in cash?

A. They gave me cash.

Q. You didn't make the proof on the day you had advertised you would, and you went to the land office and made an affidavit. Do you remember that?

A. Yes.

Q. Do you remember why it was that you didn't pay for it on that day? A. No, I don't.

Q. Did your brothers George and Edward tell

(Testimony of Mrs. Alice Gregory.)

you that they would let you have this money to make your final proof? A. Yes.

Q. And you knew that all along, that they would let you have it, didn't you?

A. No, I didn't; I didn't know how soon it would be, and I didn't know but what I would have money enough of my own from my savings by that time.

Q. Were you expecting to get money from somewhere else?

A. Yes, there was several different people owed me, but I don't remember whether I got any then or not.

Q. Did those people live in Boise?

A. Yes; it was just men that boarded with me. Probably some of them had gone away, but that was who I expected it from.

Q. Did your brothers give you \$400 or \$412.50 that day?

A. It was something over \$400 that I paid, but I don't remember how much over.

Q. Did they give you all that you paid?

A. No.

Q. How much money did you have of your own?

A. I don't remember now. I had some with me, but I didn't have enough, I am sure—half enough probably, but I had some because I always had money in the house. Sometimes I had more, if it was the last of the month; nearing the first I always had quite a bit of money, because I paid my bills the first day of the *money*, and I don't remember now.

(Testimony of Mrs. Alice Gregory.)

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated December 15, 1902, of Alice Fordney; the non-mineral affidavit of the same date; the testimony of Alice Fordney given on final proof, dated January 8, 1903; the cross-examination attached, all of which papers have been identified by Mrs. Gregory, formerly Alice Fordney, as having been signed by her; the notice of publication, dated September 15, 1902; the testimony and the cross-examination of the other witnesses, given on final proof; the affidavit of Mrs. Alice Fordney, having been identified by Mrs. Gregory, dated January 8, 1903; the register's certificate and the receiver's receipt, dated January 8, 1903; the deed of Alice Fordney, dated February 12, 1903, running to Horace S. Rand, consideration \$950, having been identified by Mrs. Gregory; all to lots 1 and 2, and the south half of the northeast quarter of section 3, township 7 north of range 8 east, Boise Meridian; and certified copy of the patent to the same property, dated August 23, 1904.

Q. I will ask you, Mrs. Gregory, if you signed that affidavit, dated June 1, 1904, signed Alice Fordney?

A. Yes.

Q. That is your signature? A. Yes.

Mr. GORDON.—We offer also the affidavit of Alice Fordney, dated June 1, 1904, having reference to the property heretofore described.

(Papers marked Plaintiff's Exhibit No. 106A to 106Q, inclusive.)

Q. Mrs. Gregory, how long after you paid the

(Testimony of Mrs. Alice Gregory.)

\$400 into the land office and made your final proof did you negotiate for the sale of this property?

A. How long after I paid the money into the land office, after I proved up?

Q. Yes.

A. I don't know; it don't seem to me like it was very long.

Q. Who spoke with you about purchasing that land?

A. I talked to a great many about it.

Q. Who did you talk with?

A. I talked to the boarders, the men I was boarding, and I don't know—

Q. Did you try to sell it to the men who were boarding with you? A. No.

Q. What did you say to them about it?

A. We just spoke about the claims we had taken up.

Q. Who was the first person you spoke with with the view of selling it to him?

A. I believe my brother. He said they were going to sell their claims, and asked if I wanted to sell mine then.

Q. Did he tell you to whom he was going to sell it? A. No, I don't remember any names.

Q. Which brother was it that spoke with you?

A. George.

Q. And you left it to him to sell, did you?

A. Yes, I told him I would sell.

Q. Did you tell him how much you would take for it?

(Testimony of Mrs. Alice Gregory.)

A. I told him, I think, that I would take \$850; I am not positive, but I think that was it.

Q. How long after that was it that you signed the deed for it? A. Not long after.

Q. Two or three days? A. Yes.

Q. Where did you sign the deed?

A. In some office in the Pierce building; I don't know whose office it was.

Q. You never knew whose office it was?

A. I am not positive, but I think it was Kin-kaid's; I am not sure.

Q. Did you go there alone, or did you go with your brother and sisters in law?

A. I remember that Ed went with me, my youngest brother.

Q. Were you paid for this land by check or in cash? A. In cash, I think.

Q. How much was given you, do you remember?

A. No, I don't.

Q. What is your best recollection?

A. \$850, I think it was.

Q. They gave you that much? A. Yes.

Q. Did you pay your brother in the office what you had borrowed from him? A. No.

Q. Did you read this deed over that you signed?

A. I suppose I did; I don't remember.

Q. Did you notice that the consideration was \$950? A. No, I don't think I got that much.

Q. Did you know Mr. Horace S. Rand was the gentleman who was getting the title to this land?

A. No.

(Testimony of Mrs. Alice Gregory.)

Q. You didn't know Mr. Rand? A. No.

Cross-examination.

(By Mr. BUNDY.)

Q. At the time you filed on this claim, the first papers in the land office, Mrs. Gregory, had you had any talk with Wells, or Kinkaid, or the Barber Lumber Company, or anybody else, as to who or what you should do with this land after you got it?

A. No.

Q. At that time had you entered into any agreement, in writing or verbal, express or implied, by which you had agreed to turn this property over to any person, firm, or corporation as soon as you got title to it? A. No.

Q. Had you made any such agreement at the time you made your final proof? A. No.

Q. Did you ever make any such agreement with any person up to the time you actually sold the property? A. No.

Q. At the time your brothers furnished you some of the money with which to prove up did you make any agreement with them by which they were to have any interest in this land? A. No.

Q. Did they have any interest in it by reason of making you such a loan? A. No.

Q. You said at one time—I think by mistake—that the whole \$400 that you paid in the land office at the time you proved up was furnished you by your brothers. Was that a fact or was it not?

A. Why, he gave me the money, but they owed me money at the time.

(Testimony of Mrs. Alice Gregory.)

Q. So that he overpaid you?

A. Yes, because I expected to pay it back.

Q. Mrs. Gregory, the United States Government in this lawsuit we are trying has charged in the complaint in this action that you entered this land for the benefit of and at the request of the Barber Lumber Company and the other defendants named in this action. Is that true or false?

A. No, I did not.

Q. The question is, is that statement true or is it false. It is charged in this complaint, the Government charges you in this complaint in this lawsuit we are trying, that you entered this land at the request of and for the benefit of the Barber Lumber Company and the other defendants in this action. Is that true or false? A. It is false.

Q. It is further charged in this action by the Government, that pursuant to agreement you entered the land and then, at the request of the defendants in this action, that you went to the land office and testified falsely, so that you could get this land and turn it over to the Barber Lumber Company, pursuant to agreement. Is that true or false?

A. It is false.

(Witness excused.)

At this time court adjourned until ten o'clock, A. M. of Saturday, February 20, 1909, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[**Testimony of Edward A. Lockhart, on Behalf of the Complainant.**].

EDWARD A. LOCKHART, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Edward A. Lockhart?

A. Yes, sir.

Q. And you are a doctor? A. Yes, sir.

Q. Medical doctor?

A. D. D. S., Doctor of Dental Surgery.

Q. What was your occupation in 1903?

A. Dentistry.

Q. Where do you reside, Doctor?

A. Wallace, Idaho.

Q. Where did you reside in July, 1903?

A. Idaho City, Idaho.

Q. You located a claim under the Timber and Stone Act in 1903, did you? A. I did.

Q. I show you timber and stone land sworn statement dated July 24, 1903, and ask you if you signed that paper? A. I did.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that paper?

A. I did.

Q. I show you notice of publication, dated July 28, 1903, and ask you if you prepared that paper and filed it in the land office? A. I did, yes, sir.

Q. I show you testimony of Edward A. Lock-

(Testimony of Edward A. Lockhart.)

hart, given on final proof, October 16, 1903, and ask you if you signed that? A. I did.

Q. And the cross-examination attached. Did you sign that? A. I did.

Q. I show you deed, dated November 5, 1903, by Edward A. Lockhart and Nellie, his wife, to Horace S. Rand. Did you sign that deed? A. I did.

Q. And is that the signature of your wife also to that deed? A. Yes, sir, it is.

Q. And you acknowledged it before Burt Resser?

A. I did, yes, sir.

Q. Doctor, do you know who made out this paper for you, or prepared this original sworn statement and the non-mineral affidavit I have shown you?

A. Burt Resser.

Q. At the time you took up a timber claim did you know John Kinkaid?

A. I did, yes, sir.

Q. Did you know Louis M. Pritchard?

A. I did not, no, sir.

Q. Did you know Patrick Downs?

A. Yes, sir.

Q. Did you know of a market for timber in the locality in which you took your claim?

A. Only in a general way.

Q. Did you know who was buying claims at that time? A. The Barber Lumber Company.

Q. Who first spoke with you that you can remember with reference to taking up a timber claim?

A. Mr. Resser.

Q. And did he introduce you to the locator or

(Testimony of Edward A. Lockhart.)

tell you who the locator was? A. Yes, sir.

Q. That was who? A. Patrick Downs.

Q. How far did Patrick Downs live from where you lived, or how far is the property that you located from where you lived?

A. I should judge in a general way about twenty-two or twenty-three miles, somewhere along there.

Q. Where did you go to see Mr. Patrick Downs?

A. I saw him on one of his trips through Idaho City.

Q. What did you say to him?

A. I asked him if I could get a claim; he told me he would bear it in mind, and if I could he would let me know.

Q. How long after that did he get you a claim?

A. I can't remember.

Q. Approximately?

A. Probably a couple or three weeks.

Q. Then did he notify you that he had a claim for you?

A. Why not personally; he saw Mr. Risser and Mr. Risser informed me.

Q. Then you went to take up this claim?

A. Mr. Risser and myself went to take up the claim, yes, sir, went out together.

Q. On the date Mr. Downs arranged for you to take it up? A. Yes, sir.

Q. Just you and Mr. Risser went together with Mr. Downs, or were there others with the party?

A. I think there were two others with the party.

Q. You say the claim was about twenty-two

(Testimony of Edward A. Lockhart.)

miles from Idaho City?

A. Guessing roughly, I should judge it was that.

Q. Did you go to any camp and stop, or did you just go up there and back?

A. No, we stayed overnight with somebody that lived along the road—he is a noted character—

Q. Kempner's ranch?

A. Kempner's ranch, yes; we took horses from there.

Q. The next morning did Mr. Downs take you out to the claim you were to locate on?

A. Yes, sir.

Q. Did you pay him at that time, or later, for his services?

A. I paid him at that time.

Q. How much did you pay him?

A. \$25.

Q. Then you came to Boise and filed these papers I have shown you?

A. I don't remember now; I don't think I did.

Q. How long afterwards did you file them?

A. Do you mean appear before the land office to file?

Q. File your first papers, yes.

A. I couldn't say; I don't remember.

Q. Do you remember filing?

A. No, I don't.

Q. You filed this sworn statement in the land office. Did you file it there or didn't you (showing witness paper)?

A. No, sir. It was filed before the recorder up there, wasn't it? I don't think I appeared but the one time before the land office. Mr. Risser tended

(Testimony of Edward A. Lockhart.)

to the legal business, and I think the papers were made out there at his office.

Mr. BUNDY.—The recorder of Boise county?

A. Yes, sir.

Mr. GORDON.—You went before Miss Kate Gorman?

A. Yes, sir.

Q. And executed these papers and somebody else filed them for you?

A. Yes, sir.

Mr. FRASER.—I think the law provides that a person can go before the recorder and execute the papers.

Mr. GORDON.—Q. Then did you receive a notice that you had to make your final proof, or who notified you?

A. The notice was sent there, and I took it to the paper, or it was sent to the paper—I don't remember exactly—and it was published.

Q. Do you remember whether you paid any fees for filing this or not? Did you pay Miss Gorman any money for this service in the matter?

A. Not personally no; whether Mr. Risser did or not I don't know.

Q. Did Mr. Risser pay the land office fees too?

A. No, I paid that.

Q. How much was that?

A. Eleven or twelve dollars.

Q. And you gave that to Mr. Risser?

A. That was given—at the time of the final proof, do you mean?

Q. No, I mean before the final proof.

A. Mr. Risser tended to that part of it.

Q. You didn't give him any money to pay for

(Testimony of Edward A. Lockhart.)

that? A. No.

Q. Do you remember the occasion of going to the land office to make your final proof?

A. Yes, sir.

Q. Who notified you of the time you were to make your final proof? A. Risser.

Q. And did you see Mr. Kinkaid before you made your final proof?

A. Had I seen him? Yes, I had seen him.

Q. Did you have any talk with him about getting any money from him?

A. I will tell you in a general way; I first made arrangements with another party up there, and Mr. Risser said that he had been down and seen Mr. Kinkaid, and he says "We can get it there," so I dropped this other matter.

Q. Then you went to Mr. Kinkaid?

A. Yes, sir.

Q. Do you remember how much you received from Mr. Kinkaid?

A. The amount of it—four hundred and some odd dollars.

Q. Do you remember whether you gave him a note or any security for that?

A. I remember signing some papers; I don't remember whether it was a note, or what.

Q. Do you remember whether it was a deed?

A. No, it was no deed.

Q. Was it an agreement?

A. It may have been a note for all I remember now.

(Testimony of Edward A. Lockhart.)

Q. How large was the paper you signed, do you remember? A. It was rather a small paper.

Q. Did he ever give you that paper back?

A. No, sir.

Q. Do you remember whether Mr. Kinkaid gave you that \$400 and some odd dollars in check or in cash? A. He gave it to me in cash.

Q. Did Mr. Risser go with you to Mr. Kinkaid's office to get it, or did you go alone?

A. Yes, Mr. Risser had both the amounts; I never received it personally.

Q. Do you mean he had the amount for yours and the amount for his claim too? Is that right?

A. Yes, sir.

Q. Then you went from Mr. Kinkaid's office to the land office?

A. No; this was a day or two previous to that.

Q. And then you went to the land office and paid that money in? A. Yes, at that time.

Q. Was anything said by Mr. Kinkaid or Mr. Risser as to where you should say you received that money, or whose money it was?

A. No; it was just like borrowing it from any other broker.

Q. Then you went to the land office and paid that in, and they gave you a receipt for it?

A. Yes, sir.

Q. Now, how long after that was it that you started negotiations for the sale of this property?

A. Oh, some three or four months.

Q. Did Mr. Kinkaid say anything to you when

(Testimony of Edward A. Lockhart.)

he gave you that money about buying the property?

A. No, he just said this: "When you get ready to sell I will make you an offer on the piece of property."

Q. Did he tell you how much that offer would be?

A. Not at that time.

Q. How much longer after that was it that he told you how much he would give you for it?

A. Just three or four weeks before we sold Mr. Risser came down and saw Mr. Kinkaid and got his offer.

Q. How much was that?

A. \$800.

Q. Did you ever see Mr. Kinkaid and did he make you an offer?

A. He never made me an offer personally, no, sir.

Q. Did he make you an offer and tell you that if you could sell it to anybody else or do better than that that it would be all right?

A. Yes, sir.

Q. When was that?

A. That was at the time Mr. Risser saw him. He didn't make this offer to me personally. Mr. Risser came down, as I say, and saw Mr. Kinkaid, and got his offer. So Mr. Risser told us if we could do better than that to do so. After that, before selling, we came down and spent two or three days around town here seeing different parties, went to one or two mills, one mill in particular. We found we could not sell it any better.

Q. And you went to Mr. Kinkaid and sold?

A. Went to Mr. Kinkaid and sold.

Q. For \$800?

A. Yes.

(Testimony of Edward A. Lockhart.)

Q. And he took out the money that you owed him and gave you the difference? A. Yes.

Q. Do you remember some questions that were asked you at the land office when you made your final proof? A. Some, yes.

Q. Do you remember this question being asked you: "Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" To which question the answer was: "Yes." Do you remember that?

Q. That was true, was it? A. Yes, sir.

Q. The next question: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer: "Money earned in business. Have had same three or four years." Do you remember that question and answer? A. Yes.

Q. Was that true?

A. No, sir; it wouldn't have been true at that time.

Q. "Have you kept a bank account during the past six months, and if so, where?" Answer: "Yes. Boise County Bank, Idaho City." Is that correct?

A. Yes, sir.

Q. Do you remember whether the deed you signed for this property was prepared when you went to Mr. Kinkaid's office, or did he prepare it while you were there?

A. That deed, I think, was prepared by Mr. Risser; I don't remember.

(Testimony of Edward A. Lockhart.)

Q. Do you know Mr. Risser's handwriting?

A. Yes.

Q. That is Mr. Risser's handwriting, is it?

A. Yes, I think that was made out and sent up and we signed it there before Mr. Risser as notary public.

Q. Was the money sent along with it?

A. Yes, sir.

Q. Do you remember how much money was sent to you? A. No, I do not, just exactly.

Q. Do you remember whether it was a check, or whether it was sent to you through Mr. Risser?

A. Mr. Risser.

Q. Mr. Risser gave you the money?

A. Yes.

Q. Do you remember how much Mr. Risser gave you when you signed the deed?

A. I couldn't swear to the amount.

Q. Was it \$250?

A. I can't say; I couldn't swear to my own knowledge.

Q. See if you can remember. Was it between \$200 and \$250?

A. The commission was taken out for Mr. Kin-kaid, of course.

Q. Do you mean the money you got from him?

A. Yes, sir; his commission for selling it.

Q. What is your best recollection of the actual money you received?

A. Of course, his money was taken out, and the commission, which was \$50, they deducted from

(Testimony of Edward A. Lockhart.)

\$800.

Q. Would leave you \$350? A. Yes.

Q. Was anything else taken out?

A. No, sir.

Q. Did your wife take up a timber claim?

A. She did, yes, sir.

Q. Has she been summoned as a witness, do you know? A. No, sir.

Mr. BUNDY.—She took a claim away over in the other country, nothing that is involved here.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Edward A. Lockhart, dated July 24, 1903; the non-mineral affidavit of the same date; the testimony of Edward A. Lockhart, given on final proof, dated October 16, 1903; and the cross-examination attached, all of which have been identified by Mr. Lockhart as having been signed by him; the notice of publication, dated July 28, 1903; the testimony of the other witnesses given on final proof; the receiver's receipt and the register's certificate, dated October 16, 1903; the deed, dated November 5, 1903, made by Edward A. Lockhart and Nellie, his wife, to Horace S. Rand, consideration \$800, which has been identified by Edward A. Lockhart as having been signed by himself and wife; certified copy of the patent, dated August 23, 1904; all to the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section 1, and the northeast quarter of the northeast quarter of section 12, township 6 north of range 7 east, Boise Meridian.

(Testimony of Edward A. Lockhart.)

(Papers marked Plaintiff's Exhibit No. 107A to 107N, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Doctor, this Mr. Risser that you speak of is an attorney at law? A. Yes, sir.

Q. Residing at that time at the same place you did? A. Yes, sir.

Q. And the preliminary part, making out papers and things of that kind was attended to by him as your attorney? A. Yes, sir.

Q. You say he was the first one that suggested to you the advisability of exercising your right?

A. Yes, sir.

Q. Then that subsequent to that either you or he arranged with Mr. Downs about locating?

A. Yes, sir.

Q. And ultimately were located by Downs?

A. Yes, sir.

Q. And the preliminary papers prepared by Mr. Risser which have been shown you were signed by yourself and ultimately filed with the recorder, and subsequently in the land office? A. Yes, sir.

Q. Now at the time you filed that first paper and swore to it, which was the inception of your entry, you said, among other things, doctor, "that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any

(Testimony of Edward A. Lockhart.)

person except myself." At the time you made your filing that was absolutely true, was it not?

A. Yes, sir.

Q. At that time there existed no agreement of any kind? A. None whatever.

Q. Had anyone suggested to you that you transfer it to anybody? A. No, sir.

Q. At that time had you any thought of transferring it to any person? A. No, sir.

Q. Was there any such agreement in force at the time you made your final proof? A. No, sir.

Q. At the time you negotiated with Mr. Kinkaid for money was any agreement made, of any kind or character, by which Mr. Kinkaid acquired any right, title, or interest in the land by reason of making you that loan? A. No, sir.

Q. Was such a thing suggested? A. No, sir.

Q. What was your understanding of the arrangement with Mr. Kinkaid by which he advanced you the money?

A. Just as though it was through any broker.

Q. Did it have any reference whatever to a sale of this property? A. No, sir.

Q. You say before going to Mr. Kinkaid, or hearing from Mr. Kinkaid, you were arranging elsewhere? A. I was, yes, sir.

Q. Just state what.

A. As I say, we put in two or three days seeing different parties.

Q. With reference to getting a loan? Didn't you say you had expected to get it somewhere else?

(Testimony of Edward A. Lockhart.)

A. Yes, sir.

Q. State what arrangements you expected to make.

A. I went to a party in Idaho City, and I asked him whether I could have some money in this business, and he said he thought I could, that he would let me have it.

Q. Then before that negotiation was closed you heard through Mr. Risser that Kinkaid had money to loan? A. Yes, sir.

Q. So that you made the deal with Mr. Kinkaid?

A. Yes, sir.

Q. After you had proved up did Mr. Kinkaid come to you and try to pay you money or assert that he had any right to buy it because of the fact that he had loaned you the money? A. No, sir.

Q. Was there any reference by either you or Kinkaid to the matter of sale on account of this loan?

A. Only as I have testified. Of course when Mr. Risser came down he said that after proving up, he said, "When you get ready to sell this piece of land allow me to have an offer on it; I will make you an offer."

Mr. KEIGWIN.—Q. Who said that?

A. Mr. Kinkaid.

Mr. BUNDY.—Then when he did make the offer of \$800 it was accompanied by the proposition that if you could do better—

A. Told Mr. Risser—I couldn't swear to that only by hearsay, what Mr. Risser told me. He said, "If you can do better, do so."

(Testimony of Edward A. Lockhart.)

Mr. FRASER.—Q. You tried to do better?

A. That is what I say, yes, sir, we put in two or three days seeing parties.

Mr. BUNDY.—Q. Mr. Kinkaid undertook to sell this for you? A. Yes, sir.

Q. Was there an agreement that he should be paid a commission for selling it? A. Yes, sir.

Q. What was that commission?

A. It was \$50.

Q. So that when Mr. Kinkaid bought it he took out the commission that was due him for selling your land, and also took out the money he had advanced to you as a loan? A. Yes, sir.

Q. The balance was paid to you?

A. Yes, sir.

Q. It is charged in this complaint in this action against the Barber Lumber Company and others that you entered into a conspiracy with the Barber Lumber Company and the other defendants in this action to defraud the United States by means of this timber and stone entry you made. Is that true or false as far as you are concerned?

A. It is false as far as I am concerned.

Q. It is further stated in this complaint that you made this entry for the benefit of the Barber Lumber Company, and at the request of the Barber Lumber Company, and that the Barber Lumber Company or the other defendants, some of them, solicited and induced you to go to the land office and testify falsely, for the purpose of getting the land to turn over to these defendants. Is that true or false as

(Testimony of Edward A. Lockhart.)

far as you are concerned? A. That is false.

Q. There is one thing here that is of no interest to me at all, or to my client, but, Doctor, I don't like to leave this record the way it is here unless you want it that way, so I will ask you about this cross-examination that the officers of the land office assumed to put you through. You testified that you expected to pay for this land with your own money and did pay the filing fees with your own money?

A. I borrowed it. I considered it my own money of course.

Q. I think so. I think if it wasn't you wouldn't be in a very good box to be spending any of it. That is what you meant, did you?

A. Yes, sir, that is what I meant by it.

Q. This other question as to where you got this money and how long you had had it. The answer is, "Money earned in business; have had same for three or four years." I will ask you, doctor, if it isn't a fact that you borrowed this money upon credit you had established by your work, and credit you had established by accumulations from your work in the last three or four years, and if that isn't what you meant by saying that you had had the money that length of time? A. Yes, sir.

Q. You had the credit? A. Yes, sir.

Q. And a man may have credit based on his property and earnings, and I assume that if he can go to the bank and get \$5,000 he is justified in saying it is the result of his earnings. Was that your under-

(Testimony of Edward A. Lockhart.)
standing?

A. That was my understanding, yes, sir.
(Witness excused.)

**[Testimony of George W. Butler, on Behalf of the
Complainant.]**

GEORGE W. BUTLER, produced as a witness
on behalf of the complainant, being first duly sworn,
testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mr. Butler?

A. In South Boise; I guess it is South Boise—
just across the bridge, but it is in the village of
South Boise.

Q. How long have you resided there in that lo-
cality?

A. About eighteen years; I think I have been
here longer than that.

Q. You have resided in and around Boise about
eighteen years? A. Yes, sir.

Q. What is your occupation?

A. I am in the ice and street sprinkling business.

Q. Were you in the same business in September,
1902? A. Yes, sir.

Q. You took up a claim under the Timber and
Stone Act in 1902, I believe?

A. Yes, sir, I filed on one in 1902.

Q. I show you timber and stone land sworn state-
ment, dated September 23, 1902, and ask you if you
signed that paper?

(Testimony of George W. Butler.)

A. Yes, that is my signature.

Q. I ask you if you filed the notice of publication dated September 23, 1902?

A. I guess I did, if it is in that statement there, about that time.

Q. I show you non-mineral affidavit of the same date and ask you if you signed that paper?

A. Yes, that is my signature.

Q. I show you testimony given on final proof by George W. Butler, May 4, 1903, and ask you if you signed that paper?

A. Yes, sir.

Q. And the cross-examination attached, did you sign that?

A. Yes, that is my signature.

Q. I show you deed, dated May 16th, 1903, by George W. Butler and Louisa Butler, his wife, to Horace S. Rand.

A. This is my signature and this is my wife's.

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

A. Yes, I think we did. I don't remember, but I think it was Pritchard. I wouldn't be positive about that, but I think we did.

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

A. You mean when I went up?

Q. Yes. A. It was my wife.

Q. You say she spoke with you or went with you?

A. No, she didn't go with me. She was the one that spoke to me about taking up the claim. Of course, I had been away from town quite a little while, and naturally we talked over the business, and she told me about her taking up a claim.

(Testimony of George W. Butler.)

Q. She had already taken one up?

A. Yes, sir.

Q. Did you know who was going to locate you before you went up there?

A. She told me who had located her, yes.

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

A. No, sir.

Q. Did you know Mr. John Kinkaid at that time?

A. No, sir.

Q. Did you go with a party?

A. Yes, sir, I went with Walt Joplin, if I remember, and someone else, and Edward Bush.

Q. How did you know they were going?

A. Bush was my brother in law, and Joplin lived just across the road from me.

Q. Did you talk with Joplin about taking up a claim?

A. Probably I did. I expect we did, we lived right there together, and when I got ready to go of course I wanted someone to go with me.

Q. Did you arrange for him to go with you?

A. I can't say about that. I think I had my rig, and I think we had his horses, and I think we went together, the three of us. I know we had my spring wagon, but I don't remember whether we had my team or his.

Q. Where did you go?

A. We went to the Kempner ranch.

Q. Did you meet Mr. Downs there?

A. Yes, sir.

Q. Did you have any talk with him before you

(Testimony of George W. Butler.)

went out to view the land as to whether or not he had claims he could locate you on?

A. I suppose we did; I can't remember about that, there was so many there, but I suppose I asked him. I have an idea I did ask him.

Q. Did you have any arrangement about paying him anything for it?

A. No, sir, I did not, until after he located us.

Q. Did he take you out to a claim and ask you whether you liked it, or did he show you a claim and point that out as the one you were to take?

A. There was quite a bunch of us went around with him all day, and he gave me the preference of the claim I wanted. I saw quite a number of claims, was with him all day.

Q. You took one of those he showed you?

A. Yes, sir.

Q. Did he show you any one claim and you told him you didn't want that one?

A. I can't remember about that. I suppose he did, because we was together all day. There was a bunch of us running lines; he got three or four of us to help him run some lines.

Q. Did he give you the description of that property there?

A. He gave me the numbers, yes, sir.

Q. Did he write them on paper for you?

A. Yes, sir.

Q. Did he do the same for Mr. Joplin?

A. I think he did; I think he gave him the numbers.

(Testimony of George W. Butler.)

Q. You returned to Boise? A. Yes, sir.

Q. Did you pay your location fee before you returned to Boise, or did you pay that afterwards?

A. If I remember right, I paid it to Mr. John I. Wells, in his office.

Q. That is John I. Wells, the gentleman here?

A. Yes, I think I did; I wouldn't be positive, but I think so.

Q. Do you know who prepared your first papers for you, your filing papers?

A. I think Pritchard; I think it was.

Q. Pritchard or Kinkaid?

A. No, it wasn't Kinkaid, I know; it was Pritchard, I am positive.

Q. Who told you to go to Pritchard's office?

A. Well, sir, I don't know whether it was Wells, or who it was; I can't say.

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

A. Yes, he give me the numbers; I think it was put in an envelope and sealed up; maybe it was or maybe it wasn't, but I had it in an envelope; I wouldn't say whether it was sealed or not; I think it was; I ain't sure.

Q. He told you to take that to Wells' office?

A. Yes, and to pay my location fees there; he told me to pay Wells; I think he did.

Q. Was Mr. Joplin there with you when you went to Wells' office?

A. I don't remember of him; no; he might have been there, but I don't remember of him.

(Testimony of George W. Butler.)

Q. Do you remember whether anyone was at Wells' office when you went there with that envelope, other than yourself?

A. I don't remember of anyone.

Q. And had you met Mr. John Kinkaid at that time?

A. I met him up there when we was locating the claims; he was there.

Q. Did he come back with you?

A. No, sir; he might have; he was here right away after we got back, but he didn't go in my rig, and I didn't see him after I left Kempner's ranch.

Q. Did you go to Mr. Wells' office the day after you returned from Kempner's?

A. I don't remember whether I did or not.

Q. How near?

A. I must have went within a day or two anyway.

Q. Did Mr. Wells have the filing papers for you there, or did he send you over to Mr. Pritchard's office?

A. I think I got them at the land office.

Q. Do you know who brought them to the land office to you? A. I don't know.

Q. I mean the blanks filled in that you filed.

A. That is what I say; I think I got those papers at the land office.

Q. Where did you get the papers that were filled in? Did you take them to Pritchard's office?

A. Yes, I think I got them at the land office and took them to Pritchard's office, if I remember right; I think I did.

(Testimony of George W. Butler.)

Q. Did you see Mr. Kinkaid at Pritchard's office?

A. No, sir, I did not.

Q. Did you see Mr. Kinkaid before you filed?

A. No, sir.

Q. Did Mr. Kinkaid go to the land office with you?

A. No, sir. I didn't know Mr. Kinkaid. The first time I remember meeting Mr. Kinkaid was when my wife and I went up and sold her claim. I might have met him before that, but I mean when she sold her claim; that is the first time I remember seeing Kinkaid. I might have seen him before, but I don't remember of it.

Q. This first paper, the sworn statement, which you filed, and which you identified as having been signed by you, I notice that in the certificate of the register it states that you had been satisfactorily identified before the register by John Kinkaid, attorney. Does that refresh your recollection?

A. Was this the first filing?

Q. That is the first paper.

Mr. BUNDY.—That is some certificate of the land office men, isn't it?

A. Well, sir, I can't remember; I don't remember; I am not sure.

Mr. BUNDY.—Did you know Mr. King at the land office? A. Yes, sir.

Q. You didn't have to be introduced to him at that time, did you?

A. I don't think so; I have seen Mr. King quite often. You said this is John Kinkaid, didn't you?

(Testimony of George W. Butler.)

Q. John Kinkaid. It says he was introduced to King by Kinkaid.

A. I might have been, but I tell you I don't think I know Kinkaid, on the square I don't; I don't think I knew Kinkaid for quite a while after that.

Q. That is just a form?

A. On the square, I don't remember.

Mr. GORDON.—Didn't I understand you to say that you met Kinkaid up at Kempner's when you were locating your claim? A. No, sir.

Q. Was it Pritchard you met up there?

A. No; I mean I met Wells. I will take that all back; I meant John I. Wells, that was who I meant. No, I didn't know Kinkaid. I have got the names kind of mixed up. That is wrong; I never met Kinkaid up there; it was Wells who I thought I was saying.

Q. And he was there at the same time that you were there locating?

A. You mean Wells?

Q. Yes. A. Yes, Wells was there.

Q. Was he out to the claim with you?

A. Yes.

Q. Did he come home the same time you did?

A. He was here shortly afterwards, but I never saw him after we left Kempner's ranch until I went to his office. I didn't see him on the road coming down.

Q. Then Mr. Downs didn't give the numbers to Wells up there, but gave them to you in a letter?

A. Yes, sir, he gave them to me in a letter.

(Testimony of George W. Butler.)

Q. You didn't give them to Wells until you got down here? A. No, sir.

Q. Did Mr. Wells go over the claim with you?

A. Well, about this particular claim that I took, I don't believe he did, but we was together most of the day, but I wouldn't say whether he went to this particular claim of mine or not. I think though likely he was with the crowd; I ain't sure.

Q. You afterwards went to the land office to make your final proof?

A. Yes, later on, but I was notified before this time that there was something wrong with the filing; I can't tell you what it was.

Q. Did you know of any market at the time you located this claim?

A. No, I didn't know of any market, no, sir.

Q. Did you know of anybody who had sold their claim?

A. No, I think not; I might, there was some timber located earlier, the year before, or some time before.

Q. Did you know to whom those people were selling?

A. No, sir, I did not, because I didn't think any of the proposition.

Q. Did you have any idea what was the value of the timber on this land?

A. The market value at that time?

Q. Yes.

A. No, I don't know as I had any real idea. Of course I knew it would be worth money; the amount,

(Testimony of George W. Butler.)

of course, I did not know.

Q. Did you know of any prospective purchasers of timber land in that locality at that time?

A. No, sir.

Q. Do you remember how much money you paid into the land office the day you made your final proof?

A. Four hundred and something; I don't remember the amount now.

Q. Did your wife make her final proof the same day? A. No, sir.

Q. Did your sister in law make her final proof the same day? A. No, sir.

Q. Did you pay the money into the land office in cash or in check? A. I paid it in cash.

Q. Did you draw it out of the bank that day?

A. Yes, sir.

Q. Which bank?

A. The Bank of Commerce. The reason I remember about paying it, I started to give Mr. Garrett a check, and after I gave him the check he told me I had better go and draw the money myself.

Q. Had you put that money in the bank that you drew on recently, or just prior to that time?

A. I don't think so, because I had money in there off and on; sometimes I owed the bank and sometimes I didn't.

Q. Did you give a note to the bank just about that time to make your account large enough to draw on for this?

A. I gave them a good many notes, but I don't

(Testimony of George W. Butler.)

remember of giving them any at that time, but then they have had my notes quite often in the bank.

Q. Do you remember whether or not a day or two before that you borrowed enough from that bank, and had your account credited with it, to cover the amount of this check?

A. Well, sir, I don't remember. I know I was always borrowing money of them; sometimes I had money there and sometimes I didn't. If I run short I give them a note. I give them a note quite often there.

Q. You made your final proof May 4, 1903, and you received your receipt. How long after that did you start negotiations for the sale of this land?

A. You mean how long was it before I sold it?

Q. Yes.

A. I don't remember; as well as I do remember though it was about two or three weeks, something like that; I wouldn't say, but I think two or three weeks.

Q. Had you had any talk with anybody about selling it before the day you sold it?

A. Yes, sir.

Q. Whom had you talked with?

A. As well as I remember, George Bayhouse was rustling someone to buy up a number of claims there, and we could get a little more money out of it than the Kinkaid people was paying, provided he could work up the deal. I think it was some Portland outfit—I couldn't say now.

Q. That was how long before you sold?

(Testimony of George W. Butler.)

A. It was just a few days; when the deal fell through he told me he couldn't take the property.

Q. How long before the deal fell through had you talked to him about it?

A. I should judge it was a week. As well as I remember that was as long as he wanted an option on my claim, if I remember.

Q. You made your final proof on May 4, 1903, and you sold twelve days after that. Now, Bayhouse hadn't said anything to you about buying this, nor had anybody else, until after you made your final proof?

A. No, sir.

Q. And you had never heard of anybody buying any timber?

A. Until I made the final proof?

Q. Yes. A. Yes, sir, I had.

Q. Who had you heard was buying?

A. My wife sold her claim before this time.

Q. Who did she sell to?

A. John Kinkaid paid the money, but I don't know who she sold to any more than I know who I sold to; I don't remember now.

Q. Who did you close the deal with?

A. Closed it with Kinkaid.

Q. How much did you get for your property?

A. I think I got \$900 for my property. I am not sure, but that is what it seems to me like I got; that is what I think I got.

Q. You read the deed over?

A. I suppose I did, yes.

Q. Did you notice that the consideration in the

(Testimony of George W. Butler.)

deed was \$1000?

A. No, I don't think it was. It might have been, but I don't think it was. I wouldn't be sure, but I think I got \$900; that is what I kind of think I got, but I may be mistaken. But it was either \$900 or more. I didn't get \$1000, I know that much.

Q. Did you know Horace S. Rand, the grantee in this deed? A. No, sir.

Q. Had you ever heard of him?

A. No, I don't think so.

Q. And previous to this you had joined in a deed with your wife to convey her property to Kinkaid?

A. Yes, sir.

Q. I mean in Kinkaid's office.

A. In his office. I don't think—it might have been deeded to Kinkaid, I don't remember now.

Q. How long before that was it that you made your final proof that she sold hers?

A. It seems to me like it was along in the winter, possibly January or February; I don't remember; I have no way of remembering.

Q. Did Kinkaid know at that time that you had filed on a claim?

A. I suppose he did; not that I know of, but I think he did.

Q. Did he say anything to you about buying your claim at that time?

A. No, I think not; I don't think so.

Q. Did Kinkaid pay you in cash or by check?

A. I think he paid me in cash. It seems to me like I remember something about a check, but I can't

(Testimony of George W. Butler.)

tell you anything about it. It seems to me like he might have paid my wife in check.

Q. Did he ever ask you for another deed, or did you ever make another deed to this property?

A. No, I don't think so. If I did, it has slipped my mind. I don't think so. I can't remember.

Q. You were to have proved up on your claim, according to your advertisement, on the 22d of January, 1903, if I understand your advertisement, and you couldn't make your final proof at that time?

A. Yes, sir, there was something wrong some way. There was three claims of us that there was something wrong, and we had to go back.

Mr. KEIGWIN.—You mean you had to go back to the land?

A. Yes, sir, we had to go back to the land.

Mr. GORDON.—Q. Do you remember the reason you gave at the land office the first time, in January, 1903, as the reason you couldn't make your proof?

A. I didn't make any excuse. They notified me at the land office that there was something wrong some way, and it had to be re-advertised, or something, and that I would have to go back. I don't know what it was; I don't believe I ever did know.

Q. Do you remember going there and making an affidavit? A. That I couldn't prove up?

Q. Yes.

A. No, sir, I don't remember of it.

Q. I show you affidavit sworn to by George W. Butler, January 29, 1903, and ask you whether or not you made that affidavit before the register, and

(Testimony of George W. Butler.)

signed that paper. (Hands witness paper.)

A. Well, sir, maybe I did, but I don't remember a thing on earth about it.

Q. Is that your signature?

A. Yes, that is my signature. I must have been there sure, but I don't have the least remembrance of it.

Q. "United States Land Office, Boise, Idaho. State of Idaho, County of Ada,—ss. George W. Butler, being first duly sworn, deposes and says: That he is a citizen of the United States over the age of twenty-one years, and the identical person who, on the 23d day of September, 1902, made Timber and Stone Sworn Statement No. 614, for the purchase of the east half of the southeast quarter, and the southwest quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section 17, in township No. 7 north of range No. — east, of Boise meridian, for which he was to offer proof on the 22d day of January, 1903; that he was unable to prove up on said entry on the 22d day of January, 1903, and is still unable to prove up on said land for the reason that he has no money; that he and his brother, Edward E. Butler, are engaged in the ice business, and they were obliged to use the money in the ice business; that it cost them \$200 more to put up ice this year than it ever did before; that affiant loaned one, Fred Dolan, the sum of \$150, and the said Dolan has not repaid the same; that affiant has contracted to sell 125 tons of hay, but that he has not been able to have the hay baled, and conse-

(Testimony of George W. Butler.)

quently cannot deliver the said hay, and therefore cannot get the money for it; that bad weather is the reason the hay could not be baled; that affiant asks that he be given further time to prove up on said land, and that a new time be set for proving up, and a new notice of publication be published.

GEORGE W. BUTLER.

Subscribed and sworn to before me this 29th day of January, 1903.

HARRY J. SYMS,
Register.

Do you remember making that affidavit?

A. No, sir, I do not. Of course, I guess I made that affidavit, but I don't remember a thing of it.

Q. Do you know the signature of your brother, Edward E. Butler? A. Yes, sir.

Q. Is that Edward E. Butler's signature to the affidavit I have just read?

A. I think it is.

Q. Then do you remember whether you advertised again or not?

A. Yes, sir, I went up there and seen the land and re-advertised.

Q. Then you had to have a further extension of time, didn't you, after you advertised the second time?

A. No, sir, I think not. I don't have any remembrance of it.

Q. Do you remember that you republished, and that you were to make final proof on the 24th of April, 1903, and that, for some reason, you couldn't

(Testimony of George W. Butler.)

make your proof that day, and had to have another continuance?

A. I think that is the continuance I had reference to. Maybe the first time that might be right, this first statement. I was thinking that was the last time. I surely didn't readvertise after that statement there; I don't remember anything about that statement at all; but there was something or other wrong some way, that we had to go up and look at the land, but what it was I can't tell you.

Q. I will ask you to read affidavit dated May 4, 1903, signed George W. Butler, and ask you if you signed that affidavit and swore to it before Edward E. Garrett. (Hands witness paper.)

A. I guess I did; that is my signature. I have no remembrance of it; I don't have any remembrance of it, but I guess I made it all right, or my signature wouldn't be there.

Q. Your witnesses were Edgard E. Bush, Walter Joplin, Patrick H. Downs, and John I. Wells.

A. The last time? I think those were the witnesses the first time, if I remember.

Q. Then you went up a second time, did you?

A. Yes, sir.

Q. Who went with you that time?

A. Frank Weasel, Walter Joplin and Ed. Bush, and then there was another party.

Q. Why did Walter Joplin go up with you at that time?

A. There was something the matter with his claim, about the same as mine, if I remember right;

(Testimony of George W. Butler.)

I know we had to go back.

Q. Did your brother Edward go back at the same time? A. No, I don't think so.

Q. Did he have to go back because his claim was held up?

A. He had taken up a claim, you know, long before that. He never was with us at all; he had taken up a claim before that.

Q. I will ask you if your witnesses on both occasions were not the same.

A. All the way the same?

Q. Yes, on both occasions the same.

A. No, sir, I don't think.

Q. I notice in your notice of publication of September 23, 1902, the witnesses are Edgar' Bush, Walter Joplin, Patrick H. Downs, and John I. Wells. I notice that the witnesses on republication, given January 29, 1903, are Edgard E. Bush, Walter Joplin, Patrick H. Downs, and John I. Wells. I will ask you if this notice of publication, dated January 29, 1903, whether or not that was prepared for you by John I. Wells.

A. Well, sir, I don't remember a thing about it; I don't, on the square. This is the general notice?

Q. Yes.

A. Well, sir, I don't remember it.

Q. You filed that notice yourself, didn't you?

A. I suppose I did; I don't remember it; I guess I did.

Q. Do you remember who prepared it for you?

A. No, sir, I do not.

(Testimony of George W. Butler.)

Q. Did you go to see Mr. Wells about this after you made your first notice and before you made your second notice?

A. I don't think I did; I don't remember of it; possibly I did. I don't think so, because I wasn't very well acquainted with Wells. That was in January?

Q. Yes.

A. Of course I was acquainted with him in January.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated September 23, 1902, of George W. Butler, identified by him as having been signed by him; the notice of publication of the same date, also identified by George W. Butler as having been signed by him; the notice of republication dated January 29, 1903, also identified by Mr. Butler as having been filed by him; non-mineral affidavit, dated September 23, 1903, identified by George W. Butler as having been signed and filed by him; the testimony of George W. Butler given on final proof, dated May 4, 1903; and the cross-examination attached identified by George W. Butler as having been signed by him; the affidavits subscribed and sworn to by George W. Butler, dated January 29, 1903, and May 4, 1903, respectively, identified by George W. Butler as having been signed and sworn to and filed in the land office by him; the receiver's receipt and the register's certificate, dated May 4, 1903; the deed, dated May 16, 1903, made by George W. Butler and Louisa, his

(Testimony of George W. Butler.)

wife, to Horace S. Rand, consideration \$1000 identified by George W. Butler as having been signed by him and his wife Louisa, and acknowledged before Louis M. Pritchard; certified copy of the patent, dated July 26, 1904, and the testimony of the other witnesses given on final proof; all to the east half of the southeast quarter, and the southwest quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section 17, township 7 north of range 8 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 108A to 108Q, inclusive.)

Mr. KEIGWIN.—Q. Mr. Butler, after you first went to Mr. Kinkaid proposing to sell your land to him, how long was it before you and he came to an agreement?

A. I thought it was about three weeks, but this gentleman says it was twelve days from the time I got my final proof until I sold; I thought it was longer than that.

Q. It was some little time? A. Yes, sir.

Q. Do you remember how much he offered you when you first went there?

A. No, sir, I don't. I think it was \$850 that he offered me.

Q. He was willing to pay you \$850 when you first went there? A. Yes, sir.

Q. And you held out for more?

A. Yes, sir.

Q. Did you get the additional price you wanted?

A. No, we thought we would get about \$1800

(Testimony of George W. Butler.)

providing this Portland outfit would take hold of the claims; as well as I remember, it was \$1200. Mr. Bayhouse would remember more about that than I would, probably, but he wanted a group of claims, and he wanted me to hold it awhile, but the deal fell through.

Q. Mrs. Butler, your wife, sold her claim some little time before that? A. Yes, sir.

Q. How much did she get?

A. I think she got \$850.

Q. Do you remember what reason you gave to Mr. Kinkaid why you wanted more?

A. Well, I thought the land was worth more.

Q. Why?

A. The way my claim was located there I thought if I could get more it was worth more.

Q. It was the same area, wasn't it?

A. Yes, sir.

Q. The same timber?

A. Yes, sir; the same kind of timber.

Q. Didn't you give as a reason to Mr. Kinkaid that you had been put to some extra expense in getting title?

A. I wouldn't say that I did, or that I didn't. I don't remember that; I don't think, though, that I did.

Q. You had been obliged to make an extra trip to the land? A. Yes, sir.

Q. And that cost you about \$21?

A. I don't remember; as well as I remember, it cost us about \$25 or \$30, I couldn't say.

(Testimony of George W. Butler.)

Q. And you told Mr. Kinkaid that you thought you ought to have some additional price on account of the additional expense.

A. I have no remembrance of it.

Q. Did you try to sell the land to anybody but Mr. Kinkaid?

A. Yes, sir; I didn't try, but the other parties did.

Q. You didn't talk to the other parties?

A. No, sir.

Q. Do you know Mr. Andrew F. Joplin?

A. Yes, sir.

Q. And he has a brother, hasn't he?

A. Yes, this Walter Joplin.

Q. There are two of them? A. Yes, sir.

Q. Did you suggest to them that they take one of these timber land claims?

A. Well, I don't know; possibly I did. We lived right across the road from one another, and they worked for me a good deal, and the chances is that I did say something to them, but I don't have any remembrance of it; it would be natural for me to do it.

Q. Did you tell them Kinkaid would buy the land if they would take it up? A. I did not.

Q. Did you at any time, before or after they made their proof, suggest to them that they could find a purchaser in Mr. Kinkaid?

A. I don't think so; I don't remember of it, but I might have told them; I don't have any remembrance of it whatever.

(Testimony of George W. Butler.)

Q. Did you tell either of the Joplins that if they didn't have the money to pay for the land Mr. Kinkaid would furnish it to them?

A. No, sir; I did not; I don't think so.

Q. Did you tell them that they would have to use their own money and couldn't borrow it from Mr. Kinkaid?

A. I might have advised them to use their own money; if I advised them at all, of course, that would be naturally what I would advise them, they being friends of mine.

Q. Why would you naturally advise them to use their own money rather than borrow the money?

A. I think anyone had better use his own money than to borrow it if they have it.

Q. Suppose a man didn't have money, would you see any objection to his borrowing money to take up a claim? A. No, sir.

Q. Didn't you tell the Messrs. Joplin, or one of them, that it would be necessary for them to use their own money, and that it would be unlawful for them to borrow the money from anybody else?

A. I don't think I did; I might.

Q. Wasn't it at that time your understanding of the law in the purchase of these timber claims it was necessary for the entryman to have his own money, and to swear at the land office that it was his own money?

A. Why, I think it is that way with any Government land you prove up on; I think it has got to be your own money, or should be. I might have got my

(Testimony of George W. Butler.)

information in that way. I don't remember ever telling them that, but I won't say I didn't tell them that.

Q. Wasn't that your understanding of the law at that time, that it would be unlawful for them to prove up on money they had borrowed from Kinkaid?

Mr. BUNDY.—I object to Mr. Butler's understanding of the law as incompetent, irrelevant and immaterial.

Mr. KEIGWIN.—Q. Wasn't that your understanding at that time?

A. It has always been my understanding that a man, to prove up on any Government land, should have the money of his own, but I can't say that I notified Joplin of those things; still I might have did it.

Q. Then it was your understanding at that time that it would be unlawful for a man to buy one of these claims with money that had been supplied to him by someone else? A. Yes, sir.

Q. That is still your understanding?

A. That is still my understanding, and always has been.

Q. And it is still your understanding that if a man should undertake to buy one of these claims with money which he had borrowed from someone else he would be committing a violation of the law?

A. I don't know anything about that, but I always felt as though a man ought to have his own money, but I am not advanced enough in law to know whether it is against the law to borrow the money

(Testimony of George W. Butler.)

or whether it isn't. I know when I want money I go and borrow it.

Q. Have you seen either of the Messrs. Joplin lately?

A. No, sir. Well, what do you call lately?

Q. Well, in the last three weeks?

A. I might have passed them on the street; I don't remember of it now. I believe though I have; I believe I saw Walt and Billy Joplin tearing down a house just across the road from me the other day.

Q. Did you have any conversation with them?

A. No, sir.

Q. Did you see Mr. Andrew Joplin?

A. No, I haven't seen him for quite a while. I don't remember speaking to him for three or four months, while we are perfectly friendly.

Q. Isn't Mr. Andrew Joplin out in the hall?

A. I couldn't tell you; I haven't seen him.

Q. You haven't seen him to-day?

A. No, sir.

Q. Do you remember having an interview, in the month of March, 1907, with the United States Attorney, Mr. Ruick, and his assistant, Mr. Johnson, or either of them, at which you were asked a number of questions in regard to this purchase of yours under the timber land act?

A. Yes, sir, I remember, before the Grand Jury, I believe, and then they had me up there in the sweat-box awhile.

Q. And they asked you a number of questions?

A. Yes, sir.

(Testimony of George W. Butler.)

Q. About your connection with this matter?

A. Yes, sir.

Q. And you gave them a number of answers?

A. I suppose I did, yes, sir.

Q. And that was the sweat-box?

A. That is what I term the sweat-box.

Q. You answered those questions?

A. Sure I did.

Q. Without any objection? A. Sure thing.

Q. You had no objection to telling the district attorney—

A. Not when they asked me decent questions; when they didn't, I didn't answer them.

Q. So far as anything connected with this matter was concerned you had no objection to telling them?

A. No, I think not.

Q. And what you told them was intended to be the truth?

A. What I told him was intended to be the truth, as near as I could.

Q. I wish you would see if you can remember whether or not these questions were asked you and these answers given by you on that occasion, which I now read:

Mr. BUNDY.—I object to it as incompetent, irrelevant, and immaterial, and attempting to impeach their own witness.

Mr. KEIGWIN.—“Q. You spoke to the Joplin boys that they could take up a timber and stone claim and make some money? A. I have an idea I told them. Q. And you told them they could take up

(Testimony of George W. Butler.)

this claim and get \$800 for it? A. I expect I did; yes, I have an idea I did. Q. And you told them if they didn't have the money that these people would advance it, but they had better use their own money, if they had it? A. I guess I told them they would have to use their own money, because I was up and knew that a fellow had to use his own money; if he didn't he would perjure himself. Q. You say you knew that beforehand? A. Anyone knows that much, that they couldn't borrow money, because when you prove up you swear that is your own money; at least I had to swear it. Q. Who told you that you would have to say that? A. Here in the land office." Now, the question is, do you remember that those questions which I have read to you were asked, and the answers I have read given by you on the occasion of your examination before the district attorney.

A. I remember when I was in the sweat-box there was something like that conversation. Yes, sir, I do; but before the Grand Jury I don't think that was asked me; it might have been, but I don't remember of it; I know it was in the sweat-box.

Q. I don't know what was said to you before the Grand Jury, but I understand you to say that you recall now that those questions and answers were given.

A. I remember those questions being asked, and I have an idea that is the way I answered them; I wouldn't be positive. I don't remember anything about the land office; that is probably what I told

(Testimony of George W. Butler.)

them.

Q. You mean you don't remember whether you got this understanding of the law from the land office or somewhere else?

A. Yes, that is what I mean.

Q. But you did understand that it was necessary for you to swear that you did use your own money, and that these Joplin boys would get into trouble if they borrowed money and it was found out?

A. That might have been my advice, if they asked me, and my advice, I have an idea that is what I did give them.

Q. Wasn't it at that time a very general understanding among people here making entries that it would be unlawful to borrow money for this purpose and use it to purchase the land with?

A. Well, I don't know; I kind of think it was.

Q. Didn't you have an idea that if you or anyone else should do that you would get into trouble with the land office?

A. Well, I thought they would be perjuring themselves, I have an idea is what I thought; I didn't know about borrowing money. I thought if you went to outsiders and got your money, and sold them your claim, made arrangements with them to sell them your claim, before you proved up on it, it wasn't right, and I don't hardly think it was right yet.

Q. That isn't quite what you said in your examination before the district attorney.

A. I think if you will read that over, I think you will find that is what I meant. See if you don't think

(Testimony of George W. Butler.)

that is the meaning of that.

Q. Have you, since this examination in March, 1907, had occasion to change your opinion as to the right and wrong of this matter?

A. I understand the Supreme Court—you see that in all the papers—has decided it another way, but I don't know whether it is right or not, that if you file on your land, after you file on your land, you have a right to negotiate a sale, but I never did, and I don't think it was proper.

Q. Do you remember when you heard of that decision of the Supreme Court?

A. No, sir, I don't; it was talked of here on the street quite often.

Q. Within the last year?

A. Yes, sir, the last year or so.

Q. So that, reading of that decision of the Supreme Court, you changed your opinion on that?

A. Naturally I did, yes, sir.

Mr. BUNDY.—Everybody has, Mr. Butler, except these two attorneys here.

The WITNESS.—I guess that's right.

Mr. KEIGWIN.—I quite agree with the decision of the Supreme Court, as far as I am concerned.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Butler, you spoke of an interview you had with Ruick in the sweat-box. Was all the interview that you had with him in the form of question and answer, or was there a long discussion with him?

A. Oh, of course he tried to make me say things

(Testimony of George W. Butler.)

that I said no.

Q. Before he began taking down the questions and answers did you have a general talk with him?

A. Not with Mr. Ruick; it was Johnson. I never talked to Mr. Ruick only before the Grand Jury; I don't think I did.

Q. Johnson was Mr. Ruick's assistant, as you understood it? A. Yes, sir.

Q. In that talk with Johnson did Johnson attempt to tell you what, as he understood it, the law was, and what the facts was, as he understood?

A. I suppose he did; I can't state exactly.

Q. Did he say to you, in substance, Mr. Butler, when you told him the facts as you remembered them, that you wasn't telling the truth?

A. Yes, he told me I wasn't telling the truth.

Q. That you was lying about it?

A. That I was lying about it; that is what caused the trouble.

Q. You had some little discussion with him?

A. Yes, I kind of got mad; I guess I had no business to.

Q. What did you finally tell him?

A. I told him I would put him out of the window if he done that again; he went away then and sent Mr. Garrett in.

Q. He was the receiver of the land office?

A. Yes.

Q. And he cross-questioned you a long time?

A. Yes, sir.

Q. In that interview did they attempt to tell you

(Testimony of George W. Butler.)

that this money you had used to prove up on had been furnished by Wells or Kinkaid? A. Yes, sir.

Q. And insisted that that was true?

A. Yes, sir, in the sweat-box; they didn't before the Grand Jury.

Q. Notwithstanding the fact that, as appears from your affidavit, you were unable to get the money just then and had to make another trip to the timber and readvertise, and go through all that again?

A. The first time, I tell you honest to goodness, I can't remember a thing about that proposition. Mr. Garrett notified me that I would have to go back again. I have an idea I was putting up ice, but I don't remember anything about the statement.

Q. I don't care anything about that. If John I. Wells or Kinkaid, or any of them, were dishing out money to make final proof, you wouldn't have had to make another trip to the timber, if you had used Wells' money and Wells and Kinkaid had furnished it?

A. I don't know but what I would rather make a trip to the timber, yes, sir; I don't think I knew he was furnishing money.

Q. They wasn't as a matter of fact. I say, if they were—

A. I don't think they was at that time. Probably I knew that they could get it, but it never crossed my mind to ever get money that way.

Q. If you had known or heard that Wells or Kinkaid, or anybody else was furnishing money to prove up with, and you had wanted to use that money, you

(Testimony of George W. Butler.)

could have got it without making another trip to the woods, couldn't you?

A. I suppose I could have got it.

Q. And you didn't go to them and try to get it?

A. No, sir, I did not.

Q. And they didn't come to you, and offer it to you? A. No, sir.

Q. Did Mr. Wells, Mr. Kinkaid, Mr. Pritchard, Mr. Barber, Mr. Moon, or any other person, at any time offer to advance you any money to make your final proof with? A. They did not.

Q. Did you make application to them, or to anybody else, other than the bank?

A. No, sir, I did not.

Q. At the time you filed your first papers in the land office had you entered into any kind of agreement, express or implied, in writing or verbal, by which the title you might acquire from the Government would inure in whole or in part to the benefit of any person other than yourself?

A. No, sir.

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

A. No, sir, I had not.

Q. Was there at any time any agreement in existence between you and any other person, firm, or corporation, by which anyone other than yourself was to have any interest whatever in the title to the land you were acquiring from the Government?

A. None except my wife, no.

Q. That wouldn't be by agreement; that would be

(Testimony of George W. Butler.)

by law? A. That would be by law.

Q. Just answer the question, eliminating your wife. A. No, sir.

Q. It is charged, Mr. Butler, in this complaint, in this action we are trying, the United States against the Barber Lumber Company and others, that you made this timber and stone entry at the request of, and for the benefit of, the Barber Lumber Company, or some of the other defendants in this action? Is that true or false? A. It is not true.

Q. It is alleged in this complaint that, pursuant to this agreement with the defendants, or some of them, you entered this land, and testified falsely, before the land office, for the purpose of getting the land to turn over to them, pursuant to that agreement. Is that true or false? A. It is false.

Q. Now, prior to the time you made your final proof your wife had made her final proof?

A. Yes, sir.

Q. And had sold her claim to Mr. Kinkaid?

A. Yes, sir.

Q. Did you know at the time you made your final proof whether Kinkaid was still buying, or whether he wasn't?

A. I have an idea I did, because there was so many people selling claims.

Q. Now, see if I can refresh your recollection. About the time you proved up, there was some talk about a pool, a lot of them putting in together?

A. Yes, sir.

Q. And selling to Portland people.

(Testimony of George W. Butler.)

A. I think it was Portland. Mr. Bayhouse was the man that did business with me, and I can't remember much about it.

Q. The proposed plan involved giving short time options to see if they could get a large tract together?

A. Yes, sir.

Q. And when the other entrymen began selling to Kinkaid at the price he was offering that broke up the pool?

A. Something broke it up, yes, sir, but I think a great many of them had sold before this. It was pretty late; there wasn't very much timber left then.

Q. It seems strange to these eastern gentlemen that it didn't take much time to negotiate the sale of a hundred and sixty acres of land. Back in Washington, you know, if they are going to sell a hundred and sixty acres it is an all-summer's job. Here claims are sold for so much per claim.

A. So much per claim.

Q. And one claim was pretty much the same as any other claim. They were pretty near all the same price.

A. As far as I know, from what I hear people talk, I think most of them got about \$800 or \$850, and some of them maybe \$900.

Q. Are you certain you got \$900?

A. Yes, sir, I am, I think I got a little over \$900; I am not positive, but I think it was a little over \$900.

Q. You have been interviewed here from a document which counsel has kept in his hands, and which purports to be a typewritten statement. He stated

(Testimony of George W. Butler.)

that it purported to be an interview you had in the sweat-box—

Mr. KEIGWIN.—The document is subject to your inspection.

Mr. BUNDY.—Let me see it, will you? (Takes paper.) The document which was shown you, and which counsel stated purported to be an interview had with Mr. Ruick or Mr. Johnson on March 25th, 1907, consists of—just look it over, just notice the questions and answers—seventeen pages of typewriting, does it not? A. Yes, sir.

Q. And purports to be all in the form of question and answer.

A. It seems to be questions and answers, yes, it seems to be.

Q. Now, in looking at that document and noticing that it is in the form of question and answer, can you state, Mr. Butler, as to whether that contains all of your interview with Johnson and Ruick or not?

A. I could not state sure whether it was all of it or only a part of it.

Q. Do you recall having a talk with them before they commenced asking you questions?

A. Yes, sir.

Q. Do you find anything there in the form of a narrative or talk except in answer to questions? They don't seem, in this statement, to have taken down anything you said, or anything they said, except the questions they asked you and the answers you gave. A. There don't seem to be.

Q. Do you remember that in addition to the ques-

(Testimony of George W. Butler.)

tions they asked you, you had an interview with them when they were not taking down the questions and answers?

A. No, I do not. I don't remember of it, only when they was not taking down the questions and answers. Of course I would know whether they was taking down the questions and answers at this time. Of course, that ain't a sworn statement, but it holds just as good with me; of course I didn't tell them anything but the truth; of course that ain't a sworn statement.

Q. It purports to be a sworn statement. If it isn't—

A. I don't think I was ever sworn in the sweat-box.

Q. I don't think you were either, Mr. Butler, but if it purports here—

A. I might have been, but I don't remember it; but it would be the same with me whether I was or not.

Q. I notice on page marked 9 W. B. of this statement is the statement "witness sworn." Have you any recollection of being sworn?

A. In the sweat-box?

Q. Yes.

A. I don't have any remembrance of it.

Mr. KEIGWIN.—What's the difference? We are not going to indict this gentleman for perjury.

Mr. BUNDY.—I know you are not, but it is because you couldn't; that's the only reason. You would indict God Almighty if you dared.

(Testimony of George W. Butler.)

The WITNESS.—Of course. I knew I was sworn when I went before the Grand Jury, but I don't think I was sworn there.

Mr. KEIGWIN.—It doesn't make any difference at all.

Mr. BUNDY.—It makes this difference, whether you are bringing in a statement that is true or one that is false.

Mr. KEIGWIN.—Mr. Bundy, we are not bringing that statement in at all, except to ask Mr. Butler—

Mr. BUNDY.—You are bringing in a statement here that purports to be a sworn statement, when the witness wasn't sworn.

Q. Mr. Butler, do you know whether these questions and answers were taken down correctly?

A. I can't say, of course.

Q. Did you ever see this statement before to-day?

A. No, sir.

Q. How many times were you in the sweat-box?

A. I think only once.

Q. This statement has one date March 25th and another one March 26th. Do you know whether that is right or not? Do you recall any other day in the sweat-box?

A. I don't think so; I might have been, but I can't remember being in the sweat-box but once. I might have been in there another day, but I can't remember it.

Mr. KEIGWIN.—It doesn't make the least difference in the world, Mr. Butler. I only used this to

(Testimony of George W. Butler.)

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Mr. KEIGWIN.—It doesn't make the least difference in the world, Mr. Butler. I only used this to

(Testimony of George W. Butler.)

ask you if you remember these questions and answers.

The WITNESS.—I said I did.

Mr. BUNDY.—Counsel said you said you did. Now, what you said in answer to his questions was that you remembered something about these questions. Now, do you remember the fact of those particular questions being asked you and those particular answers being made?

A. No, they was asking me questions in the sweat-box, and I would just answer them the same as I would you gentlemen now.

Q. The question is, do you remember those questions being asked you and those answers being made?

A. I remember the questions as I read them over. I remember about the most of it. I suppose I answered them in that way, but to state that I did answer them that way, I can't do it.

Mr. KEIGWIN.—We offer in evidence also the evidence of the advertisement of intention to make final proof on the entry of Mr. Butler, the present witness, and the testimony and the cross-examination of Edgar E. Bush, and the testimony and cross-examination of Walter Joplin, witnesses examined in support of Mr. Butler's final proof.

Mr. BUNDY.—We object to them as incompetent, irrelevant, and immaterial.

Mr. KEIGWIN.—The said papers coming from the files of the land office.

Mr. BUNDY.—We object to the introduction of any evidence in that form, affidavits or evidence of

(Testimony of George W. Butler.)

other witnesses not called to the stand in this case.

Mr. KEIGWIN.—You make no objection, I understand, on the ground that they are not specially identified.

Mr. BUNDY.—Where are the witnesses that testified for him?

Mr. KEIGWIN.—Here they are (hands paper to Mr. Bundy).

Mr. BUNDY.—John I. Wells didn't act as a witness for him?

Mr. KEIGWIN.—No.

The WITNESS.—Nor Downs, either one. They wasn't back there when I went.

Mr. KEIGWIN.—You mean the last time you went, you took Mr. Joplin and Mr. Bush with you?

A. They had to go; their claims was held up for the same reason.

Mr. BUNDY.—Do you mean by that that they were held up because they didn't have money to pay for them?

A. I think it was a mistake in the advertisement, because Ed Garrett notified me the second time; he called me up over the 'phone. He will know more about it than I will. He said "You will have to go back there," and I said, "Ain't there some way or other without going back there," and he said, "You don't want to swear to no lie."

(Witness excused.)

At this time an adjournment was taken until two P. M., at which time the taking of testimony was resumed, pursuant to adjournment, the examiner and counsel for the respective parties being present.

[**Testimony of Andrew F. Joplin, on Behalf of the Complainant.**]

ANDREW F. JOPLIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Andrew F. Joplin, are you?

A. Yes, sir.

Q. How old are you, Mr. Joplin?

A. Thirty-one.

Q. Where do you reside?

A. 422 South 10th.

Q. That is in Boise, is it? A. Yes, sir.

Q. Where did you reside in 1902?

A. South Boise.

Q. You are the son of Sonora Joplin?

A. Yes, sir.

Q. And the brother of Walter Joplin?

A. Yes, sir.

Q. What was your occupation in 1902?

A. Farming mostly; that was what I was doing at that time.

Q. Did you own a farm yourself, or were you working for someone else?

A. I am working for my mother, at the present time.

Q. Were you then, I mean? A. Yes, sir.

Q. What is your occupation now?

(Testimony of Andrew F. Joplin.)

A. Well, just first one thing and then another, the last year or so.

Q. What has been one of the things you have done in the way of employment?

A. I worked in Smeed's livery barn close on to a year.

Q. What did you do—drive or take care of the horses?

A. Took care of the horses at the barn.

Q. That is, you hitched them up, and curried them and so on?

A. Yes, sir, I worked there, and then I worked for the Citizens' Coal Company.

Q. Drive wagon for them?

A. A couple of days, I think, and unloaded coal, helped in the yard.

Q. You took up a claim under the Timber and Stone Act in 1902, did you? A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated October 2, 1902, and ask you if you signed that paper? A. Yes, sir.

Q. And filed it in the land office?

A. Yes, sir.

Q. I show you non-mineral affidavit, dated October 2, 1902, and ask you if you signed that paper?

A. Yes, sir.

Q. And filed that in the land office?

A. Yes, sir.

Q. I show you testimony of Andrew F. Joplin given on final proof, dated March 19, 1903, and ask you if you signed that paper?

(Testimony of Andrew F. Joplin.)

A. Yes, sir, that is my writing.

Q. And the cross-examination attached, did you sign that? A. Yes, sir.

Q. I show you deed, dated the 25th of March, 1903, made by Andrew F. Joplin to Horace S. Rand, and ask you if that is your signature to that deed?

A. Yes, sir.

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

A. I don't remember about that; I don't remember whether he was in there at the time or not.

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

A. I don't remember just who the first one was. The first one I ever heard speak about timber claims was Mr. Young.

Q. What Mr. Young?

A. Henry Young, a blacksmith.

Q. What did Mr. Young say to you about it?

A. The time he was speaking about it he said they was going to survey all that timber land in the hills, and the Government was going to sell it off, that is, some of it, not all of it.

Q. Well, what else?

A. I suppose that is about all he said about it; I don't remember all that was said.

Q. Had you been buying land at that time?

A. No, sir.

Q. You had never dealt in real estate to any extent?

A. No, sir.

Q. Had you talked to Mr. Butler about it?

(Testimony of Andrew F. Joplin.)

A. I don't know as I did.

Q. Do you know whether you did or not?

A. I might have said something to him about it at home, that is, conversations at home; I don't say that I didn't.

Q. Did you live with Mr. Butler?

A. No, sir.

Q. Did he come to see you at your home?

A. He was over there quite frequently, that is, on visits nights, say once maybe in awhile.

Q. What Mr. Butler was that?

A. George Butler and his wife. I know I remember them speaking about it several times when they come over to the house, but I don't know as I talked to him anything about it; but I know it was mentioned in the house, two or three conversations in the house.

Q. Did you know of anybody that was purchasing timber claims at that time? A. I did not.

Q. Did you know of any market for timber claims at that time? A. No, sir.

Q. Did you know of any persons or corporations that were anticipating buying timber claims in the near future? A. I did not.

Q. Did you know of Mr. Patrick Downs?

A. No, sir.

Q. Did you know Mr. John I. Wells when you entered this land? A. No, sir.

Q. Did you know Mr. Louis M. Pritchard?

A. No, sir.

Q. Did you know Mr. John Kinkaid?

(Testimony of Andrew F. Joplin.)

A. No, sir.

Q. Well, was it what Mr. Butler and Mr. Young said that induced you to enter a timber claim?

A. I don't know as it was.

Q. What was it that induced you to enter a timber claim?

A. My mother, I think it was, that wanted me to go up and take up a claim; she said she was going to, and wanted to know if I didn't want to go up and take up one too, and I thought I might go up, which we did.

Q. Did you ever meet Mr. Patrick Downs?

A. Met him up on the claims.

Q. Hadn't you ever met him before that?

A. No, sir.

Q. Hadn't you been up in the woods fishing and met him up there?

A. I had been up there, but didn't meet him up there.

Q. Were you up in the woods fishing twice and didn't meet Mr. Downs on either occasion?

A. We were up that way fishing and hunting, but I don't remember meeting Downs up there or ever seeing him.

Q. You and your mother went together?

A. Yes, sir.

Q. And the summer before you entered this land you were up in the mountains fishing, weren't you?

A. We generally go out every summer.

Q. I am speaking about this summer I refer to.

A. I suppose we was out that summer; we might

(Testimony of Andrew F. Joplin.)

have been; I don't remember now whether we was out the summer before or not. In 1901, do you refer to?

Q. I mean the summer of 1902.

A. I think we was.

Q. Now, I asked you were you out in the hills or mountains fishing in the summer of 1902?

A. I believe we was.

Q. How many times did you go fishing out there, or on camping parties out there, during that summer?

A. We only went once that I remember of.

Q. On one of these fishing trips, didn't you run across Mr. Downs up there? A. I didn't.

Q. How did you meet Mr. Downs?

A. I met him when we went up there to take up the claims.

Q. Well, who did you go with?

A. Went with my mother, and Mr. Wilson and his wife.

Q. What Mr. Wilson?

A. I don't know what his name is; I don't remember his first name.

Q. Where did you go to see this land and meet Mr. Downs?

A. Well, we went to the Kempner's that night, and the next morning Mr. Downs took us off about southeast of Kempner's ranch, off in this direction from Kempner's (pointing), as near as I can put it.

Q. Did you stop at Kempner's ranch that night?

A. Yes, sir.

(Testimony of Andrew F. Joplin.)

Q. Did you meet Mr. Downs there?

A. Yes, sir.

Q. Patrick Downs? A. Yes, sir.

Q. And did you ask him if he had any more claims? A. Yes, I suppose we did.

Q. And what did he tell you?

A. He said he had a few more left—he didn't know just how many—but he had several.

Q. And he took you out and located you and your mother and the rest of the party on claims?

A. Yes, sir.

Q. Did he show you a particular claim and say, "That is the claim for you," or "That is your claim?" A. He did not.

Q. What did he do?

A. He took us up to where there was claims, and he said, "Here is several claims in here, and here is some more over here," and he said, "You folks pick out what you want, and I will locate you," so we each one picked out a claim, and went around over the claims, and he showed us the numbers on the trees where they was cut.

Q. Did he give you a description of that property? A. Yes, sir.

Q. What did he say to do with it?

A. He said to bring it to Mr. Kinkaid and he would fix up the papers for us.

Q. Did he say Mr. Kinkaid or Mr. Wells?

A. I should have said Mr. Wells.

Q. That is Mr. John I. Wells, who is present here in court, is it? A. Yes, sir.

(Testimony of Andrew F. Joplin.)

Q. When you went over this land did you go over each subdivision of it, or did you just go to the corners?

A. We went all over it, that is, around the outside, you know, and through it, each claim; that is what he said we would have to do.

Q. And you went over each claim?

A. Yes, sir.

Q. And you went to each corner of the claim and all through it?

A. Yes, sir, that is, as near as we could, yes.

Q. Was there anything to keep you from going all over it?

A. I don't know as there was, but a man would have to walk quite a bit to go over every foot of it.

Q. I meant to the corners of the subdivisions, each forty acre tract.

A. I don't know as we went on the inside, that is, exactly to all of it.

Q. You just went around?

A. Yes, and through some of it.

Q. Now, were you on a fishing trip when you took up this claim, and did you go from where you were fishing over to take up the claim?

A. No, sir.

Q. Where did you start from when you took up this claim?

A. Started from home, South Boise.

Q. And when you went to Mr. Wells' office did you have a letter from Mr. Downs?

A. No, sir.

(Testimony of Andrew F. Joplin.)

Q. What did you tell Mr. Wells when you went to his office?

A. Well, he made out the numbers of our land, Mr. Downs did, and told us to take them down to Mr. Wells, and he would make out our filing papers, and so we did, and he said he was busy and couldn't make them out.

Q. Where did he send you?

A. He told us to go over to Pritchard's office, and we went over there, and he made them out for us.

Q. Who are we? A. My mother and I.

Q. Was this gentleman who had gone up there with you along?

A. I don't remember now, but I think he was, him and his wife; I ain't sure.

Q. The day you returned to Boise, or the day after, was that the day you went to Mr. Wells' office, that day or the day after? A. The day after.

Q. And Mr. Pritchard prepared the papers while you were there? A. Yes, sir.

Q. And that is this first paper, the sworn statement, I have shown you, the first paper you filed in the land office; he prepared that paper for you?

A. Yes, sir.

Q. He prepared that notice for you on the same day, did he, that is, the notice of publication?

A. Yes, sir.

Q. And this non-mineral affidavit?

A. Yes, sir.

Q. Did you go from Mr. Pritchard's office to the land office? A. Yes, sir.

(Testimony of Andrew F. Joplin.)

Q. Who went to the land office with you?

A. My mother and I.

Q. No one else?

A. I don't know whether these other people was with us or not.

Q. Did Mr. Wells go to the land office with you?

A. No, sir.

Q. Or Mr. Pritchard? A. No, sir.

Q. Did you pay any money into the land office at that time?

A. I don't remember whether we did or not.

Q. And now at that time what did you expect to do with the property?

A. I didn't know what I would do with it.

Q. You didn't have any idea what you were going to do with it? A. No, sir.

Q. Didn't you expect to cut that timber and float the logs down the stream to market?

A. I supposed we would probably, some time; I didn't know whether I would do it, or somebody else would.

Q. Was that what you bought the property for; was that what you thought you would do with it?

A. I don't know. As I say, I didn't know whether I would or not.

Q. What was it your intention to do with it?

A. As I say, I didn't know what I would do with it.

Q. You didn't know of any market for it?

A. No, sir.

Q. You didn't know of anybody that would buy

(Testimony of Andrew F. Joplin.)

it? A. No, sir.

Q. And then it came time for you to make your final proof. Do you remember that occasion?

A. Yes, sir.

Q. Now, how long had you been at work before the time you made your final proof? You were twenty-five years old then, weren't you?

A. Yes, sir.

Q. And how long had you been at work prior to that? A. I always worked, as far as that went.

Q. How long had you been working for wages prior to that time?

A. Ever since I have been sixteen or seventeen years old I have been drawing wages from my father, that is, after we moved off the ranch. My father was running a hay and grain store and a grocery store at that time, after we moved off the ranch.

Q. How much did he pay you for your services?

A. He used to pay me \$35 and \$40, according to what I was doing.

Q. That was from the time you were sixteen years old?

A. Yes; well, say, seventeen. We moved off the ranch when I was about fifteen.

Mr. KEIGWIN.—Q. Did he lodge you and feed you, in addition? A. Yes, sir.

Mr. GORDON.—Q. Do you remember how much money you paid into the land office when you made your final proof?

A. I don't remember now, but I think it was about \$7, either \$7 or \$12.

(Testimony of Andrew F. Joplin.)

Q. I mean when you made your final proof, proved up? A. \$400.

Q. Was it even \$400?

A. I don't remember; it might have been a little more.

Q. Did you pay it in cash or in check?

A. Paid it in cash.

Q. Where had you this money?

A. I had it at home.

Q. How long had you had it?

A. I don't know how long I had had it.

Q. Well, how long had you had a lump sum of \$400 at home?

A. Probably four or five years, or maybe longer; I don't remember. I always saved my money when I was working at home.

Q. And you kept that money all that time?

A. Yes, sir.

Q. Might you not have had that \$400 for ten years?

A. No, I won't say I had that much for ten years.

Q. Didn't you say you had had it for ten years when you were asked at the land office?

A. I don't remember.

Q. I will ask you if this question was asked you: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer. "I worked for it. About ten years."

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and tending to impeach

(Testimony of Andrew F. Joplin.)

their own witness on an immaterial issue.

The EXAMINER.—Answer the question.

A. I probably had money for ten years.

Mr. GORDON.—Q. Did you have the \$400 you paid in the land office ten years?

A. I might have had it that long.

Q. Did you or did you not? Don't you know?

A. I can't say.

Q. Now, up to this you didn't know of anybody that was buying or selling timber claims in the locality in which you entered this claim, did you?

A. I did not.

Q. Did you talk to Mrs. Butler?

A. Nothing concerning timber land.

Q. Did she tell you she had sold her claim?

A. I don't remember whether she did or not.

Q. Then you don't know of anyone who had sold a timber claim at the time you made your final proof?

A. I don't.

Q. You hadn't heard of anybody selling a timber claim?

A. I don't remember anything about it; I might have, though; I wouldn't say I didn't. I might have heard somebody say something about it; I don't remember anything about it, though.

Q. What makes you think you might have heard something about it? A. I don't know.

Q. Do you know of any person that had sold a timber claim at that time?

A. I don't know as I do, because I wasn't at home all the time; I was on the ranch most of the

(Testimony of Andrew F. Joplin.)

time at that time.

Q. Did you hear either at home or on the ranch?

A. I don't remember hearing of anybody.

Q. How long afterwards was it that you made your final proof? Did you hear that there was persons who wanted to purchase timber claims?

A. I don't remember now.

Q. As near as you can remember.

A. I don't remember how long it was.

Q. Was it a month, or six months, or a year, or how long? A. It might have been.

Q. Haven't you any recollection on the subject whatever?

A. I don't know. I might have been on the ranch at that time.

Q. I am speaking about when somebody asked you to sell it, or you asked somebody to buy it. How long after you paid your money into the land office was that?

A. It might be a week, or it might have been a couple of weeks, or a month or so; I don't know just how long.

Q. How long before you made this deed that you have identified did somebody speak with you about buying it? A. How long before what?

Q. You signed the deed selling this property.

A. Before they spoke to me?

Q. Yes. A. I don't remember.

Q. Do you remember signing the deed?

A. Yes.

Q. In whose office did you sign it?

(Testimony of Andrew F. Joplin.)

A. Mr. Kinkaid's.

Q. Had Mr. Kinkaid ever spoken to you before that about purchasing that land?

A. He had not.

Q. Had anybody ever spoken to you before about purchasing that land? A. No, sir.

Q. How did you happen to go to Mr. Kinkaid's office? A. I don't remember.

Q. Now until you saw Mr. Kinkaid the day you made this deed you had never heard of anybody purchasing any lands or timber claims in Boise? Is that right?

A. I don't remember just how long it was.

Q. That isn't answering my question. Please read the question. (Last question read by the stenographer.) A. I don't think I had.

Q. You made your final proof and got your receipt on the 19th of March, 1903, and the deed that you signed is dated six days later, March 25th, 1903. Now up to the time you received that receipt, on the 19th of March, I understood you to say that nobody had ever spoken to you in regard to purchasing that timber, and that you didn't know of anybody that had either sold or purchased a timber claim. Is that right?

A. I don't understand the question.

Q. Please read the question. (Last question read by the stenographer.)

A. I don't remember now.

Q. Did I understand you to say that the first person who ever made you an offer for this claim was

(Testimony of Andrew F. Joplin.)

the day you made the deed conveying it?

A. That is the first time that I remember anybody offering me anything for the claim.

Q. Had you up to that time offered to sell it to anybody? A. No, sir.

Q. Did I understand you to say that you sold it to Mr. Kinkaid? A. Yes, sir.

Q. Did you know Mr. Kinkaid before you went there to sell this property? A. No, sir.

Q. To your knowledge had you ever seen Mr. Kinkaid before that occasion?

A. I don't remember ever seeing him in my life till that time.

Q. Had you ever known of anybody else selling a claim to Mr. Kinkaid? A. I did not.

Q. When you went to Mr. Kinkaid's office what did you say to him?

A. I don't know; I suppose I asked him if he was buying claims. My mother and I went up together.

Q. When you went there with your mother did you know you could sell the claim to Mr. Kinkaid?

A. I didn't know it till we went up and asked him.

Q. And he told you that he was?

A. Yes, sir.

Q. And he bought it while you were there?

A. Yes, sir.

Q. How much money did he pay you for it?

A. I guess he gave us \$850, if I remember right.

Q. Did he give you that in cash or in check?

A. He give it in cash.

(Testimony of Andrew F. Joplin.)

Q. Was that for you claim alone, or for your mother's claim and yours together?

A. For mine alone.

Mr. KEIGWIN.—Q. Your mother got \$850 in cash at this same time?

A. I suppose she did; she got what I got for mine; she got \$800 or \$850, I don't remember just what it was.

Q. Whatever it was, she got paid in cash at the same time you did? A. Yes, sir.

Mr. GORDON.—Q. She sold hers at the same time you sold yours? A. Yes, sir.

Q. How long were you at Mr. Kinkaid's office that day?

A. I don't remember how long I was there.

Q. Ten minutes, or an hour, or two hours?

A. I don't remember.

Q. Can't you think of how long you were there?

A. We might have been there ten minutes, and we might have been there half an hour.

Q. Was it between ten minutes and a half hour?

A. Between there some time.

Q. Did Mr. Kinkaid have this deed there when you went there? A. Yes, sir.

Q. Was it already drawn with the exception of you signing your name to it when you went there?

A. He filled it out; it was in a form, and he filled it out, as near as I remember.

Q. Did you and your mother take any papers there with you when you went there?

A. Yes, sir.

(Testimony of Andrew F. Joplin.)

Q. This was the first time you had ever been to Mr. Kinkaid's office? A. Yes, sir.

Q. What papers did you take there that day?

A. I took my final receipt.

Q. And you had had that final receipt in your possession from the time it was given you at the land office until you gave it to Mr. Kinkaid the day you made your deed? A. Yes, sir.

Q. Did this deed, when you signed it, have the names of the parties in it, or were they left blank?

A. I don't remember now.

Q. You read the deed? A. Yes, sir.

Q. Do you remember reading in the deed that the consideration was \$950?

A. I don't remember now.

Q. And was Mr. Pritchard in there and took your acknowledgment, or did you go out and see Mr. Pritchard somewhere else?

A. I don't remember; he might have been in there.

Q. Don't you know whether he was in there or not? A. I couldn't say.

Q. You have no recollection of anybody being there but you and your mother and Mr. Kinkaid?

A. That is all the recollection I have.

Q. That was Mrs. John Kinkaid, was it?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Andrew F. Joplin, dated October 2, 1902; the non-mineral affidavit of the same date; the testimony of Andrew F. Joplin

(Testimony of Andrew F. Joplin.)

given on final proof, dated March 19, 1903; the cross-examination attached, all of which papers have been identified by the witness, Andrew F. Joplin, as having been signed by him; the notice of publication, dated October 2, 1902; the register's certificate, and the receiver's receipt, dated March 19, 1903; the testimony of the other witnesses given on final proof; the deed, dated March 25, 1903, made by Andrew F. Joplin, to Horace S. Rand, consideration \$950, identified by Andrew F. Joplin as having been signed and delivered by him; certified copy of the patent, dated June 10, 1904, all to lots 1, 2, 3, and 4, section 5, township 6, north of range 8 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 109A to 109M, inclusive.)

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Mr. KEIGWIN.—Q. Were you here this morning, Mr. Joplin? A. Yes, sir.

Q. Out in the hall? A. Yes, sir.

Q. How late did you stay?

A. Twelve o'clock.

Q. Did you see Mr. Butler when he came out?

A. No, sir.


Q. Mr. George M. Butler, I mean?

A.. No, sir.

Q. Do you know Mr. Butler? A. Yes, sir.

Q. Have known him for some time?

A. Yes, sir.

Q. Ever since you were a small boy? 

(Testimony of Andrew F. Joplin.)

A. Yes, sir.

Q. He has been a friend of the family?

A. Yes, sir.

Q. Lived opposite you? A. Yes, sir.

Q. Across the street, in South Boise?

A. Yes, sir.

Q. How long has your father been dead?

A. I don't know; about six years or seven, seven years, I guess.

Q. Had your father died before you made this entry? A. Yes, sir.

Q. A year or two before that, wasn't it?

A. Yes, sir.

Q. At the time of his death he had a grocery store over here in South Boise, didn't he?

A. Yes, sir.

Q. And after his death Mr. George Butler ran that for your mother, didn't he? A. Yes, sir.

Q. For how long, do you remember?

A. I don't remember now just how long.

Q. Several months? A. Yes, sir.

Q. Then the business was closed out?

A. Yes, sir.

Q. Do you remember how much it brought?

A. I do not.

Q. Did your father leave a large estate?

A. Quite a bit, yes, sir.

Q. About \$2,000?

A. I don't know just how much he left.

Q. Was it more than \$2,000?

A. I don't know.

(Testimony of Andrew F. Joplin.)

Q. Was it less than \$2,000?

A. I don't know that either.

Q. Your mother was made executrix?

A. Yes, sir.

Q. Whatever your father left appears on the inventory filed by your mother in the probate court?

A. Yes, sir.

Q. Did your father keep a bank account in his lifetime? A. No, sir.

Q. Do you know that positively?

A. Yes, sir.

Q. Your mother has never kept a bank account?

A. No, sir.

Q. You have never kept a bank account?

A. No, sir.

Q. Did your brother Walter keep a bank account?

A. I don't know about him.

Q. Have you any other brothers? A. Yes.

Q. Older or younger than you?

A. Younger.

Q. How many sisters? A. Two.

Q. Older or younger than you?

A. Younger.

Q. You are the oldest of the family?

A. Yes, sir.

Q. At the time you made this entry, were you then working in the livery-stable? A. No, sir.

Q. What were you doing then?

A. I was working for my mother at the time.

Q. Was she paying you wages?

A. Yes, sir.

(Testimony of Andrew F. Joplin.)

Q. How much? A. \$35 and board.

Q. And lodging, I suppose? A. Yes, sir.

Q. How long had you been receiving that?

A. I can't say how long.

Q. Two or three years, or six or seven?

A. Maybe a year. After father died I used to work for mother then on the ranch, and was working down there.

Q. Do you know Mr. John I. Wells?

A. Yes, sir.

Q. The gentleman who is now present?

A. Yes, sir.

Q. How long have you known him?

A. Since Monday.

Q. Only since this last Monday?

A. Yes, sir.

Q. You had had some previous acquaintance with him in 1902 and 1903, hadn't you?

A. Only the time I went to his office.

Q. You knew him then?

A. Didn't know him then; only asked if his name was Wells and he said yes.

Q. You knew he was Mr. Wells?

A. Yes, sir.

Q. Where was his office?

A. Over here on Idaho street some place.

Q. What was his occupation then?

A. I don't know.

Q. What did he seem to be doing?

A. He wasn't doing nothing when I went in.

Q. What seemed to be the character of the busi-

(Testimony of Andrew F. Joplin.)

ness he was carrying on?

A. I don't know that either.

Q. Was he simply a gentleman of leisure?

A. He wasn't doing nothing when I went in.

Q. Then the only time you ever saw him to have any conversation with him was last Monday?

A. Yes, sir; I wouldn't have known him if I had seen him up to that time.

Q. What was the occasion of your going to see Mr. Wells on this visit?

A. Mr. Downs sent us down there.

Q. What for? A. With the papers.

Q. What for?

A. He said he would make out the filing papers for us.

Q. As I understand, Mr. Downs gave you the description of the land on a memorandum, and you took that to Mr. Wells, and Mr. Wells made out the papers; is that it?

A. Yes, he give us the numbers of the land and everything.

Q. Who gave you the numbers?

A. Mr. Downs.

Q. Up in the country he gave you the numbers on a memorandum?

A. Yes, up to the camp.

Q. And then you came down here to see Mr. Wells? A. Yes, sir.

Q. What did Mr. Wells do for you?

A. He didn't do nothing; he said he didn't have time to make them out, and sent us on over to

(Testimony of Andrew F. Joplin.)

Pritchard.

Q. Time to make out what?

A. The filing papers.

Q. So he sent you to Mr. Pritchard because he didn't have time to make them out?

A. That's what he said.

Q. Did you tell him who you were?

A. Yes, sir.

Q. Did you say you were Mr. Joplin?

A. Yes, sir.

Q. Your mother was with you?

A. Yes, sir.

Q. You introduced yourselves?

A. Yes, sir.

Q. Did you say that Mr. Downs had sent you?

A. Yes, sir.

Q. Was there anything said about money?

A. Mr. Downs said to pay him \$25 for locating; I don't remember now whether we paid it to him or to Mr. Pritchard, but I think the money was handed to him, as near as I remember.

Q. To Mr. Wells?

A. Yes, sir, I think so.

Q. You are sure the money was paid?

A. The money was paid to him or Pritchard, one.

Q. Was it the same day you saw both of these gentlemen?

A. Yes, sir.

Q. Mr. Wells wasn't too busy to take the money, was he?

A. I guess not.

Q. Then you went from Mr. Wells' office directly to Mr. Pritchard, as I understand?

(Testimony of Andrew F. Joplin.)

A. Yes, sir.

Q. And he made out your filing papers?

A. Yes, sir.

Q. And you brought them to the land office and filed them? A. Yes, sir.

Q. Was anything said to you or by you in Mr. Pritchard's office about any money?

A. I don't remember as there was.

Q. Did you tell him you had paid Mr. Wells \$25?

A. I don't remember him saying anything about it, and don't know as I spoke about it.

Q. Did you ask him any questions as to how much it would cost?

A. I asked him when he made out the papers.

Q. Asked whom?

A. Mr. Pritchard, when he made out our papers, how much we owed him, and I think he said we didn't owe him anything.

Q. Did he say anything about the cost at the land office? A. I don't remember; he might have.

Q. What I am trying to get at, Mr. Joplin, is this: Were you informed what it would cost you at the land office, or did you inquire, when you went to see Mr. Pritchard? A. I don't remember now.

Q. You don't know where you got that information?

A. No, sir; I suppose we asked at the land office.

Q. Did you know then how much you would have to pay for this land?

A. The filing on the land?

Q. No, for the final proof?

(Testimony of Andrew F. Joplin.)

A. I suppose that was told us at the land office; I don't remember.

Q. Before you went to the land office to make your application, had you informed yourself how much the land would cost?

A. I don't remember now.

Q. Didn't you know—hadn't anybody told you that you would have to pay a certain amount of money sooner or later?

A. I had heard, yes, \$400 was the amount we had to pay.

Q. Who told you that?

A. I don't remember.

Q. George Butler? A. No, sir.

Q. You are sure it wasn't George Butler?

A. I don't know; he might have spoke something about it.

Q. Then you don't know whether it was Mr. Butler or not? A. No, I don't.

Q. Well, it wasn't necessary for you to inquire at the land office how much you would have to pay, was it? A. I don't know.

Q. You don't know whether you did inquire?

A. I don't say whether I did or whether I didn't.

Q. Who informed you when it was necessary to make final proof? A. Through the land office.

Q. You had a notice from the land office?

A. Yes, sir.

Q. Did you see Mr. Pritchard before you went to the land office to make your final proof?

A. No, sir.

(Testimony of Andrew F. Joplin.)

Q. Did you see Mr. Kinkaid? A. No, sir.

Q. And, of course, you didn't see Mr. Wells.

A. No, sir.

Q. When you went to the land office you had the \$400 in your pocket? A. Yes, sir.

Q. In actual cash? A. Yes, sir.

Q. Where did you get it?

A. I had it at home.

Q. You got it out of your treasury at home and took it to the land office, did you? A. Yes, sir.

Q. Your mother had hers the same way?

A. Yes, sir.

Q. After you had made your proof and paid this \$400 to Mr. Garrett, and he had given you a receipt, what did you do with that receipt?

A. I suppose I took it home with me.

Q. Are you sure about that, Mr. Joplin?

A. I guess I am.

Q. Didn't you take it some place else and leave it? A. After I made final proof?

Q. Yes, and got your final receipt. Do you know what I mean by final receipt? I mean this paper (showing witness paper) which has been shown to you, dated March 19, 1903, signed by Edward E. Garrett, as receiver of the land office, showing that you had that day paid \$401.70 for this land. Do you remember that document? A. Yes, sir.

Q. That is the paper that was given to you directly after you made your proof and payment, wasn't it? A. Yes, sir.

Q. What did you do with that?

(Testimony of Andrew F. Joplin.)

A. I kept it until I turned it over to Kinkaid.

Q. Kept it in your pocket? A. Why sure.

Q. Did you leave it at home?

A. I don't remember whether I left it home or not.

Q. You did give it to Kinkaid?

A. Yes, sir.

Q. When?

A. When I sold my claim to him.

Q. How long was that after you got it?

A. Several days.

Q. It wasn't the same day? A. No, sir.

Q. Your mother made proof the same day you did? A. Yes, sir.

Q. Did she take her receipt home with her?

A. I suppose she did.

Q. Do you know whether she took it to Kinkaid's office that day or not? A. I don't know.

Q. Do you remember having some conversation with Mr. George Butler before you made this filing in regard to the subject?

A. Conversation with him?

Q. Yes.

A. As I have said, all the conversation I had with him was right there at home, in the house, when we would all be talking.

Q. Did Mr. Butler advise you that it was a good thing to do? A. He did not.

Q. Did Mr. Butler advise you as to how it should be done? A. No, sir.

Q. Did Mr. Butler tell you how much it would

(Testimony of Andrew F. Joplin.)

cost? A. No, sir, not as I remember of.

Q. Did Mr. Butler tell you how much you could probably make out of it?

A. I don't know as he did.

Q. Don't you know whether he did or not?

A. I never heard him saying anything about it.

Q. Do you know that he did not tell you?

A. I know he did not.

Q. You would say then that he did not tell you how much you could make out of it?

A. Yes, sir.

Q. Did Mr. Butler ever tell you that it would be necessary for you to use your own money if you made an entry? A. I don't remember.

Q. You don't remember that he did?

A. I don't know as he ever told me anything about it. He might have been speaking, as I say, about the land there at home, but I don't know as he ever told me what to do, or anything about it.

Q. Did Mr. Butler ever, in your presence and hearing, make the statement to you or anyone else that it was necessary under the law that the entryman should use his own money in payment for these claims? A. I don't remember.

Q. Did you ever hear Mr. Butler say that if an entryman should use borrowed money for the purpose of proving up he would commit perjury?

A. I never heard him say that either.

Q. Did Mr. Butler, at any time, before you made your final proof, say in your presence and hearing that the entryman must be very careful in answering

(Testimony of Andrew F. Joplin.)

questions, because there was a suspicion of fraud concerning these entries? A. He did not.

Q. Did Mr. Butler give you any advice at all as to what answers you should make to the questions that were to be asked you at the land office?

A. No, sir.

Q. You are sure of that? A. I am.

Q. Do you remember Mr. Wilson's first name? I mean the name of that gentleman who, with his wife, accompanied you to this land?

A. I don't remember his first name now.

Q. Did you ever see him before?

A. Yes, sir.

Q. Was he a resident of Boise?

A. He was at that time.

Q. Did he make an entry? A. Yes, sir.

Q. Did his wife make an entry? A. Yes, sir.

Q. Where do they live now?

A. I don't know where they live.

Q. Have you seen them recently?

A. No, sir.

Q. You don't know whether they live here or not? A. No, sir.

Q. Did you ever tell Mr. Butler that you were going to sell this land? A. I did not.

Q. Did you tell Mr. Butler that your project was to float the timber down the stream and market it in that way?

A. No, sir, never told Butler nothing.

Q. That was just an idea of your own?

A. Yes, sir.

(Testimony of Andrew F. Joplin.)

Q. Were other people doing that?

A. That's the way it all comes.

Q. From this land?

A. Down the river, or has been.

Q. I mean from this land you entered, or that neighborhood.

A. I don't know whether there is any comes from there or not.

Q. Do you know of any entryman who has made an entry and cut the timber and floated it down the stream?

A. No, I don't.

Q. Did you at that time?

A. No, sir.

Q. But you thought you might do so?

A. I thought I might, yes, some time.

Q. As I understand, you had no idea of selling this land at that time?

A. No, sir.

Q. You didn't know exactly how much you could make out of it?

A. I did not.

Q. Had you made any inquiries as to how much you could probably get for it if you should want to sell it?

A. I don't know as I did.

Q. Do you know that you did not make inquiries?

A. Sure I do.

Q. You mean that you are positive you never made any inquiries as to how much the land could be sold for?

A. No, not before I sold it.

Q. Not before you sold it?

A. No.

Q. Had you heard that people in Boise were selling these claims that had been taken up in that region?

A. I don't remember as I had.

Q. You hadn't heard of any sales being made?

(Testimony of Andrew F. Joplin.)

A. No, sir.

Q. You hadn't heard of any buyers that could be had for these lands? A. No, sir.

Q. You had no idea how much you could make out of this tract? A. I did not.

Q. How did you come to go to Mr. Kinkaid to sell this land? A. I don't remember.

Q. Well, when you went there did you know Mr. Kinkaid? A. No, sir.

Q. Did he know you? A. No, sir.

Q. You told him you were Mr. Joplin?

A. Yes, sir.

Q. Your mother was with you?

A. Yes, sir.

Q. You introduced her to Mr. Kinkaid?

A. I don't know.

Q. At any rate, you made yourself known to Mr. Kinkaid? A. Yes, we made ourselves known.

Q. You showed him your receipt?

A. Yes, sir, I suppose we did.

Q. And asked him how much he would give you for the land? A. Yes, sir.

Q. What did he say?

A. He said claims had been worth more, but he was paying about \$800 and \$850 now for claims.

Q. That was the first time you had ever spoken to Mr. Kinkaid about price, or to anybody else about price? A. Yes, sir.

Q. And you don't know now who informed you to go to Mr. Kinkaid? A. I do not.

Q. Did you know before you went there that Mr.

(Testimony of Andrew F. Joplin.)

Kinkaid was in the market? A. We did not.

Q. Did you try to sell to anybody else?

A. No, sir.

Q. Had anybody offered to buy it?

A. No, sir.

Q. Did Mr. Butler give you to understand before you made this entry that if you should need money to pay for this land he knew where you could get it?

A. He did not.

Q. Who did? A. No one.

Q. Nobody ever told you that?

A. No, sir, I had my own money and didn't ask nobody for money.

Q. Had you ever taken any advice from any attorney or anybody else whom you thought knew more about the law than you did as to whether it would be proper for you to borrow money to pay for this land? A. No, sir.

Q. Had anybody ever told you that you would get into trouble if you should make proof with borrowed money? A. No, sir.

Q. Did you ever have any understanding at all on the subject? A. No, sir.

Q. You never permitted yourself to think about it? A. No, sir.

Q. Were you examined before the Grand Jury, the United States Grand Jury of this district, in the spring of 1907?

A. Well, I don't remember now what time it was.

Q. It was about two years ago, wasn't it?

A. Just about; once, I remember, when Mr.

(Testimony of Andrew F. Joplin.)

Ruick was the attorney.

Q. He was United States attorney for this district at that time? A. Yes.

Q. Well, before you went into the grand jury room did you have any conversation with Mr. Ruick about your testimony?

A. Before I went into the grand jury room?

Q. Yes. A. Yes, sir.

Q. Can you state in what month that was?

A. No, sir.

Q. Do you remember that on the 28th of March, 1907, you had an interview with Mr. Ruick in his office, in which he asked you a good many questions about this entry of yours? A. Yes, sir.

Q. Who else was present besides Mr. Ruick?

A. I don't know who the other gentleman was.

Q. Was it Mr. Johnson?

A. Mr. Johnson, I believe, was one of them.

Q. Mr. Johnson was assistant United States attorney at that time? A. Yes, sir.

Q. Was there a stenographer present?

A. I think there was.

Q. Do you know who he was?

A. I don't know his name, but that little feller that used to be in here.

Q. Mr. Oppenheim? A. Yes, sir.

Q. Do you know Mr. Oppenheim?

A. Yes, sir, I know him when I see him.

Q. He was the gentleman who was present acting as stenographer? A. Yes, sir.

Q. Was Mr. Wade present?

(Testimony of Andrew F. Joplin.)

A. I don't know.

Q. Do you know Mr. Wade who is special agent of the General Land Office, who has been on duty here for several years? A. I don't know.

Q. Do you know Mr. Goodwin? A. No, sir.

Q. Was Mr. Garrett present?

A. Mr. Garrett, I don't think was present there at that time.

Q. Was Mr. Garrett present at any interview you had with the district attorney?

A. Yes, sir; not with Mr. Ruick, he wasn't; I don't remember his being in the room at that time.

Q. Who was present at the conversation you had with Mr. Garrett?

A. Mr. Johnson and two other gentlemen.

Q. Stenographers? A. One of them was.

Q. Do you know Mr. Brannin? A. No, sir.

Q. Mr. Heald? A. No, sir.

Q. Do you know Mr. Garrett? A. Yes, sir.

Q. Do you remember that on the occasion of that interview you were asked these questions, and that you gave these answers which I now read? "Q. Who made out your filing papers for you, the papers you filed in the land office? A. Why, Mr. Pritchard. Q. Who sent you to Pritchard? A. I don't remember now. Q. Was it Downs? A. I don't remember whether it was Downs or who it was. Q. Did you see Wells when you returned from the timber? A. I don't know him. Q. You returned and saw Pritchard and Pritchard made out your papers for you? A. Yes, sir. Q. What were

(Testimony of Andrew F. Joplin.)

you given to understand, Mr. Joplin, that these claims would bring you? A. Well, I didn't know at that time, somewheres about \$800. Q. That is what they were selling for? A. Yes, sir. Q. Netting you in the neighborhood of three or four hundred?

A. Yes, sir. Q. Who told you that they would bring about \$800, Pritchard? A. Pritchard I think said they would bring about that? Q. When he made out your filing papers? A. Yes, sir." Do you remember that those questions were asked you and whether or not you gave those answers, on the occasion of your interview with Mr. Ruick, in the spring of 1907?

A. I don't remember all the answers; I was asked so much in those places.

Mr. BUNDY.—Answer the question, Mr. Joplin, just whether you remember the questions and whether you remember the answers. The question is, whether you remember those questions being asked you and remember making those answers.

A. I don't remember making those answers.

Mr. KEIGWIN.—Q. Would you say you did not make those answers? A. No, sir.

Q. It is possible that you did, then?

A. I might have said them, yes, sir.

Q. Whatever answers you made at that time were intended to be true, I suppose.

A. Well, as near as I could answer them, yes, sir, but, as I say, I was rattled, and I said a whole lot more than I intended to, that is, probably I might not give the right answers.

(Testimony of Andrew F. Joplin.)

Q. But you were endeavoring to tell Mr. Ruick just the truth, I suppose.

A. Well, I suppose I was, on some things.

Q. Did you have any motive for deceiving Mr. Ruick? A. No, sir.

Q. Was there any reason, as you understood it at that time, why you should not tell Mr. Ruick the truth? A. No, sir.

Q. Did you have any motive for inducing Mr. Ruick to believe something that was not so, so that you might deceive him?

A. I don't know as I did.

Q. Did you have any desire to tell Mr. Ruick anything that was not true, for the sake of amusing yourself? A. I don't suppose I did.

Q. Then what you said at that time—

A. As I say, I got mixed up, probably got mixed up on the questions, you know; probably there was lots of them I didn't answer right.

Q. I will ask you to listen to these questions and answers, which purport to be questions put to you and answers made by you on the occasion of your interview with the district attorney and these other gentlemen whom you have named, and try to remember whether or not these questions and answers are correctly reported.

Mr. BUNDY.—Before counsel goes any further, I desire to put on record an objection to this method of examination, as incompetent, irrelevant, and immaterial, and an attempt to impeach their own witness; and before proceeding further I would like to

(Testimony of Andrew F. Joplin.)

ask the witness a question or two. Mr. Joplin, Mr. Keigwin, the lawyer that is asking you questions, seems to have before him a very voluminous type-written document. Have you ever seen that document? A. No, sir.

Q. Have you ever examined it?

A. No, sir, not that I know of.

Q. Do you know what is contained in it?

A. No, sir.

Q. Then you, of course, don't know whether your answers are correctly put down there, or whether they are not? A. I do not.

Mr. BUNDY.—I make the objection for the reasons stated.

Mr. KEIGWIN.—Q. Mr. Joplin, I ask you to take in your hands the paper to which Mr. Bundy has referred and examine it, and see if you can tell from your memory whether the interview which you testified to as having been had by you with the district attorney in March, 1907, was or was not of the general character indicated in that paper. Take the time, Mr. Joplin, to examine it as fully as you like. (Hands witness paper.) Mr. Joplin, have you read far enough in that to say whether or not you recognize any or all of the questions as having been put to you on the occasion of your interview with the district attorney?

A. I don't remember all of them, no, sir.

Q. Do you remember some of them?

A. I remember some of them.

(Testimony of Andrew F. Joplin.)

Q. Taking up my question at the point where it was broken off, I read those questions and answers: "Q. What did you do with the final receipt when you got it from Mr. Garrett? A. I never got any. Q. You got a receipt showing you paid \$400. A. Oh, from Mr. Garrett? Q. Yes. A. I give that to Mr. Kinkaid. Q. As soon as you proved up? A. Yes, sir. Q. How did you come to take that to Kinkaid after you proved up, had you talked to him before about it? A. No. Q. When you got your receipt from the land office you took it and gave it to Mr. Kinkaid? A. Yes, sir, I suppose I did go right over there. Q. Now, on the day that you got your receipt from the land office you took it over to Kinkaid's office and left it with Kinkaid, did you not? A. Yes, sir. Q. And did your mother take hers there and leave it with Kinkaid? A. Yes, sir. Q. Kinkaid had talked to you before that, or you wouldn't have taken that to him? A. No, I didn't know Kinkaid until I went in the office. Q. Who told you to take that final receipt over to Kinkaid's office? A. I think Mr. George Butler. Q. Butler told you on the day you made proof to take your final receipt that you got from Mr. Garrett over to Kinkaid's office and leave it with Kinkaid? A. Yes, sir. Q. When did he tell you that, shortly after you filed? A. Yes, sir, shortly after. Q. It was before you put up the \$400 in the land office? A. Yes, sir. Q. And he told you as soon as you put up this \$400 in the land office and got a paper from the receiver that you should take that paper to Mr. Kinkaid? A.

(Testimony of Andrew F. Joplin.)

Yes, sir." Now, Mr. Joplin, do you remember whether or not those questions, or any of them, were put to you by the district attorney, and those answers, or any of them, made by you to the district attorney on the occasion of this interview?

A. Yes, sir, I was, some of those questions.

Q. Were you asked all of them?

A. Quite likely I answered most of them.

Q. Didn't you answer them in the way they are reported here?

A. I answered them as correctly as I could; that is the way I have answered them to-day.

Q. Do you remember whether you answered those questions as they are reported here in the extract that I have read to you?

A. I don't remember.

Q. I will ask you whether in the course of the examination by the district attorney and the other gentlemen whom you have named, these questions were put to you and these answers made by you, in reference to your visit to Mr. Kinkaid on the occasion when you sold your property, which I now proceed to read: "Q. Did he ask you who you were?

A. I believe he did. Q. And you told him? A.

Told him Mr. Joplin, yes, sir. Q. Did he seem then

to know who you were? A. Yes, sir. Q. As soon

as you said 'My name is Joplin' he seemed to know who you were and what you were there for? A.

Well, I told him what I was there for. Q. You told

him that Mr. Butler told you to come up there? A.

Yes, sir. Q. You said to him, 'Mr. Butler sent me

(Testimony of Andrew F. Joplin.)

up, and I am here to close up this timber deal?’

A. Yes, sir, that is what I told him. Q. And what

did he say? A. He said, ‘All right.’ Q. There was

nothing said about the price? A. No.’” Do you re-

member those questions being asked you and those

answers given?

A. I don’t remember that them questions was asked me.

Q. Then of course you don’t remember that those answers were made by you?

A. I remember that conversation in the room with Mr. Ruick was something over what Mr. Butler had said. Mr. Johnson took my testimony, and the first time I was in here was on the third floor, and I told Mr. Johnson just as near as I could, as I have to-day, the way I took up my land and all, and I went from the room into the grand jury room and I told as near as I could in there what I said before Mr. Johnson. I was excused then till two o’clock. I came back and Mr. Ruick took me in the room, and there was one or two questions asked me in there regarding something Mr. Butler had said, but I don’t remember the questions now.

Q. You answered them?

A. I answered the questions as near as I could.

Q. You answered them correctly?

A. I don’t know as I answered the questions at all. He said that Mr. Butler had said that I said that he had sent me up there, or something, about the claim. I don’t remember what the question was now.

(Testimony of Andrew F. Joplin.)

Q. Did you answer the question?

A. I suppose I did.

Q. Did you answer it correctly?

A. I guess I did.

Q. According to your best recollection at that time?

A. Yes, sir.

Q. Do you remember now whether you answered those questions as this report indicates that you answered them?

A. I don't remember.

Q. You may have done so, you think?

A. I might have answered them.

Q. In the period of about two years which has intervened since this examination was had have you thought much about this matter?

A. No, sir.

Q. Were you examined as a witness in the trial of Senator Borah?

A. Yes, sir.

Q. That was in the fall of 1907, was it not?

A. I believe it was.

Q. Were you asked about these things then?

A. No, sir.

Q. Were you asked about the circumstances of your making the entry?

A. I was asked how I went up there and took up the land, and who made out my filing papers, such as that.

Q. You had occasion then to think something about this matter?

A. Yes, sir.

Q. Have you thought about it since?

A. Quite likely I have.

Q. Has there been anything since the trial of

(Testimony of Andrew F. Joplin.)

Senator Borah which has brought this matter to your mind? A. I can't say.

Q. Have you had any conversations about it?

A. No, sir.

Q. Have you talked with anybody about it?

A. No, sir.

Q. Has anybody talked to you about it?

A. No, sir.

Q. Have you talked with anybody about it?

A. I might have talked with my mother about it.

Q. Have you been thinking about this since that time, or have you in the meantime had troubles of your own to occupy your mind?

A. I don't remember thinking much about it or not.

Q. Do you think your recollection of these facts is clearer to-day than it was two years ago?

A. I don't know.

Q. You see what I mean, don't you, Mr. Joplin? Have you given this subject so much attention and so much thought in the last two years that it has operated to refresh your memory or to make your idea more clear than when you talked to the district attorney?

A. I know on the Borah trial, in these rooms, I said a whole lot that wasn't so, and I knew it wasn't so at the time.

Mr. BUNDY.—Do you mean on the witness-stand, or in the room? A. In the room.

Mr. KEIGWIN.—Q. What was your reason for making different statements?

(Testimony of Andrew F. Joplin.)

A. I don't know.

Q. Why would you say, either on the witness-stand or in the district attorney's room, things that were not true?

A. Just as I say, I got rattled out there, and when I come on the witness-stand I told just as near the truth as I could.

Q. You did that when you were talking to Mr. Ruick, did you not?

A. Some things I did, and some things I didn't.

Q. Did you have any reason for misrepresenting anything to Mr. Ruick?

A. I don't know as I did.

Q. Or to Judge Burch?

A. I told Mr. Judge Burch how I took up my claim and everything, furnished my own money and everything.

Q. Do I understand you correctly, Mr. Joplin, in saying that on some of these occasions you told the truth and on others you didn't?

A. I mean I told the truth when I was on the stand before the Borah trial, and when I was in that room there Mr. Burch asked me several questions and I answered him wrong.

Q. Why did you do that?

A. I don't know; I must have been rattled, or something that way. He asked me, I know, if Mr. Wells had given me the money.

Q. What did you tell him?

A. I told him he had.

Q. Why did you tell him that?

(Testimony of Andrew F. Joplin.)

A. And I said I had went up there and located on the claims, that these men had took me up on these claims, and he said they hadn't never took me on the claims at all, probably I had never seen the claims.

Q. Mr. Burch told you that? A. Yes.

Q. Did you admit that to be true?

A. I told him they took me over the land, and that I went over the land.

Q. Then you told him the truth didn't you?

A. Yes, sir.

Q. You did go over the land?

A. I went over the land.

Q. You didn't tell Judge Burch any falsehood about that?

Mr. BUNDY.—Burch told him a falsehood.

Mr. KEIGWIN.—Q. Did you tell Judge Burch anything else that wasn't true?

A. Yes, I did.

Q. What was it?

A. I don't remember all that was said in the room.

Q. Do you remember anything else that you told Judge Burch that wasn't true?

A. I don't know.

Q. Well, was the substance—you know what I mean by the substance—of your conversation true or false?

A. It was false, what I told Judge Burch.

Q. Now, about the substance of your interview with Mr. Ruick, was that true or false?

(Testimony of Andrew F. Joplin.)

A. No, sir, there wasn't nothing to that either.

Q. It was all false?

A. Yes, sir; that is, when we was in the room there.

Mr. BUNDY.—Do you mean during the trial, or when?

A. No, it wasn't when I was in the trial.

Mr. KEIGWIN.—Q. Was it before the trial?

A. I told him the truth as near as I could when I was in before the Grand Jury.

Q. Before you went before the Grand Jury you had this conference with Mr. Ruick before you went into the Grand Jury?

A. Yes, sir.

Q. Was that true or false?

A. It was false.

Q. All of it? A. Yes, sir.

Q. You did tell him some truth?

A. Yes, I might have told him a few things.

Q. But most of it was false? A. Yes, sir.

Q. This last passage I read to you, you remember what it was, about going to Mr. Pritchard and introducing yourself and telling him that Mr. Butler had told you to go there, and closing the timber deal, was that false?

A. Yes, sir, I never went there at all, Mr. Butler never told me that at all.

Q. You are positive Mr. Butler never told you that?

A. Mr. Butler never told me nothing about this claim.

(Testimony of Andrew F. Joplin.)

Q. He didn't tell you where to go, or how to go, or how much money it would cost you?

A. He did not.

Q. Would you be just as sure of that if Mr. Butler should say otherwise?

A. I would say that he didn't say it.

Q. You think your memory is better than his?

Mr. BUNDY.—I object to this cross-examination of their own witness.

Mr. KEIGWIN.—If it should appear that Mr. Butler had stated that he did say these things, you would still say it was not so?

Mr. BUNDY.—Mr. Butler didn't say any such thing.

Mr. KEIGWIN.—I object to these statements of counsel.

Q. Mr. Butler is a man of truth and veracity, is he not? A. I suppose he is.

Q. You don't think he would intentionally testify falsely under oath, do you?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and not proper direct examination.

A. I don't suppose he would, no.

Mr. KEIGWIN.—Q. I will ask you now if, on the occasion of your interview with the district attorney, Mr. Ruick, which has been mentioned, you remember whether or not these questions were put to you and these answers made by you which I now proceed to read: "Q. And how much money was paid to you? A. \$800. Q. How was that money

(Testimony of Andrew F. Joplin.)

paid to you? A. Paid in bills. Q. What did you do with the money? A. Why, I kept it. Q. Did you deposit it in the bank? A. No, I took it home with me. Q. Where did you keep it? A. Kept it at home." Do you remember whether or not those questions were put to you and those answers made on that occasion? A. I don't remember.

Q. Were they true or false?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial; when the witness testifies that he don't remember, it is not a proper question.

Mr. KEIGWIN.—Q. Were those facts true or false?

Mr. BUNDY.—I object to it as incompetent, irrelevant, and immaterial, and improper cross-examination. A. I don't remember.

Q. Is it true or false that you were paid \$800 in bills and that you took it home and kept it?

A. I never said I was paid \$800 in bills.

Q. Is it true or false that you were paid \$800 in cash and took it home?

A. Yes, sir, that is just what I said.

Q. Then that part of your interview with Mr. Ruick is true. You did not try to deceive him about that? A. No, sir.

Q. You say now it was \$800?

A. \$800 or \$850; I said I didn't remember.

Q. I will ask you again now whether or not these questions were put to you and these answers made by you, at your interview with the district attorney in March, 1907, which I now proceed to read: "Q.

(Testimony of Andrew F. Joplin.)

Now, where—as I understand you now, Mr. Kinkaid said nothing to you about the price, but he seemed to know all about the transaction, and you knew what you were going to get for it? A. Yes, sir, he seemed to know, but he didn't tell me. Q. You didn't say anything to Kinkaid about what you were going to get yourself? A. No, I didn't. Q. Kinkaid simply made out a deed and gave you \$800 in cash? A. Yes, sir. Q. And that was on the day you got your final receipt in the land office? A. Yes, sir. Q. And you put up \$400 in the land office and on the same day you got your money? A. I couldn't say whether it was the same day. Q. But it was either the same day or the next day after? A. It was either the same day or the day before. Q. So that you were only out the use of your money a day in any event? A. Yes, sir." Do you remember those questions and answers?

A. I don't remember.

Q. If those answers were made by you to those questions were those answers true or false?

Mr. BUNDY.—That is objected to as incompetent, irrelevant, and immaterial, and asking the witness to testify to a dozen different facts in one question, and improper examination, and tending to impeach their own witness. A. I don't know.

Mr. KEIGWIN.—Q. Are those statements which are reported here—

A. Some of those statements are true and some of them are not true.

Q. Which are true?

(Testimony of Andrew F. Joplin.)

A. I don't know which ones.

Q. Is it true that Mr. Kinkaid said nothing to you about the price?

A. He said something to me about the price; I suppose he told me what he was paying for them.

Q. Is it true that he seemed to know all about the transaction?

A. He didn't know nothing about it that I know of until I went up there.

Q. Then that answer isn't true, if you made it?

Mr. BUNDY.—I object to that, because the answer is true. What he means by knowing all about it, he knew all about drawing a deed and all about purchasing a piece of land, but knowing all about what had been done before that is another thing. It isn't a fair way to examine a witness, and I object to it and ask that all this examination be stricken out.

Mr. KEIGWIN.—Q. Is that answer true or false? A. What was the answer?

Q. That Mr. Kinkaid said nothing to you about the price, but he seemed to know all about the transaction, you said: "He seemed to know but he didn't tell me." A. He might have knowed it.

Q. Did you make that answer to Mr. Ruick?

A. I don't remember.

Q. If you made that answer, was it true or false?

Mr. BUNDY.—The same objection.

Mr. KEIGWIN.—Q. If you made that answer was it true or false?

Mr. BUNDY.—Mr. Joplin, so far as the defend-

(Testimony of Andrew F. Joplin.)

ants in this case are concerned, we don't care how long this is carried on, but I think it is my duty as a lawyer to tell you, on the witness-stand, that you are not required to answer any question, or say it is true or false, which involves a dozen different things, and about which you have testified that you have no recollection. I am not assuming to advise you in any way, but I am just telling you your rights, as I understand them. You can take this matter before Judge Dietrich, if you want to. The defendants are not making any objection; we are perfectly willing to submit to the cross-examination of this witness, but I think it is only proper that counsel, or the examiner, or somebody should tell the witness his rights. In the first place, Mr. Joplin, I will say this to you: You are on the witness-stand now; you are under oath. I think the Examiner ought to tell the witness; I don't think it is my place as attorney to do it, but I can't sit here any longer and have that kind of questions asked the witness without the witness being advised of his rights, and I request the Examiner to state to the witness his rights.

The EXAMINER.—I think it is proper for the attorneys for the prosecution in this case to ascertain the facts as near as they can, and I can't see the force of this examination with reference to questions and answers which he says were given when he was not under oath, but it is proper for the prosecution now to ask him all about the facts with reference to payment of this money, what he did with it, where he got the money, what he did with it afterwards, and con-

(Testimony of Andrew F. Joplin.)

fine the examination as far as possible to those matters.

Mr. BUNDY.—Are you offering this for the purpose of laying the groundwork to impeach this witness?

Mr. KEIGWIN.—We offer it for that purpose and for any other for which it may be competent.

Mr. BUNDY.—Do you claim to have been surprised by the evidence of this witness on the stand to-day?

Mr. KEIGWIN.—Yes, sir, we have.

Mr. BUNDY.—Have you read the evidence in the Borah trial?

Mr. KEIGWIN.—I have not.

The EXAMINER.—I understand the witness to say that some of these answers are true and some of them are false, and he doesn't remember now which ones are true or which ones are false, and it seems to me that this examination has gone far enough with reference to that matter.

Mr. KEIGWIN.—If your Honor wishes to stop this examination, we will simply record our objection and take the matter before the Court.

The EXAMINER.—Certainly, put your evidence in in the way you think you ought to have it, and submit the matter to the Court.

Mr. KEIGWIN.—Do you mean to go on with this examination?

The EXAMINER.—Oh, no, I don't want you to go on with this examination. The witness asserts now, under oath, that some of those answers were

(Testimony of Andrew F. Joplin.)

true and some were false, and he don't now know which those are.

Mr. KEIGWIN.—Will your Honor indicate to us some test or criterion by which we can determine at once which of these answers are true and which are false?

The EXAMINER.—If there was any way by which you could determine which are true and which are false, I would permit you to do it.

Mr. KEIGWIN.—We can do that by asking the witness.

Mr. BUNDY.—He has testified that he told it to Mr. Johnson exactly the same way before he went into the grand jury room that he did when he went into the grand jury room, and as he has told it to-day. The witness stated that he got rattled when Judge Burch was asking him.

The EXAMINER.—You are entitled to ask him, is this true or is it false.

Mr. BUNDY.—The witness ought to be advised that he doesn't have to answer.

Mr. KEIGWIN.—If the Court wishes to advise this witness that he needn't answer, of course it doesn't matter to me whether he does or not.

The EXAMINER.—You haven't gone over the whole of that?

Mr. GORDON.—Not quite.

Mr. KEIGWIN.—Now, Mr. Joplin, these gentlemen say that I have committed error in asking you these questions, so I will try to rectify my examination to accord with correct principles, and I think

(Testimony of Andrew F. Joplin.)

I ought to say to you, and I think I will ask the Examiner to approve what I say, and to say it to you, that there is in this examination of mine no purpose whatever to show, or to make you show, that you have ever committed perjury, and that if you have committed perjury or any other offense in the course of the transaction concerning which I am questioning you, that you are not now subject to any prosecution or indictment, or any other annoyance on behalf of the Government. Will the Examiner say to this witness—

The EXAMINER.—That is true. The witness should understand now that he is not subject to prosecution for perjury for anything he stated at the time this examination was made. You are not in any danger of being prosecuted for perjury.

Mr. BUNDY.—Do I understand counsel to promise him immunity as to to-day? The witness has testified on the stand to-day as to the facts under which he took up this land.

The EXAMINER.—The witness must state here in accordance with the facts, because he is now under oath, and the time has now passed in which you may be prosecuted for anything you have said. You are in no danger for anything of that sort, but you must state now the facts as you recollect them, of course, and the witness must try to answer in accordance with the facts, and in accordance with his memory, whether these answers agree with the answers you made to Mr. Ruick or not. It doesn't matter now;

(Testimony of Andrew F. Joplin.)

we want the facts, whether you stated the facts then or not.

Mr. KEIGWIN.—The fact is, if the Court please, that this examination concerning which I am now questioning the witness was not made, as far as I can see now, as far as I know now, under oath. There was no oath administered. Was there any oath administered to you at all by Mr. Ruick?

The WITNESS.—No.

The EXAMINER.—You don't think, Mr. Keigwin, that if there was an oath administered to him at the time of this examination in a private room by Mr. Ruick that it would be such an oath as he could be prosecuted for?

Mr. KEIGWIN.—The fact is, there was no oath in this case. What I meant to say to you, Mr. Joplin, was, that if you had committed perjury or any other offense in the entry of this land in 1902 or 1903, that offense, whatever it was, if there was an offense—I don't say that there was—would now be barred by the statute of limitations, so that you are not liable to any annoyance on account of it, and the purpose of my examination is not to get you into any trouble at all.

The EXAMINER.—You can so form your question that there can't be any objection to it.

Mr. KEIGWIN.—Q. Do you remember, Mr. Joplin, whether, on the occasion of your interview with the district attorney, in March, 1907, this question was asked you and this answer given by you which I now read: "Q. Where did you get the

(Testimony of Andrew F. Joplin.)

money to prove up with? A. Well, I worked for it; I worked here, there and every place. I most always got \$2 a day." Do you remember that question and answer? A. I don't remember.

Q. Is it or is it not a fact that you got the money by working for it, and that you most always at that time got \$2 a day? A. Sir?

Q. Is it or is it not a fact that at the time you made this entry you had worked for the money and had most always got \$2 a day?

A. I didn't always get \$2 a day, that is, as I said, when I was working for my mother, I worked by the month, and when I wasn't working for her I got \$2 and sometimes more.

Q. Do you remember, on the occasion of the interview with the district attorney, in March, 1907, that you were asked: "Who told you to say on your final proof that you would probably float the lumber down the river?" And that you answered: "Mr. Butler said to say that." That would be a fair question. And that these answers and questions were put and made which I now read: "Q. And yet Butler knew you was going to sell this land as soon as you made proof, and you knew it? A. Yes, sir. Q. And Butler told you to say that? A. Yes, sir. Q. And you knew it wasn't true, and Butler knew it wasn't true? A. Yes, sir. Q. And didn't he also tell you that they were making very rigid examination of the claimants, questioning you very closely about these things, they told you that too? A. Yes, sir. Q. They told you they thought there was some

(Testimony of Andrew F. Joplin.)

fraud and you had better be very careful how you answered? A. Mr. Butler told me that this morning. Q. When you paid your money into the land office they asked you a lot of these questions Butler had talked to you about the questions, and told you how to answer them? A. Yes, sir." Do you remember those questions and answers, or any of them?

A. No, sir, I do not.

Q. You don't remember any of them?

A. No, sir.

Q. Is it true that Mr. Butler had told you to answer any of those questions in that way?

A. I have said that Mr. Butler never told me to answer no questions at all.

Q. Now, I find at this point a red ink memorandum to the effect that the witness was sworn. Now, what evidence there is of it I don't know. There is no signature, oath, or jurat attached to this paper. There is nothing but this red ink legend at the top of this page, "Witness Sworn."

Mr. BUNDY.—In view of the statement of counsel, I will ask the witness whether or not you were sworn when you were in there with Ruick?

The WITNESS.—No, sir.

Mr. BUNDY.—Or with Johnson?

A. No, sir.

Q. Or with these other gentlemen you have mentioned? A. No, sir.

Q. Or with Judge Burch? A. No, sir.

Q. Wasn't sworn at all? A. No, sir.

Q. Wasn't told that you were sworn?

(Testimony of Andrew F. Joplin.)

A. No, sir.

Mr. BUNDY.—If the Court please, I object to further interrogating this witness at all about this typewritten statement in the hands of counsel, for the reason that it carries upon its face a misstatement of facts, and isn't what it purports to be.

The EXAMINER.—I think he can ask with reference to this statement in order to refresh the memory of the witness, and then he can go on and ask the witness what Mr. Butler did tell him, or when, or where.

Mr. KEIGWIN.—If the Court please, I will go further than either you or Mr. Bundy wants to go. I am going to say this: In view of the fact that here is an intimation that an oath was administered to this witness, and in view of the fact that there is a federal statute which authorizes an oath to be administered, in view of the possibility that this witness may have been sworn, and that if he were to testify falsely in regard to this matter he might be convicted of perjury, because this is within three years. I will ask the Examiner to instruct the witness that he need not answer these questions if he desires not to.

The EXAMINER.—I think you may go on and ask him. I don't think the witness is in any danger whether he was sworn or not. I may be mistaken about that. I would like to see the law which would convict him of perjury on an examination of this kind before the district attorney. It seems to me it would have no more force than an examination made

(Testimony of Andrew F. Joplin.)

by an attorney in a case ordinarily.

Mr. GORDON.—The difference is this, if the Court please. There are acts of Congress that give agents of the land office authority to put under oath any witness they interrogate concerning any matter they have before them, and if a witness swears falsely to that, whether it is in the office or wherever it is, the statute makes it perjury.

The EXAMINER.—He can't be prosecuted for perjury now.

Mr. GORDON.—This is within the statutory period, if your Honor pleases; this was in 1907.

The EXAMINER.—I want to say to the witness that he must speak in accordance with the facts now in this examination; and counsel understands how he may frame his questions in order to get at those facts.

Mr. KEIGWIN.—I should like to have it said that so far as we are concerned, we don't consider that the witness is obliged to answer any question which we may ask him in regard to that portion of this statement.

The EXAMINER.—I think he should answer.

Mr. KEIGWIN.—I suppose we can say that to him if we want to.

The EXAMINER.—I think he should answer. You had better proceed with the examination.

Mr. KEIGWIN.—Mr. Joplin, do you remember that on the occasion of your interview with the district attorney, in March, 1907, these questions were put to you and these answers given by you which I

(Testimony of Andrew F. Joplin.)

proceed to read: "Q. Did you talk with Wells after you filed and before you made proof? A. No, I just went up there to get our papers. Q. When was this? A. I don't just remember now how it was; it seems to me like we had been to Wells before. Q. Before you filed? A. Yes, sir. Q. Did you go to him after you filed, to Wells' office, did you see Wells after you filed? A. No, we didn't go after we filed. Q. Did you see Kinkaid after you filed, and before you offered proof? A. After we filed, you mean? Q. Did you see either Wells or Kinkaid between the time you filed and the time you made proof and paid the money into the land office, or talk with anybody about the proof? A. Yes, I talked to Mr. Wells a little that morning we went up, before we got our papers." Do you follow me?

A. I don't remember.

Q. Do you understand what I am reading?

A. Yes, sir.

Q. I am not going too fast for you?

A. No, sir.

"Q. How many times did you see Wells?

A. Only once that morning when we went up to get our papers. Q. Who told you to be careful about what you said in the land office, and told you they would cross-examine you? A. Why, Mr. Butler I think told me. Q. Did he warn your mother too? A. I think he did; I think it was Mr. Butler; I couldn't be sure. Q. That is George Butler? A. Yes, sir. Q. When you offered proof, then just as quick as you got your receipt you took it to Kinkaid

(Testimony of Andrew F. Joplin.)

and he gave you the money? A. I think I went that evening or the next day. Q. You and your mother together? A. Yes, sir." Now, Mr. Joplin, do you remember any or all of those questions as being put to you, or any or all of those answers as being made by you?

A. I don't remember; they might have; I might have answered some of them; I don't remember now.

Q. I will ask you then if you remember these questions and answers as having been made on the same occasion: "Q. Who told you what the value of this claim was? A. Why, there was nobody told me just exactly the value of it. They told me it would be worth about \$800 or \$850, or somewheres in there. Q. Now didn't they tell you that you must be careful and say you had no agreement for the transfer of the land? A. Mr. Butler I believe told me that. Q. But you did have an agreement with these people, an understanding that you was to get a certain amount and transfer it to Kinkaid, didn't you? A. Not only through Mr. Butler. Q. Well, I say you had that understanding through Butler? A. Yes, sir. Q. And Butler knew you had an understanding to transfer the land to Kinkaid? A. Yes, sir. Q. And you knew it? A. Yes, sir. Q. And that statement when you said you had no agreement was false, and Butler knew it was false, and you knew it was false; that is correct, is it not? A. Yes, sir." Do you remember any or all of those questions as being put to you and any or all of those answers as being made you at your interview

(Testimony of Andrew F. Joplin.)

with the United States attorney?

A. I don't remember now.

Q. You don't remember any of them?

A. No, sir.

Q. I will ask you if you remember these questions being put to you and these answers as being made by you on the same occasion: "Q. Your mother had the same arrangement that you did? A. Yes, sir. Q. And they gave your mother to understand that by taking up this timber claim she could make about \$400? A. Mr. Butler or someone said we could sell the claims. Q. But before you made final proof in the land office you knew exactly what you would get out of it? A. Not exactly, but very near what we would get out of it." Do you remember those answers being made by you to those questions, or any of them? A. I don't remember now.

Q. Do you remember these questions as having been put to you and these answers as having been made by you on the same occasion: Q. They gave you to understand if you didn't have the money of your own they would supply it? A. Yes, sir. Q. Who gave you that understanding? A. I think Mr. Butler told me. Q. Butler told you that they would put up the money for you? A. Why, he didn't say that they would put the money up for us, but he said they would put money up for anyone that wanted money." Do you remember those questions or those answers, or any of them?

A. No, sir, I do not.

Q. Do you remember this question and this an-

(Testimony of Andrew F. Joplin.)

swer as having been put to you and made by you on the same occasion: "Q. But you had an understanding with these people, through Mr. Butler, that as soon as you got title to the land they would buy it, and that you would get \$800 for the land? A. Yes, that was the understanding, yes, sir." Do you remember that? A. I do not.

Q. Now, Mr. Joplin, what reason did you have for deceiving the district attorney in March, 1907?

A. I don't know as I had any.

Q. Why did you do it?

A. Well, I don't know.

Q. Why did you make some false statements to Mr. Ruick?

A. Well, he said that the way he wanted me to testify was something different, and I knowed nothing about it. I had told them all the time how I took up my claim and everything, and all about it, but they didn't seem to want me to testify that way, but some other way.

Q. Do you mean you told him these things just to please him?

A. I suppose I did; I got rattled and told him a whole lot of things that wasn't so.

Q. When you went on the stand did you testify to false things just to please Mr. Ruick?

A. I did not.

Q. How did you please Mr. Ruick by telling him in his office things that were false and then refusing to testify to them on the stand?

A. I don't know whether it pleased him or not.

(Testimony of Andrew F. Joplin.)

Q. Then if you didn't want to please Mr. Ruick why did you tell him these things?

A. I didn't understand the question.

Q. If you didn't want to please Mr. Ruick why did you tell him these things that were not true?

A. I don't know.

Q. Where did you go from Mr. Ruick's office that day?

A. I went in before the Grand Jury.

Q. Did you testify to the same things before the Grand Jury that you told Mr. Ruick?

A. I don't know as I did.

Q. Did you testify differently?

A. Yes, sir.

Q. In other words, where you had told Mr. Ruick falsehoods you corrected it on the stand?

A. I don't know as I told him; all I remember was just a few questions I was asked after dinner, maybe three or four or five minutes, when I went in there and he told me Butler had told me so and so, and I told him I didn't say so and so, but I don't remember what the questions was now, and that was all the time I was before Ruick, only what time I was in there before the Grand Jury.

Q. How about the time you went before Judge Burch?

A. I was before Judge Burch in the forenoon. I was sitting in here, and they came in here and called me out and said Mr. Burch wanted to talk to me, and I went out and he was down town, and so he came back up and took me in the room, and he told

(Testimony of Andrew F. Joplin.)

me the statements I made in the land office and other places was false, that I swore to a lie in the land office, and I told him I told the truth as near as I could, which I did, and I told him how we took up the claim, as I have told you here, how we took up the claim and everything, and he said I had sworn to a lie in the land office, he says, "They will throw you up in the penitentiary if you don't tell the truth."

Q. Who told you that?

A. Burch did. So I told him, I says, "I don't know what to tell." I says, "I tell the truth and that is all I am going to tell, and he said they would put me in the pen if I didn't tell the truth. So he went to questioning, and I told him a lot of stuff, and he said, "When you go before the jury swear to the truth; it don't make no difference what you tell us in these boxes here," and when I was called up I told the truth.

Q. Was it in that conversation that Judge Burch told you that Wells had given you \$400?

A. He wanted to know where I got my money, and I told him I had my money, and he said he knowed I didn't have my money; he said somebody had given me this money, and wanted to know if Wells didn't give me the money, and he wanted to know where Wells was when he give it to me; he said he did.

Q. And you said he gave you the money?

A. Yes, I said he did.

Q. And then you came directly from that room

(Testimony of Andrew F. Joplin.)

in here and went on the witness-stand and denied it?

A. Yes, in the afternoon I did; he says, "Tell the truth on the witness-stand."

Q. You are ordinarily a truthful man, aren't you? A. I tell the truth as far as I can.

Q. Do you think anybody can scare you into telling a lie?

A. I don't know; I wasn't scared at that time; I had been sick and it got me all rattled, that's the only reason.

Q. You are not afraid of anybody, are you?

A. I don't know as I am.

Q. You don't think anybody could hold you up on the street to-night and make you tell a lie and sign it? A. I might.

Q. I mean any man of your own size; would you be scared by a man of your own size?

A. I don't know whether I would or not.

Cross-examination.

(By Mr. BUNDY.)

Q. There are very few questions I want to ask you, Mr. Joplin, and those are questions simply for your own guidance, for your own benefit. Count these pages with me (showing witness paper), you can see me count; I show you thirty-three pages of typewritten matter, all of which is question and answer, headed, "Statement of Andrew F. Joplin, Boise, March 28, 1907," being the statement which Mr. Keigwin has questioned you about, which purports to be a statement you made to Mr. Ruick and Mr. Johnson. You will notice by this statement,

(Testimony of Andrew F. Joplin.)

Mr. Joplin, it is all question and answer. Now was all your conversation with Mr. Johnson and Mr. Ruick in that form? A. No, sir, not all of it.

Q. Prior to the time they commenced asking you questions, they had talked the matter over with you at great length, had they not; they had gone over the matter without taking it down?

A. No, they had taken it down, Mr. Johnson did.

Q. Was he a shorthand man?

A. No, he had a man in there taking it down.

Q. What I am trying to get at is, did you have a talk with him outside of answering questions?

A. No, sir.

Q. Can you tell, or do you know, by looking over this, as to whether this contains all you told them at that time? A. I don't know.

Q. You have never read it through?

A. No, sir; I know there is lots in there that they never said nothing to me about, quite a few questions.

Q. On the page marked "A. F. J. 19," it says, in red ink, "Witness Sworn." Were you sworn at any or all of these interviews you have told about?

A. I don't remember of being sworn in any of those rooms.

Q. Did you at the time think you were under oath? A. No, sir.

Q. Did they tell you you were under oath?

A. No, sir.

Q. Did they ask you to stand up, and administer an oath to you, like the Judge has here to-day?

(Testimony of Andrew F. Joplin.)

A. No, sir.

Q. You say, Mr. Joplin, that you were somewhat rattled in this talk you had with Mr. Johnson; that was before you went into the grand jury room?

A. Yes, sir.

Q. At that time did you tell him all about the manner in which you entered the timber and stone claim?

A. Yes, sir.

Q. And where you got the money?

A. Yes, sir.

Q. And did you tell him, as you have told it here to-day?

A. Yes, sir.

Q. And after you got through talking to him did you go to the grand jury room?

A. Yes, sir, I think so.

Q. And did you tell them the same as you did Mr. Johnson?

A. Yes, sir, I think I did.

Q. And it was after that that you talked to Mr. Ruick?

A. Yes, sir.

Q. Did Mr. Ruick say you had lied and testified falsely in the grand jury room?

A. No, sir.

Q. Did he make any threats?

A. No, sir.

Q. Simply told you what he wanted you to testify to?

A. Only a few questions was asked, as I say, in regard to my first testimony out in Johnson's room, and they asked me, and I said Butler said so, or something like that, and he took me in there and asked me a lot of questions anyway, whether Butler had told me so and so, and he wanted to know if Butler had told me so and so, and I said, "No, he

(Testimony of Andrew F. Joplin.)

didn't." And he said he would see how I swore before the jury.

Q. After talking with Ruick did you go before the Grand Jury again? A. Yes, sir.

Q. And testified further about this timber and stone claim? A. Yes, sir.

Q. And you had no further conference until during the Borah trial Judge Burch got after you?

A. Yes, sir.

Q. And after telling you his version of it there he then told you to go in and tell the truth?

A. Yes, sir; he said "The truth is what is wanted before the Grand Jury." He said I would have to tell the truth when I got before the Grand Jury.

Q. This was the jury that was trying Senator Borah, wasn't it? A. Yes, sir.

Q. And you did come in here and testify to it as you have to-day? A. Yes, sir.

Q. Now let's get down to your recollection of the facts. Did you, at the time you made your first filing on this land, have, at that time, any agreement with any person, firm, or corporation by which you had agreed to turn over to such person, firm or corporation, or any other person, the title which you might acquire from the United States?

A. No, sir.

Q. Did you have any such agreement as that at the time you made your final proof?

A. No, sir.

Q. Up to the time you made your final proof had you had any conversation, directly or indirectly, with

(Testimony of Andrew F. Joplin.)

the Barber Lumber Company, Wells, Kinkaid, or any of the defendants in this action, with reference to selling that land when you got title?

A. I had not.

Q. Did you at any time prior to making final proof, talk with the Barber Lumber Company, Wells, Pritchard, Kinkaid, or any of the other defendants in this action, anything about how much you could get for the land, or about selling it at all?

A. No, sir.

Q. Did you enter this land for the benefit of the Barber Lumber Company, or at its request?

A. I didn't know nothing about it at the time, if I did.

Q. Did you enter this land for the benefit of, or at the request of, any person other than yourself?

A. No, sir.

Q. It is charged in the complaint in this action, Mr. Joplin, that you made your timber and stone entry at the request of, and for the benefit of, the Barber Lumber Company and the other defendants named in this action. Is that true or false?

A. It is false.

Q. And it is charged in this complaint that you made the entry for them, at the request of the defendants, and then, at the request of the defendants or some of them, you went to the land office and testified falsely, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land. Is that true or false?

A. It is false.

Q. Did you hear, about the time you sold, or some

(Testimony of Andrew F. Joplin.)

time before that, of a pool that was made up between some of the people here to hold their claims?

A. No, sir.

Q. You never heard of it? A. No, sir.

Q. You don't recall how you came to go up to Mr. Kinkaid's to sell?

A. No, I don't remember how we came to go up there.

Q. Had you heard of the lands that had been entered formerly in the Basin being sold, or did you know anything about that? A. No, sir.

Q. You didn't know anything about that?

A. No, sir, I did not.

Q. So that at the time you filed, and at the time you made your final proof, you didn't know whether there would be an immediate market for this or not?

A. I did not.

(Witness excused.)

At this time court adjourned until 10 A. M., Tuesday, February 23, 1909, at which time the taking of testimony was resumed, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Mrs. Lelia Butler, on Behalf of the Complainant.]

Mrs. LELIA BUTLER, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Lelia Lee Butler?

(Testimony of Mrs. Lelia Butler.)

A. Yes, sir.

Q. And you were Mrs. Lelia Lee in 1901?

A. Yes, sir.

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

A. Yes.

Q. I show you timber and stone land sworn statement dated December 19, 1901, signed Lelia Lee, and ask you if that is your signature to that paper?

A. I should think it was; I wouldn't swear it was, but I think it; I generally write a better hand than that, but when a woman is writing in public and has her glove on she don't write so well.

Q. I show you testimony of Lelia Lee, given before the land office, dated March 6, 1902, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you non-mineral affidavit, dated December 19, 1901, and ask you if you signed that paper? A. I think I did.

Q. I show you deed, dated March 26, 1903, made by Lelia Lee to A. E. Palmer, and ask you if you signed and acknowledged that deed?

A. I surely did, yes, sir.

Q. Mrs. Lee, who was the first person that spoke with you about taking up a timber and stone claim?

A. Mrs. Burns.

Q. Mrs. Louis K. Burns?

A. No, sir, Mrs. Dora Burns.

Q. She is the wife of Louis K. Burns, is she not?

A. I don't know his initials; he is commonly

(Testimony of Mrs. Lelia Butler.)

known as "Old Burns."

Q. What did she say about it?

A. She said that if I would do as she said she would show me how to make \$200, and I mustn't ask her any questions, but just have faith in her and she would see it through all right.

Q. Did you accept the proposition?

A. I did.

Q. Did she send you to see anyone?

A. No, sir.

Q. How long after you had this talk with Mrs. Burns did you locate on one of those timber claims?

A. I think it was less than a week, as near as I can remember I think it was less than a week.

Q. Did you go to look at this land with a party or by yourself?

A. Oh, there was quite a party of us.

Q. Do you remember who were of the party?

A. There was Mrs. Burns, and Mrs. Briggs, and my brother in law, Mr. Larry, and one other man besides the driver; the other man, I never remembered his name.

Q. Who arranged for this party?

A. Well, that I don't know. Mrs. Burns took me up to the Pacific Hotel, and we got into the buggy, and that is all I knew about it at that time.

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

A. I did not.

Q. Where did you go to see this land?

A. Up beyond Placerville, I should think, as best I remember, about three miles beyond Placerville;

(Testimony of Mrs. Lelia Butler.)

we passed through several little towns, but I think Placerville was the last town.

Q. Did you know who was to locate you?

A. No, sir, I didn't know him until I got there.

Q. And who did you meet there to locate you?

A. Patrick Downs.

Q. And did you have any arrangement or agreement by which you were supposed to pay a locating fee?

A. No, sir.

Q. Did you ever pay a locating fee?

A. I did pay it.

Q. When did you pay it?

A. After we got to the land office, after we got back from there, why then we—well, I don't know whether I paid it in the land office building; I couldn't tell you where I paid that, but it wasn't until after I came back.

Mr. BUNDY.—Do you mean after you came back from looking at the land?

A. Yes, sir.

Mr. GORDON.—Q. Do you know whether it was after you came back or after you sold your property?

A. Well, now, I paid that before, because it cost me something like \$50, and you know there was the locating fee and the advertisement, and the land office fee, and then the expense of going up there and back.

Q. Who did you pay that locating fee to?

A. I don't remember his name now, but he was a slim looking man in the land office.

Q. I mean the \$25.

(Testimony of Mrs. Lelia Butler.)

A. I couldn't tell you who I paid that to; honestly I don't remember; you know I didn't know the man until that day, that was the first time I met him.

Q. Did you pay Mrs. Burns a locating fee?

A. Yes.

Mr. KEIGWIN.—Q. You paid \$50 for the two of you? A. Yes, sir.

Mr. GORDON.—Q. Do you know John I. Wells?

A. I do now.

Q. Did you pay it to him?

A. I might have, but I don't remember that.

Mr. BUNDY.—Did you say you paid Mrs. Burns \$50? A. I did, yes.

Mr. GORDON.—Q. When you went to look at this land, did you have any arrangement with Mr. Downs before you left Centerville?

A. No, sir, he never talked to me at all.

Q. When he took you to the land, did he show you a particular piece and point it out to you as the piece you were to locate on?

A. No, he let the men folks go with another man and he took us women folks and he said, "There is some very nice land, and this quarter isn't taken up, and a quarter over there isn't taken up," and he showed us around and said, "You can take whichever one you want; these are not taken, and I would advise you to take them because they have got about three million feet of timber on each quarter."

Q. How was the weather up there at that time?

A. There was snow on the ground, I should think; I should think there was between six inches

(Testimony of Mrs. Lelia Butler.)

and a foot; anyhow we went up in a sleigh.

Q. Did you go all over your claim?

A. No, not all over it; we walked around on it some, but not all over it.

Q. How far do you think you walked on the claim? A. I didn't walk very far.

Q. Fifty or a hundred yards?

A. Not more than that.

Q. Did Mr. Downs give you a description of that property? A. He did.

Q. Did he tell you were to take it?

A. Yes, sir.

Q. Where did he tell you to take it?

A. To the land office.

Q. Did you go to the land office to have your papers made out, or who made your filing papers out for you? A. At the land office.

Q. Who did you meet at the land office?

A. Well, all those that went up with me, and Mr. Wells, I think was there, and Mr. Downs was there.

Q. Did Mr. Wells bring you your papers to the land office?

A. I don't remember; I really couldn't say.

Q. This sworn statement I showed you, I will ask you whether it is your best recollection that somebody at the land office made that out, or whether Mr. Wells filled in that blank form for you?

A. You know when I went in, I went into a little room by myself, when this was made out, as I understand it, and I had to swear the same as I did here, and this man Garrett asked me if I had been on the

(Testimony of Mrs. Lelia Butler.)

land and about how many thousand feet there would be to the quarter section, and if I was taking it up for the timber, and if there was any other reason I was taking it up.

Q. Wasn't it the second time that you went there, when you made your final proof, that he asked you these questions?

A. No, I don't think so; I think it was the first time I went.

Q. Do you know who prepared that paper for you? A. I do not.

Q. How long after you returned from Centerville did you go to the land office?

A. I believe the next morning.

Q. Did you go to Mr. Wells' office before you went to the land office?

A. I did not; I didn't know his office.

Q. You had never met Mr. Wells until then?

A. Never.

Q. You met Mr. Wells that day, though, didn't you? A. Yes, sir.

Q. And he introduced you at the land office?

A. I don't think I was introduced at all; we all went up there together. I met him at the land office, that is the only place I had met him.

Q. Were you introduced to him there?

A. I think so.

Q. Do you remember whether or not you paid your locating fee? A. I can't say as to that.

Q. Now, at that time did you know of a market for this timber land?

(Testimony of Mrs. Lelia Butler.)

A. Yes, after I had made my first filing.

Q. I mean before you made your first filing.

A. No, sir, I didn't know anything about it at all.

Q. When did you expect to make the \$200?

A. That I left entirely to this woman, who said she was a friend of mine, and of course after I saw the timber we talked up there about how valuable timber was, but that was all.

Q. And then the time came for you to make your final proof?

A. Yes, sir.

Q. Do you remember that occasion?

A. Yes, sir.

Q. And had anybody said anything to you between the time you made your entry and final proof about money to make the final proof with, or to purchase the land?

A. Not until the time came to prove up.

Q. Who talked to you about that?

A. Mrs. Burns told me the money would be supplied.

Q. Did she tell you who would supply it?

A. Yes, she told me who she thought would supply it.

Q. Whom did she tell you?

A. Mr. Dean West would bring it to me.

Q. Did Mr. Dean West bring it to you?

A. He did.

Q. The day you made your final proof?

A. The day before.

Q. Do you remember how much it was he brought you?

A. Just \$400.

(Testimony of Mrs. Lelia Butler.)

Q. And you took that \$400 to the land office the next day? A. I did.

Q. And paid for the claim? A. Yes, sir.

Q. Was that \$400 in cash or check?

A. I don't know; I don't remember.

Q. Did you give a note for it?

A. I don't remember that, either; I don't know whether I did or not.

Q. And you took the same money he gave you to the land office and paid the money in? A. Yes.

Q. Now, did he tell you where you should say you received that money, or whose money it was that you were paying into the land office?

A. He didn't say whose money it was; he said "This came out of the bank."

Q. Did he tell you what you should say about it when you went to the land office?

A. No, he just made the remark, he said "You don't want to forget that this money came out of the bank."

Q. Did you have any other talk with Mr. Wells before that?

A. No, he was an entire stranger to me before that.

Q. And he came to your house?

A. Yes, sir; they were not people that I associated with at all.

Q. Did you know Mr. John Kinkaid at that time?

A. No, sir.

Q. Did you know Mr. Pritchard at that time?

A. No, sir.

(Testimony of Mrs. Lelia Butler.)

Q. Now, between the time you met Mr. Wells at the land office, when you made your filing, and the time you made your final proof, had you seen Mr. Wells again? A. No, sir.

Q. They gave you a receipt for this money at the land office, this \$400, when you paid it in?

A. Yes.

Q. What did you do with that receipt?

A. That I don't know; I have been trying to think whether I kept it or whether I took it to Mr. Wells, to his office; I don't remember whether I did one or the other.

Q. Did you go to Mr. Wells' office the day you received that receipt?

A. I don't remember that I was to his office but once, and that was when they told me to go to him and he would tell me where to go to get my \$200.

Q. Did Mrs. Burns tell you that?

A. Yes, sir.

Q. And you went to Mr. Wells?

A. Yes, sir.

Q. How long was that after you paid your money into the land office?

A. Well, I should think it was very soon.

Q. The next day or the day after?

A. I should think so.

Q. What did he say to you about where you should get the money?

A. Mr. Wells? He told me to go to Mr. Pritchard, if I remember right, I think that was his name.

(Testimony of Mrs. Lelia Butler.)

Q. Mr. Louis M. Pritchard?

A. Yes, I think in the Sonna Block.

Q. Did he go with you there?

A. No, sir.

Q. You went alone? A. Yes, sir.

Q. Had you ever met Mr. Pritchard before?

A. Never had seen him that I knew of.

Q. And you told him your name?

A. Yes, sir.

Q. Did he know what you came for, or did you have to explain to him?

A. I just told him I was one of the ladies that had come to get my money.

Q. And he asked you your name?

A. Yes, sir.

Q. Did he give you any money?

A. Yes, sir.

Q. How much? A. \$200.

Q. Did he make you sign a paper that day?

A. Yes, sir.

Q. Do you know what that paper was?

A. I suppose it was a deed.

Q. And was anything said at that time whether you should make another deed after that or not?

A. Yes, he said he would let me know when they wanted to fix up the deeds in better form, and I could come again, and I told him certainly I would come again if they desired.

Q. The deed you made first was just a temporary deed, was it? A. As I understood it.

Mr. KEIGWIN.—Q. Was that what they told

(Testimony of Mrs. Lelia Butler.)

you?

A. They said, "Come back in about six months," that they would let me know when they wanted to fix up the deeds better; they didn't say it was a temporary deed.

Mr. GORDON.—Q. Did you go back again in six months; did they notify you to come?

A. Yes, sir.

Q. Who notified you?

A. I think it was Mr. Wells.

Q. Did he come to see you?

A. No, he never was to my house; I guess he saw me on the street maybe.

Q. Was that the John I. Wells that is present here in the room? A. Yes, sir.

Q. And when you went the second time to make a deed, whose office did you go to?

A. I think Mr. Pritchard's office.

Q. And the deed that you signed that time is the one you have identified here as being dated March 26, 1903? A. Yes, that is the one.

Q. How long was that after you was there the first time and signed the deed?

A. Well, it must have been several months; I couldn't tell you how many months, but it must have been several months.

Q. Now, you made your final proof in March, 1902? A. I did.

Q. And they gave you a temporary receipt then, didn't they? A. Yes.

Q. And then was it after that time that you went

(Testimony of Mrs. Lelia Butler.)

to Mr. Pritchard's office and signed the first deed?

A. After they gave me the first deed?

Q. After they gave you the first receipt, the day you paid the money into the land office.

A. Yes, it was after that that I was at Mr. Pritchard's office.

Q. I understood you to say it was a day or two after some time you went to Pritchard's office. Was it within a day or two or three days after you paid that \$400 into the land office that you went and made this deed?

A. I think so.

Q. And then you got another certificate from the land office and receipt, July 18, 1902. Was anything said to you at that time about making another deed, or was it later?

A. Well, I think it was later.

Q. Now, do you remember the name of the grantee, or the person to whom you conveyed the property in the first deed?

A. I never read the deed at all; I don't know a thing about it.

Q. Just signed it and got your money?

A. Yes, that's the way women generally do business, I believe.

Q. Were you never asked to return the money that was given you by Mr. Wells, the \$400?

A. No, sir.

Q. Nothing was ever said about it by anybody?

A. Not a word.

Q. Now, when you went to the land office with your \$400 that Mr. West gave you, which you had

(Testimony of Mrs. Lelia Butler.)

been advised came from the bank, do you remember this question being asked you: "Did you pay, out of your own individual funds, all of the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" And answering, "I do, yes, sir."

A. Well, if it says I said it I guess I did.

Q. And the next question: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer: "From my brother's estate. Since November 9, 1901." Did you make that answer?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated December 19, 1901, of the witness; the testimony of Lelia Lee, given on final proof, March 6, 1902; the non-mineral affidavit, dated December 19, 1901, signed Lelia Lee, all of which are identified by the witness, Mrs. Butler, as having been signed by her; the notice of publication; the testimony of the other witnesses given before the land office on final proof; the receiver's receipt and the register's certificate, dated July 18, 1902; the deed, dated March 26, 1903, made by Lelia Lee, unmarried, to A. E. Palmer; certified copy of the patent, dated February 1, 1904; certificate of recordation; all to the southeast quarter of section 1, township 7 north of range 5 east, Boise meridian.

(Papers marked Plaintiff's Exhibit No. 110A to 110N, inclusive.)

(Testimony of Mrs. Lelia Butler.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Butler, were you a particular friend in 1902 of old man Burns, that you speak of?

A. Of Mrs. Burns—not a particular friend of hers either. I was almost a stranger in the town, but I met this woman and she seemed to be a good-hearted woman.

Q. You afterwards learned that you was in error? A. Yes, sir.

Q. And she turned out to be a woman of bad character? A. As far as I know.

Q. By general reputation? A. Yes, sir.

Q. And I believe finally ran away?

A. I don't know a thing about that. I live at Moscow; I don't know where she is.

Q. How long had you known Mrs. Burns at the time you made—had this first talk with her?

A. I met her when she lived on a farm; I was a widow and was keeping house for a Mr. Wilson, and Mrs. Burns owned a farm half a mile from there. She was known by her neighbors to be a good-hearted, honest, hard-working woman, with an awful lazy husband, and there she was of good character.

Q. It was after she moved to town that she went to pieces? A. Yes, sir.

Q. How long had you known her before you had this interview with her?

A. The little I knew of her on the farm was like you meet her at church in the school-house, and then when I came to town I had probably seen her three

(Testimony of Mrs. Lelia Butler.)

times after I moved to town, and then I was a married woman with two little babies; I think I had met her three times.

Q. So that at the time you had this first talk with her, she was not at that time a friend of yours?

A. Never an intimate friend.

Q. You weren't married?

A. I was married, but my husband was about as lazy as her husband, and I was trying to furnish a rooming-house to make a living for my little children, and that was the reason.

Q. But you were at that time Mrs. Lee?

A. Yes, sir.

Q. So that you were practically supporting your family yourself? A. Yes, sir.

Q. Unaided, practically, by your husband?

A. Yes, sir.

Q. Was he living with you at that time?

A. No; at the time I filed on the land, yes—let me see. No, when I filed on the land I was not with him, but afterwards we went together again, and then finally separated.

Q. So that the first suggestion you had from anyone with reference to filing on a timber claim was this conversation you told us about with Mrs. Burns?

A. Yes, sir.

Q. And shortly after that you went up with Mrs. Burns and others to view the land?

A. Yes, took my brother in law along, Mr. Larry.

Q. Up to the time you went up to view the land you had had no talk with Mr. Wells?

(Testimony of Mrs. Lelia Butler.)

A. No, sir.

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

Q. Or Mr. Pritchard? A. No, sir.

Q. Mr. Barber? A. No, sir.

Q. Mr. Moon? A. No, sir.

Q. Or, in fact, had had no conversation with anyone other than the one you have told us about with Mrs. Burns? A. No, sir.

Q. And then you took a team, as I understand it.

A. Yes, sir.

Q. From some livery stable? A. Yes, sir.

Q. And drove up to the timber?

A. Yes, sir.

Q. Forty or fifty miles distant from here?

A. Yes, sir.

Q. And you chipped in, did you, and paid your share? A. Yes, sir.

Q. And went up and saw Mr. Downs?

A. Yes, sir.

Q. And he gave you your selection of a piece?

A. Yes, sir.

Q. And you selected one piece?

A. Yes, sir.

Q. And he gave you a piece of paper showing your numbers? A. Yes, sir.

Q. Did you have any talk with Mr. Downs about what you should do with this land?

A. No, sir.

Q. There was nothing said about proving up or anything, except as you have told us that he located you? A. No, sir.

(Testimony of Mrs. Lelia Butler.)

Q. Then you returned to the land office, or to Boise, on that day, or, I think you said, the next day? A. Yes, sir.

Q. You went to the land office and filed what is known as the filing or first paper?

A. Certainly.

Q. That is correct, isn't it? A. Yes, sir.

Q. The first paper you filed was the one I show you, dated December 19, 1901. Now, Mrs. Butler, at the time you filed that first paper, on December 19, 1901, had you had any talk with anybody with reference to what you could do with this land?

A. I had not.

Q. Had anybody had any talk with you with reference to it? A. No, sir.

Q. Had you offered to sell, or had anybody offered to buy, the land up to that time?

A. No, sir.

Q. I notice in this statement, you swore, among other things, as follows: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was absolutely true at the time, wasn't it?

A. That was absolutely true at that time.

Q. At that time there existed no agreement, express or implied, in writing or verbal, by which you had agreed to transfer this property when you got

(Testimony of Mrs. Lelia Butler.)

title to it, to any person, firm or corporation whatever? A. No, sir.

Q. And there was no such agreement as that, in fact, at the time you made your final proof?

A. Never. We often talked, if it was a possible thing we would keep the land, but the lumber companies wouldn't pay stumpage, so there was no use for us to try to hold it, and in the meantime I had to have some money, and it was out of the question to hold it, because the lumber was being stolen.

Q. You mean by the local mill companies?

A. Yes, sir.

Q. With reference to this money that you proved up with that there has been so much talk about, as I understand it, at the time you filed on this land, filed your first paper, you had made no arrangements whatever for anybody to furnish you any money?

A. No, sir.

Q. Nobody at that time had even told you that the money would be furnished?

A. No, sir, but I didn't know until then how much it would cost to prove up.

Q. You remember when you filed this first paper you had to pay certain land office fees?

A. Yes, sir.

Q. And I think a fee for publication and some other fee? A. Yes, sir.

Q. You paid that at the time of the first filing?

A. Yes, sir, that's the reason Mrs. Burns told me that, and I paid it for both of us, and eventually she paid me back.

(Testimony of Mrs. Lelia Butler.)

Q. But you paid the filing fee and the publishing fee? A. Yes, sir.

Q. And you also paid, after you returned, \$25 for being located? A. Yes, sir.

Q. And \$25 which you loaned to Mrs. Burns?

A. Yes, sir.

Q. Now, that money was money you had earned or had? A. Yes, sir.

Q. And at that time you didn't know anybody was going to furnish you money?

A. No, sir.

Q. You were not familiar with timber and stone locations? A. No, sir.

Q. You knew nothing about it?

A. No, sir.

Q. You were simply acting upon the suggestion of your supposed friends? A. Yes, sir.

Q. You didn't understand when you went up there and filed on this land that you were working for somebody else?

A. No, sir, not at all.

Q. You didn't understand that you were employed by Mr. Dean West, Mr. Wells, or anybody else? A. Nobody at all.

Q. It was your understanding that you were to get this land in whatever way the law required, and to sell it and make what you could out of it?

A. Yes, sir.

Q. Had you any intention at that time of making any money out of this claim at that time except by proving up and selling it? A. No, sir.

(Testimony of Mrs. Lelia Butler.)

Q. It is charged in this complaint in this action, Mrs. Lee, that you, together with a great many other entrymen and entrywomen, entered this timber and stone claim at the request of, and for the benefit of, the Barber Lumber Company and the other defendants named in this action. Is that allegation true or false?

A. It is entirely false.

Q. It is further alleged in this complaint in this action we are trying that you went to the land office at the request of and for the benefit of the Barber Lumber Company and the other defendants, and testified falsely, at their request, and at their solicitation, under an agreement with them that as soon as you got title you would turn it over to them. Is that true or false?

A. That is false, because we would have sold to anybody after we got our deeds of we could have made more out of it; it was the money we wanted.

Q. Mr. Butler, at the time Mr. West came to you and gave you \$400, did he have any conversation with you at all with reference to selling this land?

A. None whatever.

Q. Did you have any understanding, express or implied, that by accepting his \$400 that you had to sell to him or to some other person he would tell you to?

A. None whatever, except what common sense would give one.

Q. You didn't understand that it was a loan?

A. Yes, sir.

Q. You didn't understand that it was an advance-

(Testimony of Mrs. Lelia Butler.)

ment? A. Certainly.

Q. So that when you went to Mr. Pritchard and made a deed and were paid \$200 you understood that the \$400 had been taken out? A. Yes, sir.

Q. And that the \$200 paid you represented the profit which you had made by exercising your right?

A. Yes, sir.

Q. You say that Mr. Wells told you to go to Mr. Pritchard, you said he told you to go there and get your money. Now did he tell you to go and get your money, or did he tell you to go up to Mr. Pritchard, who was buying claims, or what?

A. I couldn't say as to that. He said something about going to see Mr. Pritchard, but just what words he said I couldn't say.

Q. Do you recall now that he was telling you that Mr. Pritchard was buying claims and you could go up to him? A. Yes, that was the idea.

Q. You didn't understand that Mr. Pritchard was paying wages?

A. No, sir, I understood it was the only way, after having held this claim for this long and studied the matter over with other people, it was the only way we could dispose of the claim, because we were women and couldn't make any more out of it.

Q. But you hadn't made up your minds to that up to that time?

A. No, sir, we were constantly talking about what better way we could make more out of those claims.

Q. So that you didn't consider yourself at any stage of the game obligated to sell this land to anybody?

(Testimony of Mrs. Lelia Butler.)

A. No, sir, I felt free to pay that \$400 back when I got ready, and sell it to anybody I pleased; I could have held it if I had known that I could keep other folks from stealing my timber.

Q. Now at the time you went up there to settle with Mr. Pritchard and he gave you \$200, do you remember his telling you that the price he was paying for those claims was \$600, and that that would be \$200 for you? A. Yes, sir.

Q. You remember about that? A. Yes, sir.

Q. Then what you made out of it was \$200, less what you had paid for location fee and land office fees? A. Yes.

Q. You didn't get that back, as I understand?

A. I don't think I did. Let's see; I think I counted that I made \$200 out of it; I think that's the way I counted.

Q. Didn't Mr. Pritchard give you \$250?

A. Yes, I think that is the way, because I made \$200 above my expenses, \$200 more than I was out on it.

Q. So that what he told you was that the price he was paying for claims was \$650?

A. Yes.

Q. And he took out the \$400 which had been advanced to you by Wells? A. Yes.

Q. Leaving \$250?

A. Yes, sir, I remember speaking of it as \$200.

Q. The other \$50 represented the \$50 you had paid out? A. Yes.

Q. Did you continue your acquaintance with Mrs.

(Testimony of Mrs. Lelia Butler.)

Burns, to learn what became of her claim?

A. No, sir, only hearsay, but I had no acquaintance with Mrs. Burns.

Q. Was it correct talk here that Mrs. Burns afterwards got mixed up with one of the special agents?

A. Yes, sir.

Q. And as a result of her alliance with one of the special agents she was paid back her \$450?

A. Yes, sir, that was true.

Q. And Mrs. Briggs also?

A. Yes, sir, the special agent came to my house and asked me where Mrs. Burns lived, and I told him the best I could, and he also asked me where Mrs. Briggs lived; then he went to see Mrs. Briggs and had to come back to me again, and he said she flew at him like a setting hen, and he forgot where she said Mrs. Burns lived.

Q. Mrs. Briggs was a good deal the same character of a woman as Mrs. Burns, wasn't she?

A. As I understand; and he said he was not at all surprised that I didn't know the ladies better than what I did.

Q. Now, about this new deed that you made. The first time you went to the land office, and when you made your final proof and paid in your money, you recall, don't you, that they gave you a kind of a temporary receipt? A. Yes, sir.

Q. And that then, several months later, what was known as the final receipt was issued?

A. Yes, sir.

Q. Now the time this temporary receipt was is-

(Testimony of Mrs. Lelia Butler.)

sued was the time you went and made what you thought was the deed, the first time, or did you wait until final receipt was issued?

A. I think I waited until final receipt was issued.

Q. Of course that final receipt was not issued until several months after the temporary receipt was issued?

A. It was after the final receipt that I signed the first deed, I am quite sure.

Q. And that temporary receipt, do you remember what you did with that?

A. No, I can't remember; I can't remember whether I held it or whether I did not.

Q. But in any event you are satisfied that it was after final receipt was issued that the first deed was given?

A. Yes, sir.

Q. To refresh your recollection, do you remember at the time the first deed was made the consideration was considerably in excess of the true consideration, and that that was the reason they wanted you to come and make a second deed?

A. No, sir, I didn't know a thing about it.

Q. They didn't tell you?

A. No.

Q. Then, as I understand, your evidence, Mrs. Butler, in regard to the sale is, that the only conversation you had had with anybody prior to entering this land, was with this woman, Mrs. Burns.

A. Yes, sir.

Q. And the conversation with her was simply as you have stated?

A. Yes, sir.

Q. And you made the entry for your own benefit?

(Testimony of Mrs. Lelia Butler.)

A. I did, surely.

Q. And finally sold it for your own benefit?

A. I did.

Q. And at no time, from the time you entered to the time of final proof, was there any time when you were obligated to sell to any person, firm, or corporation? A. No, sir.

Q. And the allegations of this complaint that I have called your attention to, as far as you are concerned, are absolutely false?

A. Absolutely false.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Butler, what is your husband's name?

A. James W.

Q. Is he any relation to George Butler?

A. Yes, sir, a brother.

Q. And Edward Butler? A. A brother.

Q. You have said something about Mrs. Burns' escapades with a special agent of the Department of the Interior. You don't know anything about that of your own knowledge, do you?

A. I don't know anything, but the man came and asked, where did she live, because he came first to see me on account of somebody reporting back there that we were not doing this business straight somehow.

Q. And all he asked you was were Mrs. Burns lived? A. Yes, sir.

Q. But there wasn't anything said about Mrs. Burns getting her \$400 back, or of any flirtation between him and Mrs. Burns?

(Testimony of Mrs. Lelia Butler.)

A. No, sir, no indeed.

Mr. BUNDY.—That was simply common reputation?

A. Common reputation, yes, sir.

Mr. BUNDY.—The land office books show that they paid Mrs. Burns back the \$400.

Mr. GORDON.—Q. Do you know where Mrs. Burns is now?

A. I do not; I haven't recognized her on the street for years, if I would meet her.

Mr. KEIGWIN.—Q. She is not in Boise?

A. I don't know; I live in Moscow. I am not a BoBSITE now.

[Testimony of W. S. Walker, on Behalf of the Complainant.]

W. S. WALKER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Walter S. Walker?

A. Walter Scott Walker.

Q. What is your occupation, Mr. Walker?

A. I am in the real estate, insurance, and loan business.

Q. What was your occupation in 1902, in April?

A. Same business.

Q. Where do you reside?

A. At 212 East Idaho.

Q. In Boise?

A. Yes, sir.

(Testimony of W. S. Walker.)

Q. And you resided there in April, 1902?

A. Yes, sir.

Q. You took up a claim under the Timber and Stone Act in 1902, didn't you?

A. I took up a claim; I don't think it was in that year.

Q. I show you timber and stone land sworn statement, dated April 5, 1902, and ask you if you signed that paper? A. Yes, sir, that is my name.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that paper?

A. Yes, sir, that is my name.

Q. I show you testimony of Walter S. Walker given on final proof, dated June 20, 1902, and ask you if that is your signature?

A. Yes, sir, it is.

Q. I show you deed dated March 16, 1903, made by Walter S. Walker and Minnie Walker, his wife, to A. E. Palmer. Is that your signature.

A. Yes, sir.

Q. And that is the signature of your wife?

A. Yes, sir.

Q. And you acknowledged it before Sherman King? A. Yes, sir.

Q. Mr. Walker who first spoke with you about taking up a timber and stone claim?

A. Mr. Harry S. Worthman.

Q. What did he say to you about it?

Mr. BUNDY.—I think I have made a standing objection to this. I object to it as incompetent, irrelevant and immaterial, and asking the witness to

(Testimony of W. S. Walker.)

testify to hearsay evidence and conversations with persons not parties to this action; and the same objection to all similar evidence; and I ask that all similar evidence heretofore received be stricken out; and I object to any more being received.

Mr. KEIGWIN.—Isn't that included in our original stipulation?

Mr. BUNDY.—I guess it was.

Mr. GORDON.—Q. State what he said Mr. Walker?

A. I don't know as I can do that, Mr. Gordon. It has been a good many years ago. As I remember it, Mr. Worthman's office was one or two doors from mine in the Falk building; he used to come in my office a great deal, and we were sitting talking one day, and he said, "W. S., I believe I know where there is a couple of claims," and he said, "Would you like to have a claim"? and I says, "Yes, I would just as soon," and he said, "I think I can put you on a claim," and I says, "All right, if you can get one, Harry, I will take it," and in a few days he came in and told me he had seen Pat Downs, and if I had any money we would take a claim, and I said, all right, I would take one and give it to my wife, and that was about all there was to it, as I remember.

Q. How long after that conversation did you go to view this claim?

A. I don't remember that; I think it was only a short time, probably a few days, a day or so, something like that.

Q. Did you go with a party?

(Testimony of W. S. Walker.)

A. No, sir, I had some business in Idaho City I think; I remember now, Mr. Worthman and I went to Idaho City on some other business, and there we met Mr. Downs and went out and looked at the claims.

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

A. No, sir, I did not.

Q. And you went out there and Mr. Downs located you on a claim? A. Yes, sir.

Q. Did you know whether it would cost you a locating fee before you left Boise? A. Yes, sir.

Q. Did you understand how much it was to be?

A. I think so, Mr. Gordon. I think Mr. Worthman told me it would cost us about \$50 apiece, if I remember correctly; I think that was about what it was.

Q. Did Mr. Worthman locate a claim the same time you did? A. Yes, sir.

Q. You went to Idaho City, did you?

A. Yes, sir.

Q. Where did you go from Idaho City?

A. We went—it is up, I think—let me see—I think we call it—

Q. Was it Kempner's ranch?

A. No, we didn't go to Kempner's ranch. We didn't go that way; we went up the gulch, I think up Grimes gulch.

Q. Where did you meet Mr. Downs?

A. He was at Idaho City.

Q. Did you talk to him before you went out to the claim about these claims?

(Testimony of W. S. Walker.)

A. No, sir, I did not; he just said he had a couple of good claims, in general conversation, and I told him I would take one.

Q. You and Mr. Worthman went out and took the two claims he showed you? A. Yes, sir.

Q. Did you pay him a locating fee then?

A. I don't remember that; I don't remember whether I did or not.

Q. Do you remember when you paid him the location fee?

A. No, sir, I do not; it might have been then, but I couldn't tell you that.

Q. He gave you a description of the property?

A. He did.

Q. At that time did you know of any market for these timber claims? A. No, sir, I did not.

Q. Did you know of a prospective market?

A. No, sir, I did not.

Q. You didn't know of anybody that was buying or selling claims?

A. No, sir, I did not; I simply took it because I had a timber right, and thought I could make a little money on it.

Q. Then you came back to Boise?

A. Yes, sir.

Q. Do you know who prepared your first papers, the sworn statement, non-mineral affidavit, and notice of publication I have shown you.

A. I think it was Mr. Garrett; he was in the land office at that time.

Q. Look at those papers and see if it refreshes

(Testimony of W. S. Walker.)

your recollection, and see if Mr. Garrett prepared that.

A. This is Worthman's handwriting, I think, in the sworn statement; as I say, I don't remember who prepared these; that is Worthman's writing.

Q. What is that—the notice of publication?

A. No; just his signature here; that is Mr. Worthman's writing, I would say, down to there. This is Mr. Garrett's.

Q. You mean the signature is Mr. Garrett's?

A. Yes, sir.

Q. And the body of it is filled in in Mr. Worthman's writing? A. Yes, I would say so.

Q. That is the sworn statement you filed in the land office? A. Yes, sir.

Q. Now look at the next paper, the notice of publication, and tell me whether or not the body of that is in Mr. Worthman's handwriting.

A. Yes, I would say it is; that is Mr. Worthman's to there.

Q. The next paper is the non-mineral affidavit. Is that a blank form filled in in Mr. Worthman's handwriting?

A. It looks like it, yes, sir; I would say that is Worthman's handwriting, yes, sir, I would; that doesn't look like it there; this does.

Q. Do you remember who named these witnesses for you? A. No, sir, I don't.

Q. I notice that the witnesses were Harry S. Worthman, Patrick H. Downs—

A. I was a witness for him I remember, and he

(Testimony of W. S. Walker.)

was for me.

Q. Patrick H. Downs, John I. Wells?

A. I don't remember knowing him.

Q. And John A. Lippincott?

A. Yes, I know Mr. Lippincott, have known him for a good many years.

Mr. BUNDY.—Wells wasn't a witness, was he?

Mr. GORDON.—No, I don't think he was, but the witnesses whose names were given—

Mr. BUNDY.—They have to name three witnesses and the custom was to name four, and they usually named John I. Wells. They all did that down here. It seems to have been the custom because Wells knew the whole country up there.

Mr. GORDON.—Was Pat Downs down here when you went to the land office? A. Yes, sir.

Q. He went to the land office with you?

A. I think he did; I am not sure of that.

Q. I mean when you filed your first papers?

A. I couldn't say; I think so, but I wouldn't say that positively; I don't remember.

Q. Did you go to Mr. Worthman's office the morning before you filed these papers?

A. I think he came to my office, if I remember correctly.

Q. And you and he went to the land office?

A. Yes, sir.

Q. Do you remember whether Mr. John I. Wells was at the land office and Mr. Downs also on that occasion?

A. I don't remember knowing Wells at that time;

(Testimony of W. S. Walker.)

I don't think I did. I know Patrick Downs was there; I am quite sure he was.

Q. Did he come back with you from Idaho City?

A. Yes, sir, he did; he came back.

Q. Did you have an arrangement with him to go to the land office with you?

A. I have to think, Mr. Gordon. I don't remember that. I am quite sure he went there, but I don't know what the arrangements were. It has been so long that I haven't thought much about it.

Q. Do you remember how much you paid at the land office for advertising and filing fees the first time you were there, or did you pay anything?

A. Yes, sir, we paid something. Let me see; I don't know; I don't remember the amount; I was going to say \$34 or something, but I might be all wrong; I don't remember; we paid some money, but I have forgotten what it was.

Q. Then in the course of time you went to the land office again and made your final proof?

A. Yes, sir.

Q. Do you remember with whom you went on that occasion?

A. I think it was the same parties.

Q. Did you notify them of the time you were going?

A. I think, if I remember, Mr. Garrett notified us that he was ready, and we went there together; that is my remembrance of it.

Q. You were all there at the same time?

A. Yes, sir.

(Testimony of W. S. Walker.)

Q. Didn't you see some of those people and ask them whether they would be there or not?

A. The way I remember it, Mr. Worthman told me, or Mr. Garrett, I don't remember which it was, that it was ready for final proof.

Q. Anyhow you and Mr. Worthman and the other witnesses was there at that time.

A. I am sure Mr. Downs and Worthman and I; I am quite sure Wells was not there, because I didn't know him.

Q. Do you remember how much you paid in the land office at that time, the time of final proof?

A. My recollection is about \$425, something like that.

Q. Do you remember whether you paid it in cash or by check?

A. No, sir, I couldn't tell. The chances are that I paid it by check; I couldn't say that; it might have been cash; I don't know.

Q. You kept a bank account at that time?

A. Yes, sir.

Q. What bank? A. Capital State.

Q. Do you remember whether you drew a check on that bank or took a check to the land office or took the cash to the land office?

A. I couldn't tell you; I never looked that up; I don't remember.

Q. Do you know how long you had had this money that you paid into the land office?

A. I couldn't tell you that; I have always got a little bit.

(Testimony of W. S. Walker.)

Q. I mean, do you remember whether you had \$412 that you had gotten that day or several days before, or a year before? A. Yes, sir, I do.

Q. Which was it?

A. I possibly had it a year; I might have had it more than that. It was my own money; I had more than \$400 for that matter.

Q. I mean in actual cash.

A. Yes, I don't think there has been a time that I haven't had that much in my safe; I have got it there now.

Q. Now at this time did you know of any person that was purchasing timber claims?

A. I do not.

Q. You made your final proof June 20, 1902.

A. I don't remember the date; I suppose that is it; whatever is there is right.

Q. How long after that was it that you learned of some one purchasing timber claims?

A. I should judge it was over a year; I know I paid taxes on it one year, if not two; I think I have a tax receipt, and it was over a year; I don't remember the dates.

Q. Did your wife take up a timber claim?

A. No, sir.

Q. How long before you started negotiations for the sale of this property did you learn of a market for it?

A. As I remember it, Mr. Worthman came into my office one day, and says, "Do you want to sell your claim?" And I said, "I never had anything I

(Testimony of W. S. Walker.)

wouldn't sell. Why?" And he said, "I have got a man that will buy it." And I says, "Who is it, and how much money?" He said it was Senator Kinkaid, and he told me, and I said, "What are you going to do?" And he said, "I am going to sell," and I said I would sell too.

Q. And then did you go to see Mr. Kinkaid that day?

A. No, sir, I don't think I did; I think it was—I don't remember—maybe it was a few days after, or something.

Q. Did Mr. Worthman go with you?

A. If I remember correctly, I think he was in Worthman's office, and I think Worthman called me in there, and he says, "Now, we can sell those two claims." He says, "I am going to sell mine. What are you going to do with yours?" And I said, "Whatever you do I will do." And I think that day or the next day he brought me a deed and I sold it.

Q. How much did you get for it?

A. I think it was \$750; I think it was \$650 or \$750, I don't remember exactly.

Q. It wasn't a thousand? A. No, sir.

Q. Did you know Mr. A. E. Palmer, the grantee in this deed? A. No, sir, I do not.

Q. Did you ever make any other deed but the one deed? A. No, sir,

Q. Never were asked to make another deed to correct some error in the former deed?

A. I don't remember; there might have been something; I don't know; I make so many deeds I

(Testimony of W. S. Walker.)

couldn't remember, though; I don't think so, though; I think that is the only deed.

Q. Before you made this deed, hadn't you made another deed, which was destroyed when you made this deed?

A. I think you are right. I think I made a deed to Kinkaid; I don't remember the transaction; I think it came back to correct an error, or else deed to this man Palmer, if I remember correctly.

Q. How long was that before you made this deed?

A. I couldn't tell you, Mr. Gordon; I don't remember; I think probably a month or two, or two or three months, something like that. I never paid much attention to it, to tell you the truth.

Q. Did your wife sign the first deed?

A. I suppose so; I don't remember, but I guess she did. It is lawful to sign the deeds, and I suppose she did.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, dated April 5, 1902, made by Walter S. Walker; the non-mineral affidavit of the same date; the testimony of the witness Walker given on final proof, dated June 20, 1902, all of which papers have been identified by Walter S. Walker as having been signed by him; the cross-examination attached to the testimony on final proof; the notice of publication, dated April 5, 1902; the testimony of the other witnesses given on final proof; the receiver's receipt and the register's certificate, dated June 20, 1902; the deed, dated March 16, 1903, made by Walter S. Walker and wife, Min-

(Testimony of W. S. Walker.)

nie, to A. E. Palmer, consideration \$1,000, which has been identified by Walter S. Walker as having been signed by himself and wife, and acknowledged before Sherman G. King; certified copy of the patent; all to the southeast quarter of section 31, township 6 north of range 6 east, Boise meridian.

(Papers marked Plaintiff's Exhibit No. 111A to 111N, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Walker, it seems that there is substantially nine months period from the time you made your final proof, June 20, 1902, and the date of this last deed that has been shown you, dated March 16, 1903, so evidently you are in error as to having kept the land a year.

A. That is what I supposed; I paid taxes on it; I remember that distinctly.

Q. Do you recall that the first deed you made, if you made any two deeds, was made by yourself without your wife's signature?

A. I don't remember that.

Q. Do you recall making the other deed at all?

A. I think there was another deed; that is just a hazy recollection.

Q. Are you certain of that?

A. No, I am not, but I think, I have just a hazy recollection that there was another deed made, but I wouldn't swear to it.

Q. Let's see if I can't refresh your recollection. Do you recall the incident of making the first deed?

(Testimony of W. S. Walker.)

Was your wife present at that time?

A. Not in the office.

Q. Don't you recall that the trouble with the first deed was that your wife hadn't signed it, you signed it and was paid, and afterwards your wife came and signed and acknowledged it.

A. I think you are correct, but by golly it is so long back that I don't remember, but I think that is the facts.

Q. Mr. Walker, at the time you filed your first papers, entered this land, did you have in existence any agreement, express or implied, in writing or verbal, by which you had promised and agreed to transfer the title you might acquire from the United States to any person, firm, or corporation whatever?

A. I did not.

Q. Did you have any such or similar agreement at the time you made your final proof and final receipt was issued to you? A. I did not.

Q. Did you ever, at any time, have any such agreement? A. No, sir.

Q. Did any person, firm, or corporation have any interest in the land you acquired from the United States, prior to the time you sold it, or to the timber growing upon it? A. No, sir.

Q. It is charged in the complaint in this action that you, together with a great many other citizens in this vicinity, made entry of timber and stone lands at the request of, and for the benefit of, the Barber Lumber Company, John Kinkaid, and the other defendants named in this complaint. Is that

(Testimony of W. S. Walker.)

true or false? A. It is false.

Q. And it is charged in this complaint that, pursuant to that agreement, you and the other entrymen made entry of this land, and were solicited to, and at the request of the Barber Lumber Company and the other defendants, went before the land office and testified falsely, in order to procure title to turn over to those defendants. Is that true or false?

A. It is false.

Q. You said you paid a locating fee to Pat Downs, but didn't recall when you paid it. Are you sure you paid it at all?

A. Yes, I am sure I paid him something.

Q. Do you remember whether it was before or after you filed? A. I do not.

Q. It was before your final proof?

A. Yes, sir.

(Witness excused.)

No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

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

VOLUME VI.

(Pages 2001 to 2400, Inclusive.)

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

FILED

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VOLUME VI.

(Pages 2001 to 2400, Inclusive.)

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

[**Testimony of Mrs. Clara Gish Ewing, on Behalf of
the Complainant.**]

Mrs. CLARA GISH EWING, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. Ewing, where did you reside in 1902?

A. What year is this?

Q. This is 1909.

A. I came to Idaho in—it will be seven years next July or August. I came from Minnesota to Idaho.

Q. And you came from Minnesota to Idaho in July, 1902?

A. It was either July or August, I don't remember which.

Q. Did you and your husband come alone, or did you come with a party?

A. He came several months ahead of me, and I came alone.

Q. Did he come with a party, or did he come alone?

A. He came alone when he came; I think he came alone; there was no particular party; he was supposed to come alone; there was no particular party made up to come.

Mr. BUNDY.—You never can tell who these husbands are coming with.

A. No, I couldn't swear to that, so be careful.

(Testimony of Mrs. Clara Gish Ewing.)

Mr. GORDON.—Did you start from Minnesota with the intention of living here in Idaho?

A. Yes, sir.

Q. At Boise?

A. Well, we thought so; we were like a good many others, we were looking for a location; we rather expected to stay here; he was here ahead of me.

Q. How long after you arrived here did you get in the notion of taking a timber claim?

A. Were really in the notion before we came out here; I think I wrote a letter to Congressman McClary before we came out here,—

Q. He was from Minnesota?

A. Yes, he was from Minnesota—asking him about the timber business, and he sent us a book with the pages marked, and I had that book until a very short time ago; when I was cleaning up I burned a lot of old trash.

Q. And he sent you a book pointing out timber in Idaho?

A. No, he sent us a book with a page marked, telling about the timber and stone business, and timber and stone acts.

Q. It was a circular of the General Land Office, wasn't it?

A. Yes, it was a book that came from the land office.

Q. How long after you got to Idaho, arrived here, did you talk with someone about taking up a timber claim?

(Testimony of Mrs. Clara Gish Ewing.)

A. Well, I didn't talk with anybody about it until Mr. Ewing came home one day and says: "I have found someone that can locate us on a timber claim."

Q. And who was that?

A. Downs, that is the name; I don't remember names very well.

Q. How long after your husband told you that did you go to look at one of these claims?

A. We started that day.

Q. Did you and your husband go alone, or did Mr. Downs go with you?

A. Mr. Downs was not with us; Mr. and Mrs. Humphreys and Mr. Ewing and I went together.

Q. Mr. and Mrs. William Humphreys?

A. Yes, and Mr. Downs and some other parties whose names I do not remember; there was a gentleman and one lady at least; they went another road.

Q. Was the gentleman's name Robert S. Heal?

A. I don't remember whether that was the name or not; they didn't go on the same road we did.

Q. And you and your husband went together?

A. We went in a double carriage, with Mr. and Mrs. Humphreys and their boy.

Q. Did you know Mr. and Mrs. Humphreys before? A. We knew them in Minnesota.

Q. Did Mr. and Mrs. Humphreys come to Idaho at the same time you did?

A. Mr. and Mrs. Humphreys came some time in the spring. I think they came here somewhere near the time Mr. Ewing did.

Q. Did anybody in Minnesota tell you about the

(Testimony of Mrs. Clara Gish Ewing.)

timber claims out in Idaho?

A. No, I don't know as anyone told us particularly about the claims. We learned of there being lots of timber out here, and we were living in a timber country there, and had lived in Stillwater—we didn't come from Stillwater here—we came from Mikado here, and naturally, like all people living in those places, were interested, so we came here with the intention of looking after timber when we got here.

Q. Did you know of any parties in Minnesota being gotten up for the purpose of coming to Idaho to take up timber claims?

A. No, we were some of the first people that came out here, that I know anything about.

Q. Did anybody else come out here that you know of?

A. No, nobody from our particular town came here except Mr. Ewing had a brother living there that came later.

Q. I just meant big parties.

A. No, I don't know of any parties that came.

Q. Where did you meet Mr. Downs?

A. Centerville. Let me think a minute. We started from here in the afternoon. I don't know whether we got to the Halfway House that night or whether we got to Idaho City that night, but I am quite sure it was at Centerville we met Mr. Downs; I am not sure whether it was Centerville or Idaho City; I can't remember everything exactly.

Q. That was the first time you had ever met

(Testimony of Mrs. Clara Gish Ewing.)

him? A. Yes, that was the first time.

Q. And the next day he took you out to a claim?

A. Yes, sir.

Q. Did you have any talk with him before you went out to the claims, after you met him up here at Idaho City or Centerville?

A. I don't know whether I talked with him about it; we came to the claims that morning; I don't remember whether I talked to him particularly about it or not.

Q. Did he take you and your husband alone, with the rest of the party, or how?

A. The four of us went together.

Q. Did he take you out to a claim and locate you on it? A. Yes, sir.

Q. When he got to a claim did he say, "This is the one I will locate Mrs. Ewing on?" Tell how you were located.

A. We came down back from Centerville towards Idaho City, and the claim he located Mrs. Humphrey on—now I think now it was on the left-hand side of the road, coming down—I have never been in that country since—and her claim led right up to the road, and mine right across the road, with a river between.

Q. Did Mrs. Humphrey get out of the wagon?

A. Yes, we all did.

Q. When you got down to the road there did he say, "I will give Mrs. Humphrey this claim," and then say, "Mrs. Ewing your claim is over the river," or what did he do?

(Testimony of Mrs. Clara Gish Ewing.)

A. I don't remember just exactly how he did that.

Q. Was it the way I state it?

A. I can't remember the exact words that was said, but we went on to this place; he was the one that told which was to have the claim. I guess we had to agree on Mrs. Humphrey's and mine; I don't remember about that, but I remember which was her's and which was mine, but I can't remember the exact words that was said; that was a long time ago.

Q. How far from Idaho City was this claim you were located on?

A. Well, now I can't tell you; it was between Centerville and Idaho City.

Q. Was it near Idaho City or Centerville?

A. I can't say which town it is nearer, because I have never been on the road but the one time.

Q. How far off the main road was your claim?

A. It wasn't far at all. As I said, Mrs. Humphrey's claim laid right up to the road and then mine just across, across a river, a sort of a river, to get over to the one I was located on.

Q. Did your's run down to the road too?

A. I think not; I don't think it came onto the road; I am not sure of that though, but I think not.

Q. Did you go a hundred, or two hundred yards off the road to get to your claim, or how far did you go?

A. I can't tell you exactly.

Mr. BUNDY.—How many steps, how many paces, how many inches?

A. I can't remember things that far back; I

(Testimony of Mrs. Clara Gish Ewing.)

didn't charge my memory with them; I didn't suppose it was necessary.

Mr. GORDON.—Q. Was it a quarter of a mile, or half a mile?

A. No, I don't think it was that far; it doesn't seem to me it was.

Q. Did Mr. Downs give you a description of that land at that time? Did he write out on a paper the description of the land?

A. I don't know; I suppose he did.

The EXAMINER.—The number of the section?

A. Well, I had everything that was necessary to go with it. I don't remember just exactly how it was done; we did what was necessary to be done, and that is all I can remember about that. We went to our corners, and there was something about looking at the corners and I did that.

Q. Did Mr. Downs return to Boise with you?

A. Yes, he came down. Mr. Downs had a horse; he rode on his horse part of the time and part of the time he was in our buggy; he didn't come to town with us; he had some other people to locate; I know he didn't come all the way; he came part of the way, but I am quite positive he didn't come all the way; I can't remember exactly.

Q. How long after you returned to Boise did you go to the land office and file your papers?

A. I don't remember exactly; I suppose though that we went right away, but I am not sure.

Q. Was it the next day, or the day after, your best recollection?

(Testimony of Mrs. Clara Gish Ewing.)

A. I think we went soon, but I don't remember exactly. So many things have come into my mind since then that I don't remember exactly.

Q. Had you met Mr. John I. Wells at that time?

A. No, I had not met him.

Q. Do you know Mr. John I. Wells now?

A. Yes, we paid our location fee to Mr. Wells; Mr. Downs said to go to Mr. Wells and pay the location fee to him.

Q. Did all of you go together to see Mr. Wells?

A. I don't think so; I don't know; I think Mr. Ewing went alone to pay the location fee; I don't remember; but I remember this, that we paid \$25 for being located, and I am quite sure we paid it to Mr. Wells, that Mr. Downs told us to.

Q. That is the gentleman who is present?

A. That's the man; that is my recollection.

Q. I show you timber and stone land sworn statement, dated August 11, 1902, and ask you if you signed that paper.

A. Well, it looks like my writing.

Q. I show you the non-mineral affidavit of the same date, signed Clara B. Ewing, given on final proof, at the land office, November 7, 1902, and ask you if that is your signature to that.

A. It looks like it.

Q. This sworn statement and notice of publication and non-mineral affidavit you have identified, I will ask you where you received those papers.

A. Now, I don't know.

Q. Do you know who filled in the blanks in those

(Testimony of Mrs. Clara Gish Ewing.)

forms?

A. No, I don't; I don't remember now; it has been so long ago; everybody was new to me here.

Q. Do you remember whether Mr. Wells filled them in for you?

A. No, I don't know; I don't know whether it was Mr. Wells or not.

Q. Do you remember being in Mr. Wells' office before you filed those papers?

A. I was in Mr. Wells' office, but whether it was before I filed the papers or not, I don't know.

Q. Do you know what you went to Mr. Wells' office for?

A. I think that must have been when I paid the location fee; I am not sure of that either. As I say, I was new here and everybody was new to me, and as I say I didn't charge my memory with those things.

Q. Do you remember whether Mr. Wells went to the land office with you when you filed those papers?

A. No, I don't remember that.

Q. Do you remember whether Mr. Wells introduced you at the land office, to the register of the land office?

A. I don't believe he did; I don't know; I don't remember of it.

Q. I notice in the register's certificate attached to this sworn statement, the first paper you filed, that you are personally known or have been satisfactorily identified by John I. Wells.

A. I don't remember; he might have been and I

(Testimony of Mrs. Clara Gish Ewing.)

not remember it, because, as I say, it is a long time ago, and I have had so many transactions in making transfers of property that I didn't charge my memory with it, and I can't remember it.

Q. Do you remember who suggested Mr. John I. Wells being a witness for you when you gave your notice of publication?

A. No, I do not; I don't remember that he was.

Mr. BUNDY.—He wasn't, I guess.

A. I don't remember his being a witness; as nearly as I can remember, the Humphreys were our witnesses, because they went with us; they went in another rig.

Q. Do you remember how much you paid at the land office when you filed your papers?

A. No, I do not; I paid what they asked me, and I don't remember what it was.

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

A. I remember that I made final proof.

Q. Now, at any time until you made your final proof do you remember whether or not you knew of a market for this timber?

A. No, I can't say that I did.

Q. Did you know of anybody that was buying timber in that locality or was selling timber?

A. I remember of having a letter from someone once inquiring about buying, to know if the timber was for sale.

Q. Do you know who that was?

A. No, I don't remember the name of the party

(Testimony of Mrs. Clara Gish Ewing.)

at all.

Q. And you say you remember the occasion of going to the land office to make your final proof?

A. Yes, I remember that I made final proof.

Q. Do you remember how much money you paid at the land office on that occasion?

A. I don't remember exactly; I paid what was required to be paid, but I hadn't thought about it at all now.

Q. Did your husband make his final proof the same day?

A. I suppose he did; I don't remember.

Q. Do you remember who was at the land office with you when you made your final proof?

A. I don't know.

Q. I mean did you go alone, or did your husband or some other people go with you?

A. I think he was there, because we were both to prove up the same day; I suppose he was there; I can't say exactly; I suppose he was, but I don't remember all the little details now.

Q. Do you remember whether you paid about \$400 into the land office the day you made your final proof?

A. Well, I paid what they required now, and I don't know just exactly the exact amount, but I paid what was necessary to make final proof, and I don't remember exactly what it was.

Q. Did you pay it, or did your husband pay it?

A. I don't remember whether I handed the money in or whether he did; I don't remember

(Testimony of Mrs. Clara Gish Ewing.)

whether we were together, or whether we were not together.

Q. Do you remember whether you gave them a check or cash for this purchase price of the land at the land office?

A. No, I don't remember that either.

Q. Do you remember whether you got the money you paid into the land office, and how long you had had it in your actual possession?

A. No, I do not remember, or just exactly what money I used. I had several thousand dollars on hand at that time, and I don't remember; I was buying so many things and investing, I don't remember just exactly all about it.

Q. You had received a certain amount of money before you came west, hadn't you?

A. Yes, sir.

Q. About \$2000?

A. Well, I had about \$2000 in one certificate, and then I had other money; I was traveling before I came here through Utah and Colorado, and I had quite a little bit of money besides; I know I had one certificate that I had deposited, and then I had other money besides that certificate; I don't remember just exactly how much I had with me.

Q. And just prior to making your final proof you had purchased a piece of property?

A. We purchased a piece of property.

Q. And you paid \$2000 cash for that?

A. I paid \$2000 cash for that.

Q. And gave a mortgage for \$1700?

(Testimony of Mrs. Clara Gish Ewing.)

A. Yes.

Q. And then you were building a house at that time on that land, weren't you?

A. We built a house from the building and loan.

Q. You were building it at that time?

A. Yes, we were building a house, yes.

Q. Do you remember whether the money you actually paid in the land office was of the money you had when you came here, or was it money you had borrowed shortly before that?

A. I don't think I was borrowing money at that time; I had money, and I was teaching and earning from \$5 to \$7 a day; I don't believe I was borrowing money when I had money.

Q. How long had you been teaching here?

A. Here I began teaching—I opened my studio here the 6th day of September.

Q. You hadn't taught any for several months before that, had you?

A. I hadn't taught any for about—well, I quit teaching just when I left for the west, the 13th day of July, and was visiting in Colorado and Utah.

Q. Then you had been teaching here but two months when you made your final proof?

A. I had been teaching here about two months; I began the 6th of September.

Q. And you made your final proof the 7th of November. What is your best recollection as to whether or not you borrowed from the bank the four hundred and some odd dollars that you paid in the land office?

(Testimony of Mrs. Clara Gish Ewing.)

A. I don't think I borrowed any money to pay; I am quite sure I borrowed no money; as I say, I am not quite sure of anything.

Q. Do you remember whether you got the money from the bank that you paid in the land office?

A. I don't think I got it at the bank, because I didn't have the money to check out of the bank.

Q. You paid this money into the land office on November 7th, 1902, and they gave you a receipt for it, and how long after that was it that you started negotiations for the sale of this property?

A. I don't remember starting any negotiations for the sale of it.

Q. You sold it? A. Yes.

Q. When did you start negotiations with reference to the sale?

A. Now, I don't remember just when I sold it.

Mr. BUNDY.—February 29, 1903, according to the deed, three months later than final proof.

A. As I said, I didn't remember; Mr. Ewing made the arrangements about the sale of it, and I didn't remember exactly.

Mr. GORDON.—Mr. Bundy, let me ask you where you got that date from.

Mr. BUNDY.—I am taking it from my book here.

Mr. GORDON.—Where did you get that from—the record or the deed?

Mr. BUNDY.—The deed.

Mr. GORDON.—The deed is dated June, 1903.

Mr. BUNDY.—February 29th.

Mr. GORDON.—The deed has been changed, and

(Testimony of Mrs. Clara Gish Ewing.)

that is the reason I asked you that question.

Mr. GORDON.—Q. To whom did you sell this property?

A. I think it was to Mr. Pritchard.

Q. Had you ever met Mr. Pritchard before?

A. I think I had.

Q. Had you had any arrangements to sell this property before Christmas of 1902?

A. I had never talked with anybody about selling.

Q. Had Mr. Pritchard talked with you about selling it at any time?

A. He had not, to my recollection.

Q. Had you ever talked to him about anything?

A. I don't believe I had; I don't remember.

Q. How did you meet Mr. Pritchard?

A. I don't remember that I ever did meet him personally and talk with him; as I say, just as I told you, I was a stranger here at the time, and everybody was new to me, and I don't remember everybody. I was trying to think just before I came in here of the party we sold to, until you mentioned his name.

Q. I didn't know I mentioned Mr. Pritchard.

A. The name was mentioned; I was trying to think of the name.

Q. Did you ever go to Mr. Pritchard's office?

A. I believe we signed the deeds there, but I am not sure of it.

Q. Did you and your husband go together to sign the deeds?

A. I remember when the deeds were signed.

(Testimony of Mrs. Clara Gish Ewing.)

Q. Is Mr. Ewing here at this time?

A. No, he is not here; he is in Portland.

Q. Is he living in Portland?

A. Yes, sir, he is in the real estate business there.

Q. Do you know what his address is?

A. 431 Chamber of Commerce.

Q. Did you have any talk with Mr. Pritchard about the purchase price or selling price of this land?

A. I don't remember about it, because Mr. Ewing, as I say, is the one that arranged for the sale of the land.

Q. And you just went with him?

A. Yes, I went with him; it was done with him, and I can't say positively that we signed it in Mr. Pritchard's office; I can't remember positively about that.

Q. Did you ever meet Mr. John Kinkaid?

A. No, not to my recollection; I don't remember him at all.

Q. When you went to Mr. Pritchard's office, or wherever you went to sign this deed, was the deed already prepared, or was it drawn after you arrived there?

A. I don't remember that.

Q. You didn't know Mr. A. E. Palmer?

A. I think not.

Q. Did you read the deed over that you signed?

A. I suppose I did, but I don't remember.

Q. You don't remember whether Mr. Palmer's name was in that deed?

A. I do not.

Q. Do you know whether you signed the deed in blank?

A. I do not remember.

(Testimony of Mrs. Clara Gish Ewing.)

Q. Do you remember whether this was in February that you signed this deed, or was it in the summer? A. I don't know that now.

Q. Do you remain in Boise all summer?

A. Not usually; I usually go down to the coast for a few weeks.

Q. Do you remember whether you were in Boise in the summer of 1903, or did you go to the coast?

A. I usually go to the coast, when I go, along in the latter part of July or the first of August, when they are having the coast excursions, but I don't remember whether I missed that summer or not.

Q. Do you remember whether you sold this property in the winter or in the summer?

A. I don't remember.

Q. Did you put the money in the bank that was given you? A. I don't hardly think we did.

Q. Do you know what was done with the money?

A. We were using so much at that time; Mr. Ewing was going into business, opening up the Co-operative Mercantile Company, in the spring, along in there I think it was, and was buying horses and selling them, and we were investing quite a little bit at the time, and we were not banking at the time.

Q. What is your best recollection as to when you sold this property? A. I don't know.

Mr. BUNDY.—When you have got the deed right before you, what do you want to be asking such questions for?

Mr. GORDON.—For the simple reason that the deed has been changed, and I want to find out when

(Testimony of Mrs. Clara Gish Ewing.)

the sale was made.

The WITNESS.—I don't remember; we were selling other things, and buying; we sold a lot in the spring some time, and I don't remember when that was; I don't remember the dates; it isn't because I am not trying to remember them, but because I can't actually remember them.

Q. Then, you can't tell whether you sold it the latter part of the winter or the early part of the summer? A. No, I couldn't do it.

Q. How much money were you given for this property?

A. I don't remember that exactly, but to my recollection it was something about \$700, in the neighborhood of \$700; now it might have been a little more and it might have been a little less; I don't remember exactly what it was.

Q. Do you remember whether you ever made more than the one deed to this property, or did you make two?

A. I don't remember; I did whatever was required in the sale of the land, and I don't remember what it was; I would sign deeds now and I don't know what I would sign, deeds my husband sends me I sign and I don't pay much attention to it. He has been sending me deeds from Portland to sign, and I do so much of that kind of business that I don't remember.

Mr. GORDON.—We offer in evidence sworn statement of Clara B. Ewing, dated August 11, 1902; non-mineral affidavit of the same date; the testimony of

(Testimony of Mrs. Clara Gish Ewing.)

Clara B. Ewing given on final proof, dated November 7, 1902, all of which have been identified by Mrs. Clara B. Ewing as having been signed by her; the notice of publication, dated August 11, 1902; the testimony of the other witnesses given on final proof; the deed, dated June 29, 1903, made by Clara B. Ewing and husband, Albert B., to A. E. Palmer, consideration \$1950; the register's certificate and the receiver's receipt, dated November 7, 1902; certified copy of the patent, dated April 8, 1904; all to the east half of the northwest quarter, and the west half of the northeast quarter of section 34, township 7 north of range 5 east, Boise Meridian. The deed also contains and conveys lots 3 and 4, and the east half of the southwest quarter of section 7, township 7 north of range 6 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 112A to 112L, inclusive.)

The WITNESS.—Now, if you had just read that awhile ago you wouldn't have had to ask me so many questions.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Ewing, at the time you filed your first papers in the land office, on August 11, 1902, you made oath as follows: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except my-

(Testimony of Mrs. Clara Gish Ewing.)

self." That statement was absolutely true at that time, was it not? A. I think it was.

Q. You hadn't made any arrangement—

A. No, no arrangement with anybody; I had talked with nobody about it.

Q. You had not offered to sell and nobody had offered to purchase?

A. No, sir, I had not.

Q. Did you have any such agreement as that at the time you made your final proof?

A. I had no agreement with anybody at any time.

Q. And it was, as appears from the deed here, several months after you made your final proof before you sold the land?

A. I don't remember at all.

Q. Had you had any negotiations whatever relative to selling or transferring this property until a short time before you did in fact sell it?

A. I negotiated with nobody at all about it.

Q. The negotiations were all with your husband?

A. Yes, he arranged for the sale of the land when I sold it.

Q. Mrs. Ewing, this great country of ours, in this lawsuit we are trying, has charged you in this complaint, through these gentlemanly attorneys here with having entered this land at the request of, and for the benefit of, the Barber Lumber Company, John Kinkaid, Louis M. Pritchard, and the other defendants named in this action. Is that true or false, as far as you are concerned?

A. I knew nothing of the Barber Lumber Com-

(Testimony of Mrs. Clara Gish Ewing.)

pany; I knew nothing of any of these people when we thought of taking a timber claim. It is just as I said to the gentleman here.

Q. You are charged in this complaint with having entered this land, filed upon it, at the request of, and for the benefit of, the Barber Lumber Company and the other defendants named in this action. Is that true or false? A. It is not true.

Q. It is also charged in this complaint, Mrs. Ewing, through these attorneys, that under this agreement which it is claimed you made with the Barber Lumber Company and the other defendants you went to the land office and made this filing, and then went to the land office and testified to what you knew to be false, in order to procure title for the benefit of these defendants. Is that true or false?

A. It is not true.

(Witness excused.)

At this time court adjourned until two o'clock, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Miss Evelyn O'Farrell, on Behalf of the Complainant.]

Miss EVELYN O'FARRELL, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

(By Mr. GORDON.)

Q. You are Miss Evelyn O'Farrell?

A. Yes, sir.

(Testimony of Miss Evelyn O'Farrell.)

Q. What is your occupation, Miss O'Farrell?

A. Just at present I am housekeeping for the family.

Q. Did you have any occupation in 1901?

A. No, at that time I was still keeping home.

Q. Did you take up a timber and stone claim in November, 1901? A. Yes, November, 1901.

Q. I show you timber and stone land sworn statement, dated November 26, 1901, and ask you if you signed that paper?

A. Yes, I think that is my signature all right.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that paper?

A. Yes, sir.

Q. I show you the testimony of Evelyn O'Farrell given on final proof, February 26, 1902, and ask you if you signed that paper? A. Yes, sir.

Q. Who first spoke with you about taking up one of these timber claims?

A. Nobody ever asked me to take it up, but I knew that such things were being taken up, and I began to inquire how I could get one too, and I was told by the party that Mr. Wells could show me how to go about it.

Q. Who was this person that told you to go to Mr. Wells? A. Mr. William Sweet.

Q. And he told you to go and see Mr. John I. Wells?

A. Yes, he said he would introduce me to Mr. Wells and I could talk to him about it.

Q. So you went to see Mr. Wells?

(Testimony of Miss Evelyn O'Farrell.)

A. Yes, I met him on the street one day, and Mr. Sweet was with me and he introduced me to him, and he said if I wished to take up any timber, he told me where his office was, and I could go there to his office, and I finally took up the timber.

Q. Did you go to Mr. Wells' office before you took up a claim? A. I think so.

Q. What did you have to say to Mr. Wells about it?

A. I just wanted to know how I would proceed about taking it up, and he said there was a party going out on a certain date, and wanted to know if I would be able to go out with them at that time; there was room in the conveyance and I agreed to go.

Q. Do you know who were of the party that you went with?

A. There was a Mr. Burns; the others I don't remember.

Q. Was that Mr. Louis K. Burns?

A. I don't know.

Q. And you didn't know Mr. Patrick Downs at that time, did you?

A. No; he drove the party out, but I never knew him before that.

Q. And he located you on a claim?

A. Yes.

Q. Did you make any arrangements about paying a location fee?

A. No, not for a location fee, but I asked him about the hotel up there; that was before I left;

(Testimony of Miss Evelyn O'Farrell.)

when I went to his office that time I inquired into those things to know where I should stay. When I inquired into those things he said I could stay at his home instead of going to a hotel, he would telephone to his wife and tell her to expect me; and I wanted to know what the whole thing would cost, and he said about \$25, and I paid Mr. Wells \$25.

Q. And that was before you started up to the claim?

A. No, I didn't pay him until I returned from the trip.

Q. Was your claim near the claims of the other people who were located the same day that you were?

A. I don't know.

Q. I mean did he take you out by yourself to show you your claim, or did he take the others out?

A. No, there was somebody else, but I couldn't tell you who the party was; I don't remember whether it was Mr. Burns or not, but there was somebody else went along in the same conveyance.

Q. Did he leave the other people at your claim and take you on beyond the others by yourself?

A. No, sir.

Q. And when you got to your claim was it pointed out to you as the one you were to locate on?

A. Yes, there was a well-traveled road that run right through the claim, so he didn't have to drive much off that road to show me the corners.

Q. As I say, that was pointed out to you and you located on that one? A. Yes, sir.

Q. And then you were given the numbers, as they

(Testimony of Miss Evelyn O'Farrell.)

call it? A. Yes, sir.

Q. What did you do with them? Did you bring them back to Boise with you? A. Yes.

Q. Did you go to someone's office to have your papers prepared?

A. No, I went to Mr. Garrett, in the register's office.

Q. Did you go to Mr. Wells' office and pay him the \$25 before you filed?

A. No, Mr. Wells came out to the house and I gave him a check out there. I didn't consider that I was buying the location for \$25 from Mr. Wells at all.

Q. What did you think the \$25 was for?

A. For the whole thing, from the time I left here until I got back again.

Q. You didn't pay for your hotel bill?

A. No, sir.

Q. You didn't pay for the team you went up with?

A. No, sir.

Q. That was to pay for the team and all your expenses? A. Yes, sir.

Q. And for your filing papers?

A. No, I didn't consider it that way.

Q. Who prepared the first papers you filed in the land office? Who filled out the blank form for you, the sworn statement? (Showing witness paper.)

A. I don't know unless I filled it out myself.

Q. Is that your handwriting?

A. It looks like it; yes, that one is.

Q. Non-mineral affidavit, is that in your handwriting? A. Yes, sir.

(Testimony of Miss Evelyn O'Farrell.)

Q. The notice of publication; whose handwriting is that in? A. It looks like mine, all right.

Q. Did you know Mr. William F. Snow at that time?

A. He was one of the witnesses, my witnesses.

Q. Was he up there where the land was that you located on?

A. He might have been up there; I didn't know him.

Q. Mr. James H. Hamilton, was he up there?

A. He could have been.

Q. Did you meet him there? A. No.

Q. Did you know either of those gentlemen?

A. Never before that time.

Q. This notice of publication, did I understand you to say that it is in your handwriting? Who suggested to you to name those people as witnesses?

A. Mr. Wells, I suppose; I had to have witnesses.

Q. Did Mr. Wells go to the land office with you?

A. I don't think he did.

Q. Then when was it that Mr. Wells suggested these persons as witnesses for you?

A. When I found out I had to have witnesses, the chances are I had asked him, although I don't remember that.

Q. When you filed this paper, as I understood you had only seen Mr. Wells once, and that was the time you went there to make arrangements for going to see this land. Was that right?

A. I don't know; I might have seen him more than once, because I could easily have.

(Testimony of Miss Evelyn O'Farrell.)

Q. Do you remember whether when you came back from viewing the land you went to Mr. Wells' office before you went to the land office?

A. I don't remember whether I did or not.

Q. Did Mr. Downs go to the land office with you?

A. No.

Q. Did the other people that went over the land at the same time you did, did they go to the land office with you? A. I think they were there.

Q. Did you just happen to be there at the time they were, or was there an engagement or prior understanding that you should meet there?

A. No, I had no understanding.

Q. You, according to your publication, should have made your final proof on the 18th of February, and you didn't make it until the 26th of February, eight days later; the reason you gave was that you couldn't get your witnesses. Do you remember what witnesses there were that you couldn't get at that time?

A. It was Mr. Hamilton, I believe, that I couldn't get at that time; but I have never seen those people since, any of them.

Q. You hadn't ever seen them before either, had you?

A. No, I don't remember of it at all.

Q. After you made this entry, and several months later, why it came time to make your final proof. Do you remember that occasion?

A. When was that, please?

Q. That you made your final proof, purchased

(Testimony of Miss Evelyn O'Farrell.)

this land? A. That was in February?

Q. Yes.

A. Well, I came the day Mr. Garrett told me to come.

Q. Do you remember being at the land office and paying the money into the land office?

A. Yes.

Q. Do you remember how much money you paid at the land office? A. \$412.50, I think.

Q. Do you know where you got that money from that you paid at the land office?

A. Do you mean what bank?

Q. Yes. A. Bank of Commerce.

Q. Did you draw it out that morning?

A. No, sir.

Q. When did you draw it out?

A. I paid with a check; I wrote my check and gave it to him.

Q. Certified check? A. Yes, sir.

Q. How long had that money been in the bank?

A. I couldn't tell you; I always have had it in there; ever since my father's death I have had at least \$500 in the bank.

Q. For how long before you paid it into the land office?

A. It was in February; we pay out taxes in November; I had it there anyway since the November before.

Q. Then you didn't borrow any money with which to make final proof? A. No, sir.

Q. At that time did you know of anybody that

(Testimony of Miss Evelyn O'Farrell.)

was buying timber claims? A. No, sir.

Q. Mr. Sweet never told you of anybody that was buying timber claims?

A. No, never mentioned it.

Q. You didn't know of a market for timber claims? A. No.

Q. You didn't know of anybody that had sold timber claims? A. No.

Q. How long after you made final proof did you start negotiations for the sale of this land?

A. I made my final proof in February, 1902.

Q. Yes. A. I had it patented in 1904.

Q. Yes.

A. Well, I paid taxes on it in the fall of 1904. And did I pay taxes in 1905? I don't remember. And then when I negotiated to sell it?

Q. Yes.

A. Well, in 1905, in the summer, some time in August or July, I don't remember which.

Q. When you sold was that the first time you knew of anybody buying timber claims in Boise?

A. I had heard of the people selling their claims before that.

Q. Did you know to whom they were selling?

A. The Barber Lumber Company principally.

Q. What occasioned you to sell to the Barber Lumber Company?

A. Well, I had no need of selling it to them; that is, I could have still held it; I wish I had.

Q. I know that; but why did you sell to the Barber Lumber Company?

(Testimony of Miss Evelyn O'Farrell.)

A. Because I was ready to leave town at the time; I was going down to the Lewis & Clark Exposition, and the papers were talking about a fire raging in that section, and I didn't know but maybe my claim would be in ashes when I returned.

Q. Was that the reason?

A. Principally, one of the reasons.

Q. What was the other reason?

A. I don't know as I had any other reason.

Q. Did anybody come to see you and tell you that the timber was on fire and you had better sell?

A. No, they didn't say it was on fire up there and nobody came to me, but it was the general report throughout the town and in the vicinity. We knew it was on account of the dense smoke in town here.

Q. Did John I. Wells tell you?

A. I don't know that he particularly did; he might have.

Q. Don't you remember that he did?

A. No.

Q. You say you don't remember?

A. He could easily have told me so, but I don't know that he really did.

Q. Haven't you told anybody that he told you so and that that was the reason you sold?

A. I don't know.

Q. Did you go to see the managers of the Barber Lumber Company to sell this, or did they come to see you?

A. No, sir, they sent me a letter, I think, was the first time, asking if I will sell to them, and no, they

(Testimony of Miss Evelyn O'Farrell.)

didn't come to me, or I didn't go to them.

Q. They wrote to you?

A. Yes, they wrote to me.

Q. When was that?

A. In the summer of 1905.

Q. That was the first offer you had had?

A. No, sir; I had an offer from the Payette Lumber Company.

Q. When was that?

A. Just shortly before I received the letter from the Barber Lumber Company.

Q. And did they make you an offer for it?

A. Yes, I think he did.

Q. How much did he offer you?

A. I think the Payette people made—I don't know how I got it, but I thought I was getting \$800 from the Payette people; that is how I understood; I don't know whether they wrote that or not.

Q. And you wanted more?

A. No—well, I just held on to it; I didn't care whether I sold it or not, but when I got an offer of \$1,000 from the Barber Lumber Company I took it.

Q. Was that the first offer the Barber Lumber Company made you for it?

A. I couldn't say; if I would say yes, maybe I would begin to think I had made a mistake, and I don't know.

Q. Did you go to the Barber Lumber Company to consummate this sale, or where did you go?

A. No, I went to Falk's store. I was ready, you know, to leave town, and I went to Falk's store and

(Testimony of Miss Evelyn O'Farrell.)

Mr. Chapman sent me his check to Falk's store.

Q. Who brought you the check?

A. A Mr. Cunningham brought it to me.

Q. Do you know his first name?

A. Arthur Cunningham, A. E. Cunningham.

Q. And he had been employed at the Falk Mercantile Company? A. Yes.

Q. Had you talked to Mr. Cunningham about selling this land before? A. I may have.

Q. How did you arrange to have them send it to you at the Falk Mercantile Company?

A. I don't know how the arrangements were made.

Q. Did you sign the deed then, or the day after that?

A. I signed it the day I got my check.

Q. In the Falk Mercantile Company Store?

A. No.

Q. Where?

A. You see at the time I was going away I had quite a little business to attend to, and I had so many offices to visit that I don't remember which one I went to to sign that deed.

Q. Did you visit Mr. Kinkaid's office?

A. I don't remember.

Q. Did you know Mr. John Kinkaid?

A. Yes.

Q. Did you meet him at any time during the transactions with reference to this property?

A. I guess I did.

Q. Do you know when it was?

(Testimony of Miss Evelyn O'Farrell.)

A. I don't remember.

Q. Did you sign the deed in Mr. Kinkaid's office?

A. I declare I have forgotten.

Q. Do you know who brought you the deed that you signed? A. No.

Q. Haven't you any idea where you signed it?

A. No.

Q. Do you know what you were in Mr. Kinkaid's office about concerning this property? A. No.

Q. How long before you sold it was your visit to Mr. Kinkaid's office?

A. I don't know that I was ever in his office. I know where his office was; it was in the Sonna Building, but I don't know as I was ever in there.

Q. Did you ever talk to Mr. Kinkaid with reference to the sale of this property? A. No.

Q. Did you know Mr. Louis M. Pritchard?

A. No.

Q. And you don't know where you signed the deed? A. No.

Q. You don't know where you received the deed you did sign? A. No, strange to say.

Q. Did you close the deal with the Barber Lumber Company without seeing anything of the officers or managers of the Barber Lumber Company?

A. Yes, sir.

Q. Who conducted the business for you or for the Barber Lumber Company?

A. Mr. Cunningham.

Q. Was he an agent of the Barber Lumber Company?

(Testimony of Miss Evelyn O'Farrell.)

A. No, he wasn't, but then he knew that I was quite busy, and he just got it for me, but I don't remember whether I signed the deed in the store, or where.

Q. Had you talked to Mr. Cunningham about this before that time? A. I might have.

Q. Do you know whether you did or not?

A. No.

Q. How did you know that Mr. Cunningham knew about this, and why did you go to the Falk Mercantile Company to close the sale?

A. Why, I went there because I go there every time I get to town, I stop in there at the store.

Q. I mean you didn't go there to sell the Barber Lumber Company a piece of property if you never talked to anyone about it before? A. No.

Q. Then why did you go there to consummate this sale? Did Mr. Cunningham tell you he was going to have the money for you that day?

A. No; when I went in he says, "Here is your check."

Q. Did you sign the deed then, or had you signed it before then? A. I don't know.

Q. And that was the first time you had talked to Mr. Cunningham about selling to the Barber Lumber Company?

A. No, not the first time; I don't know what I ever said to him about it; we talked about different business schemes; we often have.

Q. Did you ever talk to Mr. Chapman about this?

A. No.

(Testimony of Miss Evelyn O'Farrell.)

Q. Then by letter somebody told you that the Barber Lumber Company would give you \$1,000; is that right? A. Yes, sir.

Q. And you answered and told them you would take the \$1,000? A. Yes, sir.

Q. Do you remember anything after that about this proceeding other than getting a check from Mr. Cunningham?

A. As I tell you, I don't remember whose office I went to to sign that deed at all, because I had been in so many that day that if I mention one it might be the wrong one.

Q. After you wrote to the Barber Lumber Company and accepted their offer of \$1,000, was anything said as to where you were to receive the money or where you were to sign the deed, or when it was to be paid; wasn't there any letter to that effect?

A. No.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Evelyn O'Farrell, dated November 26, 1901; the testimony of Evelyn O'Farrell, given on final proof, dated February 26, 1902; the non-mineral affidavit of Evelyn O'Farrell dated November 26, 1901, all having been identified by Evelyn O'Farrell as having been signed by her; the notice of publication, dated November 26, 1901; the cross-examination of Miss O'Farrell, attached to the testimony given on final proof; the register's certificate and the receiver's receipt, dated August 1, 1902; certified copy of the patent, dated February 1, 1904; all to the south half of the southeast quarter

(Testimony of Miss Evelyn O'Farrell.)

of section 26, and the north half of the northeast quarter of section 35, township 7 north of range 5 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 113A to 113-O, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Miss O'Farrell, this Mr. Cunningham you speak of is a friend of yours and your family, isn't he?
A. Yes, sir.

Q. And your sister worked there, was working in the Falk store?

A. She was stenographer in Falk's.

Q. Mr. Cunningham's connection with this sale, as I understand it, was simply—

A. Simply as a friend.

Q. And for some reason, which you now don't remember, the check was sent to him?

A. Yes.

Q. As I understand this whole transaction, you filed on this land, as you stated, on November 27, 1901, made your final proof February 26, 1902, got your final certificate on August 1, 1902, held the land until patent was issued to you on February 1, 1904, paid taxes on it after patent, and finally, on August 1, 1905, sold it to the Barber Lumber Company for \$1,000.

A. Yes, sir. Was it August 1st?

Q. August 1st, 1905, you made the deed.

A. I knew it was in the summer time.

Q. At the time you filed on this land, filed your

(Testimony of Miss Evelyn O'Farrell.)

first papers in the land office, had you at that time any agreement with any person, firm or corporation, by which you were to turn over title to them as soon as you got title? A. No.

Q. Did you have any such agreement at the time you made your final proof? A. No.

Q. Did you ever, at any time, prior to the time you sold this property, have any agreement with any person, firm or corporation to that effect, or like effect?

A. No, I wasn't obligated to anybody in the world.

Q. The Government of the United States charges in this complaint that you entered this land at the request of, and for the benefit of, the Barber Lumber Company, John Kinkaid, Louis M. Pritchard, A. E. Palmer, Horace S. Rand, and the other defendants. Is that true or false?

A. No, I took it up just as I have told you.

Q. Then the answer to that would be "false"?

A. Yes.

Q. It is also alleged, Miss O'Farrell, by the Government, in this lawsuit, through their attorneys, that, pursuant to the agreement you had with the Barber Lumber Company and the other defendants, you not only entered this land at their request and for their benefit, but, at their request, and at their solicitation you went to the land office and testified to what you knew to be false. Is that true or false?

A. I never knew of the Barber Lumber Company at that time.

(Testimony of Miss Evelyn O'Farrell.)

Q. There are other defendants besides the Barber Lumber Company. Did you have such an agreement with anybody? A. No.

Q. I want to get your statement whether that allegation is true as charged. It is charged that you, at the solicitation of, and at the request of, the Barber Lumber Company, John Kinkaid, A. R. Palmer, Horace S. Rand, Pritchard, and the other defendants, entered this land, at their request, and at their solicitation, for the purpose of getting this title away from the Government to turn it over to these defendants or some of them. Is that true or false?

A. I certainly didn't do anything like that.

Q. Is it true or false?

A. It must be false; it isn't true.

Q. You say that at the time you made your filing, or just before filing, you had some talk with Mr. Wells, and he advised you that you could stay at his house up there instead of going to the hotel.

A. Yes, instead of going to the hotel.

Q. Did you stay at Mr. Wells' house?

A. Yes, sir.

Q. And on your return from there you paid him \$25? A. Yes.

Q. Did you understand that there was a charge for cruising, locating, showing you the numbers?

A. I thought maybe there was.

Q. Do you remember now anything about paying your share of the rig?

A. No, the whole expenses were \$25.

Q. And that you paid to Mr. Wells as stated?

(Testimony of Miss Evelyn O'Farrell.)

A. Yes.

Redirect Examination.

(By Mr. GORDON.)

Q. Miss O'Farrell, I want to ask you one other question. Did Mr. Wells ever speak with you about selling this property? A. He might have.

Q. Did he, or did he not?

A. I guess he did; he asked me how long I was going to keep it.

Q. And didn't he tell you you had better sell it?

A. I don't know that he ever did.

Q. Didn't he tell you that the Barber Lumber Company was cutting timber up there and that if you didn't sell your land to them they would cut it anyhow?

A. No, but I think Mr. Wells told me at one time that there were people up there cutting; he didn't say the Barber Lumber Company; he didn't say they were cutting on my claim, but he said something to the effect that they were cutting up there, and sometimes they cut on different claims; he didn't say anything about mine in particular.

Q. Was that the time he said to you that you had better sell? A. I couldn't say.

Q. Did you talk to him about it on another occasion besides that one?

A. I may have. Of course he lived in town here, and likely I have met him quite frequently, and oftentimes I spoke on the subject, that is, I would ask him lots of times how the claim was doing, and he said all right.

(Testimony of Miss Evelyn O'Farrell.)

Recross-examination.

(By Mr. BUNDY.)

Q. These talks about selling were long after you made your final proof, these talks with Wells?

A. Oh, yes.

Q. You didn't have any talk with Wells or anybody else before you made your final proof?

A. No.

Q. Did you have any talk with him before that?

A. No, I don't think I did; I never considered that I was under obligation to Mr. Wells, or to anybody else.

Q. Nobody else except the Government.

Redirect Examination.

(By Mr. GORDON.)

Q. How do you know that these conversations were after your final proof? Do you remember when they were? A. No, I don't.

Q. Do you know whether they were before or after your final proof?

A. I wouldn't be selling until afterwards.

Q. This is about somebody suggesting it to you. I am not asking you what you thought; I am asking about what was asked you.

A. I don't remember.

Q. You don't know then whether it was before you made final proof or after, do you?

A. No, most likely it was after; I think it must have been after, because I never thought of selling it until after I had made final proof.

(Testimony of Miss Evelyn O'Farrell.)

Q. Then, when Mr. Wells spoke to you you did think of selling it?

A. No; when there was a demand for it I thought of selling it; there was no demand at that time.

(Witness excused.)

[**Testimony of Elma E. Gardner, on Behalf of the Complainant.**]

ELMA E. GARDNER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. Gardner, where do you reside?

A. In Boise.

Q. How long have you resided in Boise?

A. Why, about twenty years, I think.

Q. Have you an occupation?

A. Yes, I am a dressmaker.

Q. And were a dressmaker in 1902?

A. Yes, sir.

Q. You took up a claim under the Timber and Stone Act in 1902, did you? A. Yes, sir.

Q. I show you timber and stone land sworn statement dated October 1, 1902, and ask you if you signed that paper.

A. Yes, that is my signature.

Q. I show you non-mineral affidavit, signed by Elma E. Gardner, of the same date, and ask you if you signed that paper.

A. Yes, that is my signature.

(Testimony of Elma E. Gardner.)

Q. I show you the testimony of Elma E. Gardner given on final proof, dated March 19, 1903, and ask you if you signed that. A. Yes.

Q. I show you the cross-examination attached and ask you if you signed that.

A. Yes, sir.

Q. I show you deed dated March 28, 1903, made by Elma E. Gardner to Horace S. Rand, and ask you if you signed that deed?

A. Yes, that is my signature.

Q. And acknowledged it before Louis M. Pritchard? A. Yes.

Q. Mrs. Gardner, when you took up this claim did you know John I. Wells?

A. Yes, sir, I think I did.

Q. The gentleman present here?

A. Yes.

Q. Did you know Patrick Downs?

A. Yes, sir.

Q. How long had you known them?

A. Well, I really don't know how long I had known them.

Q. Did you know Mr. Louis M. Pritchard at that time? A. Yes, sir.

Q. And Mr. John Kinkaid? A. Yes, sir.

Q. Who first spoke to you about taking up a timber claim? A. Mr. Pritchard, I think.

Q. What did Mr. Pritchard say to you about it?

A. Well, I don't know; Mr. Pritchard was a friend of the family, and I don't remember just exactly what he said about it, but he said I could take

(Testimony of Elma E. Gardner.)

up a timber claim.

Q. Did he tell you how much it would cost you?

A. I think so, yes.

Q. And how long after he spoke with you about it did you go to locate?

A. I really couldn't tell you; I don't remember.

Q. And do you remember who you went with to locate on the claim?

A. Why, I went with Mr. and Mrs. Blamford.

Q. Were you told before you left that Mr. Patrick Downs would locate you?

A. Yes, I think I understood that.

Q. Did you have any talk with Mr. Downs about where he would locate you, when you met him?

A. No, I don't think so; not that I remember of.

Q. Where did you meet him when you went to view this claim?

A. Why, I don't know; I think we met him at Kempner's ranch, up above Idaho City.

Q. Did you have any talk with him that day about your claim, before you went out to look over it?

A. I think we did, but I don't remember just what the talk was.

Q. Did you ask him how much it would cost you?

A. I think I understood how much it would cost before I went up.

Q. How much?

A. I think we were to pay \$2.50 an acre.

Q. I mean the expense of locating.

A. I think we did talk something about the expense of that; it seems to me it was \$25.

(Testimony of Elma E. Gardner.)

Q. Did you pay him then or did you pay someone else?

A. Mr. Pritchard attended to that for me.

Q. Did he pay that \$25 for you?

A. Yes, at least I gave him the money.

Q. When did you give him the money?

A. Some time after I came back.

Q. Was it after you sold? A. No, sir.

Q. Was it before you sold? A. Yes, sir.

Q. You are sure of that?

A. Yes, it was before I sold.

Q. Did Mr. Kinkaid give you a letter to Mr. Downs? A. No.

Q. Pritchard, I meant, did he give you a letter to Mr. Downs?

A. No, Mr. Pritchard went along with us.

Q. Were you all located together? A. Yes.

Q. I mean were the claims you located on adjoining each other?

A. I think they were; I know we visited all of them, and I think they were adjoining each other.

Q. Do you remember the kind of weather you had the day you went to look over this claim?

A. Yes, it was nice weather.

Q. Did Mr. Pritchard return to Boise with you?

A. Yes.

Q. Were you given a description of your land up there? A. Yes, sir.

Q. Was it given to you?

A. Well, I don't know; I don't really know about that, whether it was given to me or not; I can't tell

(Testimony of Elma E. Gardner.)

you, but I know I have a description.

Q. How long after you returned did you have your first papers prepared that you filed in the land office?

A. Well, I can't, I don't remember, but I think I went down quite soon to file on it.

Q. Where did you get your papers that you filed?

A. Mr. Pritchard attended to it for me; I really don't know.

Q. Did he bring them to the land office for you?

A. Yes, I think so.

Q. Did you know of a market for this land at that time? A. No, sir.

Q. Did you know of anyone that was buying timber claims? A. No, I did not.

Q. Did you know of anybody that was selling timber claims? A. No.

Q. Did you know of a prospective buyer?

A. No, I did not.

Q. Did Mr. Kinkaid tell you that there would be a market for it soon?

A. No, I don't think I knew Mr. Kinkaid just at that time.

Q. I mean Pritchard; excuse me.

A. No, he told me he thought I would be able to sell it, he would be able to sell it for me, but he didn't tell me there was a market for it.

Q. Do you remember whether you paid that location fee to Mr. Kinkaid or to Mr. Wells—I mean Mr. Pritchard.

A. I don't know; Mr. Pritchard attended to it

(Testimony of Elma E. Gardner.)

for me, and I know I paid him the money, whatever he had to do with it; he was doing other business for me and he did this, so I gave him the money and he attended to it.

Q. The reason I ask that, I see that in one of the questions asked you in the land office, in answer to the question, "Did you pay or agree to pay anything for the information, and if so, to whom and the amount?" you said, "Paid location fee of \$25 to John I. Wells."

A. Well, I might have done it myself; I don't just remember that; I couldn't tell you; Mr. Pritchard did my business.

Mr. BUNDY.—And he made out your papers for you?

A. Yes, sir.

Mr. GORDON.—Q. Now, do you remember the occasion of making your final proof?

A. No, I do not remember much about it.

Q. You remember going to the land office?

A. I remember going to the land office.

Q. And do you remember who went with you?

A. I think I had to have witnesses, and it seems to me I had Mr. Blamford and Mr. Pritchard.

Q. Do you remember how much money you paid at the land office on that occasion?

A. No, I can't tell just exactly, because there were different things that had to be paid.

Q. This was when you purchased the land, the second time you went.

A. I think I paid \$2.50 an acre for it, and I think I had a hundred and sixty acres.

(Testimony of Elma E. Gardner.)

Q. Do you remember paying about \$400 in the land office?
A. Something like that.

Q. Did you pay that yourself, or did somebody pay it for you?

A. No, nobody paid it for me; I paid it myself.

Q. Did you pay it in check?

A. No, I had cash.

Q. Where did you get the cash?

A. It was my money that I had earned.

Q. How long had you had it?

A. I can't tell you that; I had a certain sum of it quite awhile, and the other I hadn't had so long.

Q. You didn't borrow any of it from anybody?

A. No; still I did have some from my mother, about \$50 I think.

Q. And that was all you borrowed?

A. Yes.

Q. You didn't get the money out of the bank that day?
A. No, sir.

Q. You didn't keep a bank account?

A. Not at that time I don't believe I did.

Q. Now, up to that time had you heard of anybody that was buying timber claims?

A. No, I had not, that I remember of.

Q. Mr. Pritchard hadn't told you of anybody that he knew that was buying timber claims?

A. No.

Q. Now, how long after you paid this \$400 into the land office was it that you heard of somebody buying timber claims?

A. Well, I don't remember.

(Testimony of Elma E. Gardner.)

Q. Well, was it a week, or was it a year?

A. It wasn't a year, I don't believe; it seems to me like it was four or five months; I don't remember; I couldn't say positively.

Q. Who was the first one that spoke with you with the view of buying it?

A. No one did, excepting Mr. Pritchard telephoned me that he thought they could sell the claim for me.

Q. Did he tell you how much you could sell it for?

A. He told me to come up to the office and see if we could make arrangements for it.

Q. And you went to the office? A. Yes.

Q. Was anyone there besides Mr. Pritchard?

A. I don't think there was; it seems to me there was someone in the office, but I don't think it was anyone that had anything to do with this affair.

Q. Did you sign the deed that day?

A. No, I don't think I signed the papers that day. We talked it over.

Q. How much did you get for it?

A. I don't know; I don't remember.

Q. What is your best recollection?

A. I think something like between seven and eight hundred.

Q. How long after that visit was it that you made the deed? A. I don't remember.

Q. You remember that it was not on that occasion?

A. I don't think it was; I am not positive.

(Testimony of Elma E. Gardner.)

Q. Was it the next day?

A. I can't remember; I don't know.

Q. Where did you sign the deed?

A. In Mr. Pritchard's office, I think.

Q. Did you accept the amount that Mr. Pritchard offered you the first day you went there?

A. I don't know; I don't remember that; I remember that he told me that he could sell it, and I suppose he told me what he could get for it.

Q. Did he tell you to whom you could sell it?

A. I think he must have; I don't know.

Q. You don't remember?

A. I don't remember that.

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Q. Had you ever heard of him?

A. I don't believe so; I don't remember.

Q. The second time you went back and signed the deed was the deed prepared and ready for you when you got there?

A. Well, I guess so; I think it must have been.

Q. Did he give you a check, or did he pay you in cash?

A. I think he paid me in cash.

Q. And you read this deed before you signed it?

A. Yes, sir.

Q. Did you notice that the consideration in it was \$1200?

A. Well, I don't remember.

Q. You didn't get but eight hundred and something?

A. I tell you I don't remember what I got for it, because at the same time I was taking up a home-

(Testimony of Elma E. Gardner.)

stead and making improvements on it, and Mr. Pritchard did the business for me, and I was making these improvements, so I really don't know what I got for it.

Q. Did you ever make another deed for this piece of property? A. No.

Q. Were you ever asked to make another deed?

A. No, not that I remember of.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Elma E. Gardner, dated October 1, 1902; non-mineral affidavit of Elma E. Gardner of the same date; the testimony of Elma E. Gardner given on final proof, March 19, 1903; and the cross-examination attached, all of which have been identified by Elma E. Gardner as having been signed by her; the notice of publication, dated October 1, 1902; the testimony of the other witnesses given on final proof; the receiver's receipt, and the register's certificate, dated March 19, 1903; the deed, dated March 28, 1903, made by Elma E. Gardner, to Horace S. Rand, consideration \$1200; certified copy of the patent, dated June 10, 1904; all to the south half of the southwest quarter, and the northwest quarter of the southwest quarter of section 12, and the northeast quarter of the southeast quarter of section 11, township 7 north of range 7 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 114A to 114N, inclusive.)

(Testimony of Elma E. Gardner.)

Cross-examination.

(By Mr. BUNDY.)

Q. Miss Gardner, I think you said that Mr. Pritchard was a friend of yours?

A. Yes, he was a friend of the family.

Q. He was an attorney here in the city at that time?

A. Yes.

Q. And did some other business as your attorney other than this?

A. Yes.

Q. And in matters, part of the matters at least, relating to this filing, he acted as your attorney?

A. Yes, sir.

Q. And in the matter of selling the land acted as your agent in that respect?

A. Yes, sir.

Q. At the time you went up to look at this land of course no one had had any talk with you about what you were to do with it?

A. No, sir.

Q. At the time you filed your first papers in the land office, at that time had you entered into any agreement of any kind, written or verbal, express or implied, by which you had agreed to turn this title over to any person when you acquired title from the Government?

A. I had not, no.

Q. Had you entered into any such agreement as that when you made your final proof?

A. No, sir.

Q. The Government, in this lawsuit we are trying here, Mrs. Gardner, charges that you entered this land at the request of, and for the benefit of, the Barber Lumber Company, Mr. Kinkaid, Mr. Palmer, Mr. Rand Mr. Pritchard, and the other defendants

(Testimony of Elma E. Gardner.)

named. Is that true or false? A. I did not.

Q. And it is charged in this complaint that, pursuant to the agreement you had with these defendants, or some of them, you went to the land office and deliberately testified falsely, for the purpose of acquiring title from the Government fraudulently, to turn it over to these defendants. Is that true or false? A. It is false.

(Witness excused.)

[Testimony of Frank R. McDonald, on Behalf of the Complainant.]

FRANK R. McDONALD, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Frank R. McDonald?

A. It is.

Q. What is your occupation, Mr. McDonald?

A. I am a mining man, millwright.

Q. What was your occupation in 1902?

A. I was following mining engineering.

Q. You are a mining engineer by profession, are you? A. I am a mechanical engineer.

Q. Where do you reside?

A. I reside at Horseshoe Bend at present, Boise actually.

Q. What is your age? A. Thirty.

Q. You took up a claim under the Timber and Stone Act in September, 1902, did you?

(Testimony of Frank R. McDonald.)

A. Yes, sir.

Q. I show you timber and stone land sworn statement of Frank R. McDonald, dated September 16, 1902, and ask you if you signed that paper?

A. Yes, sir.

Q. I show you non-mineral affidavit of the same date; did you sign that paper? A. Yes, sir.

Q. I show you testimony of Frank R. McDonald given on final proof April 28, 1903, and ask you if signed that paper? A. Yes, sir.

Q. And the cross-examination attached?

A. Yes, sir.

Q. I show you deed dated May 4, 1903, Frank R. McDonald and Ellen E. McDonald, to Horace S. Rand. Is that your signature? A. Yes, sir.

Q. Is that the signature of your wife?

A. Yes, sir.

Q. And you acknowledged that before Louis M. Pritchard? A. Yes, sir.

Q. Did your wife take up a claim under the Timber and Stone Act? A. No, sir.

Q. Mr. McDonald, who first spoke with you about taking up a claim under the Timber and Stone Act?

A. I am not sure, but I think the first was from my father or Mr. James that I know of.

Q. Did you know Mr. John Kinkaid at that time?

A. I had met Mr. Kinkaid before that time.

Q. Did you know Mr. Pritchard at that time?

A. No, I don't know him.

Q. Did you know Mr. John I. Wells when you took up your claim?

(Testimony of Frank R. McDonald.)

A. I had just met him; I couldn't say I was well acquainted with him before that time, but I had met him.

Q. Did you meet him before you took up a claim?

A. Yes, sir.

Q. Did you meet him with reference to taking up a claim, before you took up your claim?

A. No, I think not, not in direct reference to it; I met him with other parties and was introduced to him and I had met him before and was introduced to him by a mining party.

Q. Near what town or place is this claim located?

A. The nearest town is Idaho City.

Q. Did you know Mr. Patrick Downs before you left here to view the claim?

A. I didn't know him personally; I don't think I ever met him before that time.

Q. Did you go with a party to Idaho City?

A. Yes, sir.

Q. Who were of the party?

A. There was a Mr. and Mrs. Thompson, a Mr. Rose, and there was another gentleman—I don't remember his name.

Q. Did you know any of them before you started from Boise?

A. I knew Mr. Rose, had met him years before.

Q. How long had it been before that time that you had seen Mr. Rose?

A. I couldn't say; I hadn't seen Mr. Rose before we were ready to go for some little time.

Q. Who arranged the party for you?

(Testimony of Frank R. McDonald.)

A. I was told that Mr. Thompson was going to take the party out, and a party pointed him out to me.

Q. Who told you that?

A. I don't know; I am not sure; it might have been Mr. James, or it might have been my father.

Q. Where did you start from?

A. We started from Boise; I think we met at the Pacific Hotel; I am not positive about it.

Q. Did you know what it was going to cost you for location fee before you started?

A. I had an idea; I knew what it had cost my father and the others.

Q. Had your father taken up a claim at that time?

A. Yes, sir.

Q. Had he sold it at that time?

A. I don't remember; I don't know.

Q. And when you met Mr. Downs did you have an understanding with him what you were to pay him?

A. I am not sure that we did, but it was—I think it was understood what the location would be from the others; I think that when I left I understood what the others had paid, my father and Mr. James paid him.

Q. You didn't say anything to Mr. Downs about it?

A. I didn't say anything to Mr. Downs about money at all.

Q. How far from Idaho City was your claim?

A. I don't know how far it is; it was over on

(Testimony of Frank R. McDonald.)

Crooked river.

Q. Was it ten miles, or how far?

A. I think it is about fifteen miles.

Q. And you went over there?

A. Yes, sir.

Q. And when you arrived there did Mr. Downs point out a claim and say, "This is the one I will locate you on"?

A. The day after we got there he took us out from the ranch to the claim.

Q. And showed you the claim you were to locate on?

A. Yes, sir.

Q. And you located on the one he showed you?

A. Yes, sir.

Q. And he gave you a description of it there?

A. Not on the ground, the description was sent down; he took us out around the claim and showed us the claim.

Q. Did he make out a description of all the claims?

A. I think he did.

Q. Did he give them to one person to bring back here?

A. I don't know.

Q. Do you remember whether he gave you yours separately, or did he give yours with the rest of them?

A. I think they were all together.

Q. Where did you go to get your papers prepared?

A. Mr. John Kinkaid, I think, prepared my papers.

Q. I forget whether you told me whether you had met Mr. Kinkaid or not.

(Testimony of Frank R. McDonald.)

A. I had met Mr. Kinkaid before, in the mining business early in the year.

Q. But not with reference to this transaction?

A. No.

Q. Did all of the party that went with you go to Mr. Kinkaid's office to get the papers prepared?

A. I think they did; I know some of them was there at the time I was there.

Q. Did Mr. Kinkaid go to the land office with you?

A. I believe so; I wouldn't be positive about that.

Q. At that time did you know of a market for timber claims?

A. I know they were being sold.

Q. Did you know to whom they were being sold?

A. No, sir.

Q. Hadn't heard of anybody that was buying them?

A. I hadn't heard of any direct person; I knew they were being sold.

Q. Did you know of any person personally that was buying timber claims?

A. I can't say that I did personally, only I knew my father and Mr. Janes had taken up claims, and what information I had I got from them.

Q. Now, did you pay a location fee, \$25 for location fee? A. Yes, sir.

Q. Did you pay that to Mr. Downs or to Mr. Wells?

A. It was paid here; I either paid it to Mr. Wells or to Mr. Kinkaid; I am not sure which; but it was

(Testimony of Frank R. McDonald.)

paid when we came back.

Q. How long after you came back?

A. I think it was paid when the papers were made out that day, I believe, as near as I remember.

Q. And I understand you to say that these first papers that you filed were made out by Mr. Kinkaid, the sworn statement and the non-mineral affidavit and the notice of publication? A. Yes, sir.

Q. And at that time did you know of anybody that was buying timber claims, after you had filed?

A. No, sir.

Q. Then it came time for you to make your final proof; do you remember that occasion?

A. I do.

Q. You didn't make your proof on the day you had advertised to make proof?

A. No, sir; I didn't have the money at that time.

Q. You had been sick, as I understand.

A. No, my wife had been sick.

Q. And you paid a good deal of money to doctors and nurses?

A. Yes, I made an affidavit to that effect. I went to some office somewhere in the Falk Building at that time and made an affidavit and passed it in why I was to readvertise.

Q. You were to have made your proof originally on the 14th of January, 1903, and you made the affidavit you have referred to on the 23d of January, 1903, and then made your final proof in April, 1903. Now, do you remember how much money you paid in the land office the latter part of April when you

(Testimony of Frank R. McDonald.)

made your final proof?

A. I think it was \$412.50; I am not exactly positive.

Q. Did you pay that in check or in cash?

A. I think I paid that in cash.

Q. Did you borrow that money?

A. I borrowed part of it; part of it I had.

Q. How much did you borrow?

A. I am not positive about the amount.

Q. What is your best recollection about how much?

A. I might have borrowed \$250 or \$300, somewhere along there.

Q. Who did you borrow that from?

A. From Mr. Pritchard.

Q. Did you give him a note for it?

A. I did.

Q. Do you know how long that note was to run?

A. I am not positive.

Q. Up to that time you didn't know of anybody that was purchasing timber claims?

A. No, sir, I didn't know of anyone directly; I knew they were being sold.

Q. Mr. Pritchard had never said anything to you about it? A. No, sir.

Q. Was this the first time you had met Pritchard anywhere during this transaction?

A. Yes, sir.

Q. Who told you to go to Mr. Pritchard?

A. I am not sure whether I was told through some one, Mr. James, or my father; I intended to

(Testimony of Frank R. McDonald.)

throw the thing up; I expected to have the money and through sickness I was kept in town, and I intended to drop it in the first place. I intended to drop it when I re-entered last, and my father suggested that by paying a small fee you can get the time extended for three months, and in that time you can probably get out and raise the money. Then I decided that I couldn't do it, and the time was up, and I think it was my father said someone told me that he thought I could get the money from Mr. Pritchard.

Q. Had you talked to Mr. Wells about it?

A. No, I think not; but I had met him sometimes, and I knew his brother better than I did him; I used to drop up there and talk mining; Mr. Wells had been up in the Basin.

Q. Did you get this money from Mr. Pritchard the day you made your final proof?

A. I am not positive whether I got it that day. I either got it the day I made final proof or the day before—I am not positive about it.

Q. That was in cash? A. Yes, sir.

Q. And you paid that identical money into the land office?

A. It might have been part of the identical money, and it might not. I had spending money for other purposes.

Q. How long after that did you start negotiations for the sale of this property?

A. I think it was about two weeks; it seems to me it was something like that; anyway I had to get

(Testimony of Frank R. McDonald.)

rid of it; I was out of employment.

Q. With whom did you negotiate for the sale of it?
A. Mr. Pritchard.

Q. I notice that you made your final proof the 28th of April, and the deed is dated the 4th of May; that is six days. How long before—I will ask you if you didn't make a deed to Mr. Pritchard the day you got the money from him.

A. No, sir, I signed nothing but the note for the money when I got the money.

Q. How many times did you see Mr. Pritchard with reference to the sale of this property?

A. I think I saw Mr. Pritchard once, as near as I remember.

Q. And that was the first time you knew that Mr. Pritchard was buying timber claims?

A. Yes, sir.

Q. Who told you to go to see him to see if you couldn't sell it?

A. I am not positive about who it was; I was talking it over, and I had kind of gone up against it on account of sickness, and I had talked it over freely with some of the other people, my father and my brother in law, and I am not positive who it was.

Q. How much did Mr. Pritchard offer you for this land?
A. I think it was \$750.

Q. And you took that amount?

A. Yes, sir.

Q. And you signed the deed the same day he offered it to you?

A. I only made the one call on Mr. Pritchard

(Testimony of Frank R. McDonald.)

after I borrowed the money.

Q. And he took his money out that he loaned you?

A. Yes, sir.

Q. And did your wife go with you on the occasion that you signed the deed? A. Yes, sir.

Q. Then she went to Pritchard's office with you when you went to see him about it?

A. Yes, she went to Mr. Pritchard's office.

Q. I mean when you went to see Pritchard about selling this, you took your wife along, and it was all one transaction? A. Yes, all one transaction.

Q. You read this deed over? A. Yes, sir.

Q. Did you know Horace S. Rand, the grantee in it? A. No, sir.

Q. Did Mr. Pritchard write the deed, or prepare the deed, while you were there?

A. I am not positive as to that.

Q. Or did he have it there when you arrived?

A. I am not sure.

Q. What is your best recollection?

A. I am not sure; I know there was some filling out; it took some little time.

Q. Did you notice that the consideration in the deed was \$800?

A. Well, I wouldn't be positive about whether I did or not, and I wouldn't be positive—I said \$750, now I wouldn't be positive about that, but it was somewhere in there.

Q. I show you this deed and ask you if the dates are the same in the deed now as when you signed it. There are evidences there that the day and the month

(Testimony of Frank R. McDonald.)

have been changed in the deed proper, and also in the acknowledgment.

A. I wouldn't be sure about that; I don't remember about that, because I haven't thought of it or anything since it happened; I felt that under the circumstances I was pretty lucky.

Mr. GORDON.—We offer in evidence timber and stone sworn statement of Frank R. McDonald, dated September 16, 1902; the non-mineral affidavit of the same date, of Frank R. McDonald; the testimony of Frank R. McDonald given on final proof, dated April 28, 1903, and the cross-examination attached, all of which have been identified by Frank R. McDonald as having been signed by him; the notice of publication, dated September 16, 1902; the testimony of the other witnesses on final proof; the receiver's receipt, and the register's certificate, dated April 28th, 1903; and the deed, dated May 4, 1903, made by Frank R. McDonald and Ellen E., his wife, to Horace S. Rand, consideration \$800; certified copy of the patent, dated June 10, 1904; all to lots 2 and 3, and the southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter of section 6, township 6 north of range 8 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 115A to 115O, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. McDonald, are you a son of N. J. G. McDonald?
A. Yes, sir.

(Testimony of Frank R. McDonald.)

Q. It seems that your father sold his claim August 9, 1902, some little time before you filed on yours. Now, after you had made your final proof and were in possession, then, you understood you could sell if you wanted to.

A. At that time I did; at the time I filed I had the money of my own, and intended to take it as a speculation; I had the money and thought it would be a good investment, but at the time I proved up on it I had sickness, and I wanted to get my money back that I had put into it.

Q. After you had made your final proof you were advised by your father or someone else that you could sell to Mr. Pritchard? A. Yes, sir.

Q. So that when you went to Pritchard you then knew, when you took your wife along, that you could sell and make a deed at that time?

A. Yes, sir.

Q. And you went to his office for that purpose?

A. Yes, sir.

Mr. GORDON.—Mr. Bundy, there is one other question I would like to ask, and I will either ask it now or after you get through.

Mr. BUNDY.—Go ahead.

Mr. GORDON.—Q. I notice in this cross-examination, Mr. McDonald, that you have identified here, that when you made your final proof you were asked this question: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" And this answer: "Earned it. Have had it for a week."

(Testimony of Frank R. McDonald.)

Did you make that answer?

A. I am not positive; if it is there I suppose I did, but I am not positive. If I made that answer I know I had no intention of saying that I earned all of it.

Q. That is a mistake then?

A. It is a mistake if I answered it in that way; my nearest recollection is that I answered the question that part of it I earned and part of it I borrowed; I had no object in saying that I earned it all, because I would have had a hard time to prove it.

Mr. BUNDY.—Q. Now, you were asked a question by Mr. Gordon as to Mr. Downs taking you on a certain claim and telling you “This is your claim.” Did you understand that Mr. Downs was locating you upon one particular claim only, and that you had no right of selection in the matter?

A. We went out with Mr. Downs and talked about it going out, and he said “There is some good claims up here,” and he took us down, and I couldn’t see any difference in the timber, and he says, “This is yours,” and we looked it over and there was no preference that I could see, so far as we could see, so there was no use in saying anything about it.

Q. That was what Mr. Downs was employed for?

A. He was employed to locate us on the best claims.

Q. You supposed that he knew more about it than you did? A. He certainly did.

Q. Now, at the time you filed your first papers in the land office, had you entered into any kind of

(Testimony of Frank R. McDonald.)

agreement, express or implied, verbal or written, with any person, firm, or corporation by which you had agreed to transfer or assign to any such person, firm, or corporation, or to any other person, the title which you might acquire from the Government?

A. No, sir.

Q. Had you made any such agreement at the time you made your final proof? A. No, sir.

Q. At the time you borrowed the money from Mr. Pritchard, which you used in part in making final proof, did you have any agreement, express or implied, with him, by which he or any person for whom he was acting acquired any right, title, or interest in that land? A. No, sir.

Q. Was any reference made by either you or Mr. Pritchard, or anyone else, that by reason of the fact that he had made you that loan you had to sell that land to him, or to any person he should direct?

A. No, sir.

Q. It is charged in this complaint that you entered this land at the request of, and for the benefit of, the Barber Lumber Company and the other defendants. Is that true or false?

A. It is false.

Q. And it is alleged in this complaint that you entered into an agreement not only to enter the land, but that you did, and that pursuant to that agreement, you went to the land office and swore falsely, for the purpose of defrauding the United States out of these lands. Is that true or false?

A. It is false.

(Testimony of Frank R. McDonald.)

Q. Did any person, firm or corporation have any interest, in the lands you purchased from the United States until the time you sold, as you have testified?

A. No, sir, not so far as I know.

(Witness excused.)

[Testimony of William J. Wills, on Behalf of the Complainant.]

WILLIAM J. WILLS, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William J. Wills?

A. Yes, sir.

Q. Where did you reside in December, 1901, Mr. Wills?

A. Boise City.

Q. Mr. Wills, you took up a claim under the Timber and Stone Act December 26, 1901, did you not?

A. Yes, sir.

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

A. A man by the name of Henry Rice, I believe.

Q. What did Mr. Rice tell you?

Mr. BUNDY.—I wish to object to the reception of any evidence from this witness for the reason that no entry under the Timber and Stone Act made by him is involved in this action, that neither the Barber Lumber Company nor any of the defendants have, nor is it alleged that they have procured any land through Mr. Wills, or any land upon which he

(Testimony of William J. Wills.)

entered, and state that it appears from the complaint in this action that Mr. Wills never did acquire any land, and as a matter of fact never did make a timber and stone entry except to make original filing.

Mr. GORDON.—Q. What did Mr. Rice tell you?

Mr. BUNDY.—Q. Henry Rice is dead, isn't he?

A. I believe he is.

Mr. BUNDY.—I object to any statement made by Mr. Rice, who appears to be dead, as incompetent, irrelevant, and immaterial; the witness has said that he is dead.

Mr. GORDON.—Q. I asked you what Mr. Rice said to you.

A. He said there was a chance to get some timber claims.

Q. And did he tell you that you could make anything out of it?

Mr. BUNDY.—I object to that as leading, and incompetent, irrelevant, and immaterial.

A. Why, he said to go and see Dean West, I believe.

Mr. GORDON.—Q. And you went and saw Dean West? A. Yes, sir.

Q. Did you know Mr. West before that time?

A. Well I was not personally acquainted with him, but I had seen him.

Q. What did Mr. Dean West say to you?

Mr. BUNDY.—The same objection to this.

A. He said that they were filing on claims up in the Basin and there was a bunch of them going out in a short time and I could go up with them if I

(Testimony of William J. Wills.)

wanted to.

Mr. GORDON.—Q. Did he tell you that you could make anything out of it?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and leading.

A. He said a person could sell claims.

Mr. GORDON.—Q. Did you have the money with which to make final proof, at that time?

A. No, sir.

Q. Did he tell you where you could get the money to make final proof?

A. No, sir, not at that time.

Q. You took up a claim? A. Yes, sir.

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

A. Yes, sir.

Q. Did you know Mr. Patrick Downs at that time? A. Yes, sir.

Q. Did Mr. West send you to Mr. Wells?

A. Yes, sir.

Q. Was that Mr. John I. Wells, the gentleman now present? A. Yes, sir.

Mr. BUNDY.—Look Mr. Wells in the face and see if he is the one.

A. Yes, sir, that is the one.

Mr. BUNDY.—I just wanted to see if you could; that was all.

Mr. GORDON.—What did Mr. Wells tell you to do?

A. He give me the money to prove up with.

Q. I mean before that, before you went up to look at the land?

(Testimony of William J. Wills.)

A. He never said anything to me about the land before that.

Q. Who located you on the land?

A. It was Patrick Downs.

Q. Was your wife with you?

A. Yes, sir.

Q. What is your wife's name?

A. Mary Wills.

Q. And you filed your first papers in the land office?

A. Yes, sir.

Q. Do you remember who prepared those papers for you?

A. I think John Wells prepared them, or some of them.

Q. And now did you see Mr. West again about the money to make your final proof?

A. Not till the time to prove up.

Q. Did you go to him and see him?

A. No, he come to me.

Q. What did he say to you?

A. He said if I could go to Wells' office in the bank building I could get the money.

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

A. Yes, sir.

Q. How much money did you get?

A. Something over \$800.

Q. Was that the same day you were to make your final proof?

A. I think it was.

Q. What did you do with that money? Did you go to the land office, or did you go home?

A. I went home.

(Testimony of William J. Wills.)

Q. When you got the money from Mr. Wells did Mr. Wells say anything to you about where you should say you received that money when you went to the land office?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and for the same reasons as before stated.

A. I believe I understood him to say to say it was my own money.

Mr. GORDON.—Q. Did I understand you to say that instead of going to the land office you went home?

A. Yes, sir.

Q. Then did you ever go to the land office?

A. No, sir.

Q. Why not?

A. I went home and talked the matter over with my wife, and we concluded that we wouldn't proye up; it would be a case of perjury.

Q. Did you ever give the money back to Mr. Wells?

A. No, sir.

Q. Then neither you nor your wife ever proved up on the claims?

A. No, sir.

Q. Did Mr. Wells ever come to you about that money?

A. Yes, I believe he did once.

Q. What did he say to you?

A. I think he wanted me to pay the money back.

Q. What did you tell him?

A. I believe I told him I wouldn't.

Q. Did you give Mr. Wells a note for this money?

A. No, sir.

Q. Or a receipt for it?

A. No, sir.

(Testimony of William J. Wills.)

Q. Now, when you got that money did you have an understanding with Mr. Wells what you were to do with this claim?

A. Only just turn the papers from the land office over to him when I proved up, that was all.

Q. Did you understand that you were to get a certain amount when you sold, when you took this claim up?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and as leading.

A. Mr. West said something about it.

Mr. GORDON.—Q. What did he tell you?

Mr. BUNDY.—The same objection.

A. Two or three hundred.

Mr. GORDON.—Q. That was for your trouble in taking up the claim?

Mr. BUNDY.—I object to it as suggestive and leading.

A. That was my understanding.

Mr. GORDON.—Q. I will ask you whether or not Mr. Wells threatened you with prosecution if you didn't give the money back.

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial.

A. He said he would prosecute me.

Mr. GORDON.—Q. What did he say he would do with you?

A. He said he would send me to the penitentiary if I didn't give the money back.

Cross-examination.

(By Mr. BUNDY.)

Q. Why didn't you go to the penitentiary and

(Testimony of William J. Wills.)

ask them to lock you up?

A. I didn't want to go there.

Q. You didn't want to go? A. No.

Q. You knew you was guilty, didn't you?

A. I didn't believe I was guilty.

Q. Didn't you lie when you went to the land office the first time? A. I don't know.

Q. You don't know? A. No.

Q. Didn't you tell them at the land office at the time you filed on this land that you hadn't entered into any kind of agreement with anybody?

A. I don't remember.

Mr. BUNDY.—Have you got these papers here Mr. Gordon?

Mr. GORDON.—No.

Mr. BUNDY.—Q. Did you sign the regular papers at the land office when you made your filing?

A. Yes, sir.

Q. Don't you remember that in that paper you swore that you had not at that time made any agreement with any person, firm, or corporation, by which you were to turn over any interest in that land to them, or to any other person?

A. I don't know as I ever read the papers.

Q. You hadn't at the time you made your filing, any agreement with anybody, had you?

A. No, sir.

Q. The agreement that you testified to was after you made your filing and before final proof?

A. I don't understand the question.

Q. Mr. Wills, at the time you first went to the

(Testimony of William J. Wills.)

land office and filed those papers, now up to that time had you had any talk with John I. Wells about this land at all? A. None whatever.

Q. Had you had any talk with anybody at that time, before you went, or at the time you went, by which you had agreed to deed this land or transfer it to anybody? A. No, sir, I had not.

Q. Up to the time you filed your papers nobody had ever asked you to sell it, had they?

A. No, sir.

Q. Nobody had asked you to transfer it?

A. No, sir.

Q. Nobody had asked you to borrow money on it?

A. No.

Q. I am talking about the time you filed. So that up to the time you filed, you could have honestly sworn that at that time you had no agreement of any kind or character relative to that land?

A. There was never any agreement whatever.

Q. So that at the time you filed this first paper in the land office there was no agreement, written or oral, express or implied, by which you had agreed to turn that property over to anybody when you got title? A. No, none whatever.

Q. And then after you filed, you some time after that had a talk with Dean West, I believe?

A. Yes, sir.

Q. And you told Dean West, or let him know in some way that you was not going to be prepared to make final proof, you didn't have the money?

A. I believe that was it.

(Testimony of William J. Wills.)

Q. You told him you wasn't going to have money enough to prove up yourself? A. Yes, sir.

Q. And then did Mr. West tell you that he thought he knew where you could get the money, or did he tell you to go to Wells?

A. He told me to go to Wells.

Q. So you went to Mr. Wells and he gave you \$800 and something for your own claim and for your wife's claim. Is that right? A. Yes, sir.

Q. Was that the first time you had had any talk whatever with John I. Wells about advancing this money? A. Yes, sir.

Q. Was that the first time you had seen John I. Wells at all with reference to this land?

A. Yes, sir.

Q. Had you had any talk with Downs about it?

A. None whatever.

Q. Did Downs locate you? A. Yes, sir.

Q. Did you pay him for it?

A. I don't know whether it was \$25 or \$50, but \$25 probably.

Q. Whatever it was, you paid him?

A. Yes, sir.

Q. You paid for it with your own money?

A. Yes, sir.

Q. And didn't borrow the money from anybody?

A. No, sir.

Q. You paid your share of the rig?

A. Yes, sir.

Q. And when you filed in the land office you paid your filing fees? A. Yes, sir.

(Testimony of William J. Wills.)

Q. That was your own money? A. Yes, sir.

Q. And nobody ever got any interest in the claim you were making up to the time you spoke of when Mr. Wells gave you \$800? A. No, sir.

Q. When Mr. Wells gave you the \$800 you say you believe he said something to you about telling the land office it was your own money. Now are you sure of that Mr. Wills? A. Yes, sir.

Q. Did Mr. Wells say to you, in substance, that he was buying, or give you to understand that he was buying this land of you, and was paying you \$400 on it, and that it would be your money?

A. No, he wanted me to turn the papers over to him until such time as the land could be sold.

Q. As a loan then? A. Yes, sir.

Q. So your understanding with Mr. Wells was that he was lending you the money to prove up?

A. That is the way I understood it.

Q. And to be paid back when you sold the land?

A. I don't know as anything was said about that.

Q. Did he say anything about when you were to pay it back? A. No, sir.

Q. He just gave you \$800 and said, "Bring the receipt to me until such time as the land is to be sold"? A. Yes, sir.

Q. But you hadn't agreed to sell it to Mr. Wells?

A. No, sir.

Q. Nor to deed it to anybody he said?

A. No, sir.

Q. You simply borrowed the money from Wells and was to bring your receipt in there for security

(Testimony of William J. Wills.)

until you got ready to sell your land?

A. Yes, sir.

Q. You knew Mr. Wells up in the Basin, I suppose, Mr. Wills? A. Yes, sir.

Q. Had known him for some years?

A. Two or three years.

Q. And he had been engaged in the mining business up there? A. Yes, sir.

Q. And you had been engaged in the mining business?

A. Yes, I was working for wages up there.

Q. You and Mr. Wells worked in the same mine together, or in the same locality?

A. In the same vicinity.

Q. And saw a good deal of each other?

A. Yes, sir.

Q. And at that time you and he were friends?

A. Yes, sir.

Q. And so when your friend loaned you \$800 with which to make final proof you took it?

A. Yes, sir.

Q. And then you went home and concluded that you would simply keep your friend's money and not prove up? A. Yes, sir.

Q. And you have kept your friend's money ever since? A. Yes, sir.

Q. And you have refused to pay it back?

A. He never asked me only one time.

Q. Have you any notion of paying it back?

A. Well I might.

Q. Do you consider that you owe it to him yet?

(Testimony of William J. Wills.)

A. Yes, I suppose I do.

Q. It is a just debt that you owe Mr. Wells to-day, and if you was able to pay it to-day you would pay it, wouldn't you? A man can't pay when he hasn't it, but if you had the money you would pay it, would you, Mr. Wills? A. What was the question?

Q. I say it is a just debt and if you had the money you would pay it to-day, wouldn't you, if you was able to?

The EXAMINER.—(After a pause.) Answer the question.

A. What was the question?

Q. (Last question read by the stenographer).

A. Yes, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. How long have you known Mr. Wells?

A. Probably nine or ten years.

Q. Had you known him well, before you got this money from him?

A. I had known him probably two or three years.

Q. Had you an intimate acquaintance with him, or only casually?

A. No, just a talking acquaintance.

Q. Had you had any business relations with him?

A. No, sir.

Q. You had never done any business with him at all? A. No, sir.

Q. Ever borrow any money from him?

A. No, sir.

(Testimony of William J. Wills.)

Recross-examination.

(By Mr. BUNDY.)

Q. You considered that you and Mr. Wells at that time were friends, didn't you? A. Yes, sir.

Q. Mr. Wills, at the time John I. Wells gave you this \$800 you was pretty hard up, wasn't you?

A. I didn't have much money.

Q. Wasn't you hard up and behind in your rent, and didn't you tell Mr. Wells you was pretty hard up and was mighty glad to get the money?

A. I don't remember about the rent.

(Witness excused.)

[Testimony of Bert T. Parker, on Behalf of the Complainant.]

BERT T. PARKER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your occupation, Mr. Parker?

A. I worked in a flour mill for Mr. Ridenbaugh for fifteen years. I work on the outside now, but at that time I was working in a flour mill.

Q. What kind of work, labor work?

A. Yes, sir, all kinds of work, labor principally.

Q. What was your occupation in September, 1902? A. I was in the mills.

Q. Same position?

A. Yes, sir, I think the same thing.

Q. You took up a timber and stone claim in 1902?

(Testimony of Bert T. Parker.)

A. Yes, sir.

Q. I show you timber and stone land sworn statement of Bert T. Parker, dated September 4, 1902, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you testimony given by Bert T. Parker on final proof, dated March 17, 1902. Is that your signature to that?

A. Yes, sir.

Q. And the cross-examination attached; is that your signature?

A. Yes, sir.

Q. I show you non-mineral affidavit, dated September 4, 1902? Did you sign that paper?

A. Yes, sir.

Q. I show you deed, dated February 11, 1903, by Bert T. Parker to Horace S. Rand. Is that your signature to that deed?

A. Yes, sir.

Q. You acknowledged that before L. M. Pritchard?

A. Yes, sir.

Q. Mr. Parker, who was the first person that spoke with you about taking up a claim under the Timber and Stone Act?

A. A man by the name of Will Cavas.

Q. Did you know of a market for timber and stone claims at that time?

A. No, sir.

Q. Did Mr. Cavas tell you that you could sell it?

A. No, sir.

Q. Did he take up a claim?

A. Yes, sir, took it up at the same time I did.

Q. Did you go to see anyone besides Mr. Cavas before you took up your claim?

A. No, sir.

Q. Where did you go to locate on this claim?

(Testimony of Bert T. Parker.)

A. Up on the Crooked River.

Q. What place did you go to?

A. We stopped at a house, Mose Kempner's, and then we met a man there by the name of Downs.

Q. Patrick Downs?

A. And he gave us the corners of it.

Q. How far was your claim from Mose Kempner's ranch?

A. I guess it was about maybe a couple of miles; I don't exactly know.

Q. Had you ever met Mr. Downs before?

A. No, sir.

Q. Before you left Boise to look at this claim had you ever met Mr. Downs? A. No, sir.

Q. Did you know you were going to meet Mr. Downs up there?

A. Yes, Cavas told me there was a man that would give us the corners, but I didn't know who he was.

Q. Did you and Mr. Cavas go together, or did somebody else go with you?

A. A man by the name of Thomas Kelley.

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

A. No, sir.

Q. What did you say to Mr. Downs when you met him?

A. Mr. Cavas give him \$75 to give us the corners.

Q. Did you say anything to him, or just hand out the \$75?

A. Mr. Cavas give him the money to give us the corners.

Q. Did you tell him what you had gone there for?

(Testimony of Bert T. Parker.)

A. Yes, sir.

Q. Did you ask him if he had many claims?

A. Yes, sir.

Q. And he told you he had? A. Yes, sir.

Q. Did he say he had lots of them, or did he say he had three, or what did he say?

A. He didn't say that way. We asked him if he had some timber claims and he said "yes."

Q. Did he take you out and show you your claim and locate you on it? A. Yes, sir.

Q. And did the same with the other parties?

A. Yes, sir.

Q. And you say Mr. Cavas paid the money?

A. I give Mr. Cavas \$25, and Thomas Kelley give him \$25, and his own \$25, that was \$75.

Q. Did you loan Mr. Kelley that money?

A. Not at that time; I loaned him money to prove up on his claim with.

Q. Did Mr. Downs give you the numbers of your claim? A. Yes, sir.

Q. Did he give it to you or to Mr. Cavas?

A. He give it to Mr. Cavas in one envelope.

Q. Did he tell you where to take that envelope?

A. Yes, sir, he told me to come down—I forget the place he told us to come—he give it to Mr. Cavas and we come down, I think it was to Pritchard's office.

Q. Did you meet Mr. Kinkaid in these transactions? A. No, sir.

Q. And you went to Mr. Pritchard's office?

A. Yes, sir.

(Testimony of Bert T. Parker.)

Q. You and Mr. Kelley and Mr. Cavas were together? A. Yes, sir.

Q. And did Mr. Pritchard prepare your filing papers for you? A. Yes, sir.

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

A. Well, I don't remember, sir, now, whether he did or not.

Q. I understood you to say you didn't know Mr. John I. Wells at that time? A. No, sir.

Q. Have you ever met him?

A. I have met him since.

Q. With reference to this property?

A. No, sir.

Q. He never said anything to you about this property? A. No, sir.

Q. You named the witnesses at the land office, did you?

A. I was witness for I think Cavas, and he was my witness.

Q. I notice in the notice of publication that you filed you gave John I. Wells as one of your witnesses. Did you name him or did somebody suggest him to you, or don't you know anything about that?

A. I don't know about that.

Q. Now at this time you didn't know of a market for this property; is that correct?

A. No, sir, I didn't know of a market for that property.

Q. Then some time after that you made your final proof? A. Yes, sir.

Q. Do you remember who notified you that it was

(Testimony of Bert T. Parker.)

time to make your final proof?

A. I think Mr. Cavas let me know; he come over one day when we was all working.

Q. And did you and Mr. Cavas go to the land office together? A. Yes, sir.

Q. Do you remember how much you paid in the land office? A. \$400, I think.

Q. Did you pay it in check or in cash?

A. Cash.

Q. Did you have a bank account at that time?

A. Yes, sir.

Q. Did you draw the money out of the bank that morning? A. Yes, sir.

Q. How long before that had you put the money in the bank?

A. I don't know, it might be over a year or two; I sold some property, a mining claim, and had \$1500 in the bank; I drew out \$800 then; I only had \$800 in at that time.

Q. How long before this had you sold the mining claim?

A. I don't exactly know; it was quite a little while.

Q. Six months? A. Yes, more than that.

Q. Which bank did you have this money in?

A. I think it was the First National Bank, sir, or the Boise City National; I think it was the First National Bank.

Q. And did you get the money out of the bank the morning you went to the land office?

A. Yes, sir.

(Testimony of Bert T. Parker.)

Q. You hadn't borrowed any money from anybody?

A. No, sir; I loaned Kelley though, I think it was \$200 or \$250; I don't exactly know how much it was.

Q. Now at this time did you know of any persons that were buying timber claims?

A. No, sir.

Q. Hadn't heard of anybody selling any?

A. The Butler brothers came to me and said there was a man buying timber claims.

Q. That was before you proved up?

A. No, sir; they asked me if I had a timber claim, and I told them "Yes."

Q. When was that statement made to you?

A. Oh, I don't know, a little before I sold it.

Q. That was after you made your final proof?

A. Yes, sir.

Q. Do you mean George and Edward Butler?

A. Yes, sir.

Q. The people that owned the sprinkling carts?

A. Yes, sir, they said a man by the name of D'Arcy from Portland wanted to buy some claims, so I came over, and he was in the Sonna block, and I met him, and he said he would give \$800 for the claim if I would make an affidavit as to how much timber there was on the claim, and I told him I couldn't, I didn't know how much there was.

Q. (By Mr. KEIGWIN.) How much did this man from Portland offer you?

A. He didn't offer it to me; I met a man coming down, and he said he would give me \$800, but I would

(Testimony of Bert T. Parker.)

have to make affidavit how much timber there was, and I couldn't do that.

Q. You didn't see Mr. D'Arcy?

A. No, I met a man going up to his office, and the man told me, "He wants you to make an affidavit."

Mr. GORDON.—Q. Who did you meet?

A. I don't know his name. He said "Have you got a timber claim to sell," and I said, "Yes," and he said, "He will give you \$800, and you will have to make an affidavit how much timber there is on it," and I couldn't do that.

Q. You turned right around and went back?

A. Yes, sir.

Q. When did you next have an offer for it?

A. I think it was the same day.

Q. Who offered you then?

A. A man by the name of Kinkaid.

Q. Had you ever met Kinkaid before?

A. No, sir, I never met him before.

Q. That was John Kinkaid?

A. Yes, I think that was the name.

Q. How did you happen to meet Mr. Kinkaid?

A. It was talked on the streets; they said there was another man buying claims.

Q. Who told you that?

A. I couldn't tell you that.

Q. People you knew at that time?

A. Yes, sir, people that had timber claims.

Q. And you went to Mr. Kinkaid's office?

A. Yes, sir.

Q. How many times did you go to his office?

(Testimony of Bert T. Parker.)

A. Once, sir.

Q. And you sold while you were there?

A. I asked him—I, Tom Kelley and Will Cavas went up and asked him how much he would give.

Q. Did Cavas and Kelley go with you to D'Arcy's office?
A. No, I don't think Kelley went up.

Q. Where was Kelley?

A. He was out on the street.

Q. Did I understand you to say that Kinkaid's office was in the same block?

A. Across the street.

Q. And you went from that office over to Kinkaid's office?

A. We stood around town a little while and heard there was another man, Kinkaid, and found out where his office was.

Q. And the three of you went in and sold that day?
A. Yes, sir.

Q. And you made the deeds while you were there?

A. Yes, sir.

Q. How much did he offer you?

A. He gave me \$800.

Q. Do you remember the deed you made was in blank, or did it have the names in it when you signed it?
A. I don't recollect now, sir.

Q. Did you read the deed over?

A. Yes, sir, part of it.

Q. Did you notice that the consideration was \$950?
A. No, sir.

Q. You only got \$800?

A. \$800 was what I got.

(Testimony of Bert T. Parker.)

Q. Did he pay you in cash?

A. He give me a check on the First National Bank.

Q. Did you put the money in your bank?

A. Part of it, sir.

Q. How much of it did you put in the bank?

A. I don't know how much.

Q. What is your best recollection?

A. Maybe I put all of it, but I can't recollect, sir.

Q. Did you ever hear of Mr. Horace S. Rand?

A. I think that was the man, sir, that the deed was made out to, if I ain't mistaken.

Q. You didn't know him? A. No, sir.

Q. Did you only make the one deed, or did you make two deeds? A. It was one, I think.

Q. Were you ever asked to make another deed to this property? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Bert T. Parker, dated September 4, 1902; non-mineral affidavit of Bert T. Parker of the same date; the testimony of Bert T. Parker, given on final proof, dated December 17, 1902; and the cross-examination attached, all of which have been identified by Bert T. Parker as having been signed by him; the testimony of the other witnesses on final proof, and the cross-examination thereto; notice of publication, dated September 4, 1902; the register's certificate, and the receiver's receipt, dated December 17, 1902; the deed of Bert T. Parker, dated February 11, 1903, to Horace S. Rand, consideration \$950, which has been identified by Bert

(Testimony of Bert T. Parker.)

T. Parker as having been signed by him and acknowledged before Louis M. Pritchard; certified copy of the patent, dated May 13, 1904; all to the north half of the southeast quarter, and the south half of the northeast quarter of section 9, township 7 north of range 8 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 116A to 116N, inclusive.)

Mr. KEIGWIN.—Q. I think you said you had sold a mining claim some time before this.

A. Yes, sir.

Q. How long before?

A. I don't exactly know.

Q. Well, was it one or two or three or four years?

A. I guess it was maybe a year or two.

Q. How long had you had that mining claim?

A. About two years, I guess.

Q. Had you been a miner?

A. No, sir, I bought a man's interest out.

Q. How long had you held it before you sold it?

A. It was two years.

Q. Now was that a mining claim or a ranch, Mr. Parker?

A. Mining claim out here to Neal; there is a mill on it now.

Q. Had you owned a ranch too?

A. Yes, sir, I owned a ranch.

Q. Where was that?

A. I got a ranch out here on Eight Mile, sir, from Boise.

Q. How long had you owned that?

(Testimony of Bert T. Parker.)

A. About two years, I guess, sir.

Q. Do you remember what you paid for it, approximately? \$1700, I think, \$1800.

Q. And you owned that ranch at the time you made this timber land entry? A. Yes.

Q. Have you sold that ranch?

A. No, sir, I own it.

Q. You still own it?

A. Yes, sir, the man that owned it, he sold out his half interest, and I only got eighty acres.

Q. You owned only one-half of the ranch?

A. Yes, sir.

Q. But you still own that half interest?

A. Yes, sir.

Q. And you had owned it for some time when you made this timber entry? A. Yes, sir.

Q. Don't you remember when you got it, approximately? Do you know whether you had owned it five years or ten years—don't you know?

A. Cavas he bought a man's relinquishment out, and he filed on it.

Q. And then gave you a half interest in it?

A. Yes, sir, I paid him for that.

Q. Do you remember how much you paid for it?

A. \$1800.

Q. You had also owned this interest in the mine before that time? A. Yes, sir.

Q. Do you still have any mining interests?

A. No, sir.

Q. You have nothing now but this ranch?

A. No, sir.

(Testimony of Bert T. Parker.)

Q. How were you employed at the time you made this entry?

A. I was working for Mr. Ridenbaugh in his flour-mill at that time.

Q. Working on a salary? A. Yes, sir.

Q. How much? A. \$60.

Q. How long had you been making \$60?

A. I had been making it since '89.

Q. You had been working for Mr. Ridenbaugh since '89?

A. Yes, sir, with the exception of three months last summer a year ago.

Q. Did you get \$60 all the time from 1899 down to the time of making this entry?

A. Yes, sir.

Q. That was a period of about fourteen years?

A. More than that.

Q. I don't mean down to the present time, down to 1903, about fourteen years.

Mr. BUNDY.—Are you trying to find out that he couldn't have had \$400?

Mr. GORDON.—Q. Do you know where Cavas got the money he proved up with?

A. Yes, sir.

Q. Where?

A. Well, when I proved up I loaned Tom Kelley money to prove up, and he was building this First National Bank, was putting in stone, and had his money tied up, and we put up our land office receipts to a woman by the name of Mrs. McCarty, and she furnished the money.

(Testimony of Bert T. Parker.)

Mr. BUNDY.—That is, you and Kelley put up yours? A. Yes, sir.

Mr. GORDON.—Q. Did you know when you made this deed who was getting this property?

A. I did, sir; I have forgotten the name.

Q. Did you know whether a company was getting it or not? A. No, sir.

Q. Never told anybody that you did?

A. No, sir, never anything about it.

Mr. KEIGWIN.—Q. Do you know Mr. John I. Wells, the gentleman who is present here?

A. Yes, sir.

Q. How long have you known him?

A. I didn't know him at that time; I have met him around town since.

Q. Didn't you know him in 1903?

A. No, sir; I might have met him, but I didn't know him personally, like I do now.

Q. You know him now? A. Yes, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Parker, counsel have been asking you questions from a long typewritten statement there. Were you summoned here some time before some special agent or district attorney some place and gave a statement? A. Yes, some time ago.

Q. A year ago? A. Yes, sir.

Q. And you told them all about it then, did you?

A. Yes, sir, the same I have here.

Q. So they have had your statement a long time?

A. Yes, sir, I told them the same as I did now.

(Testimony of Bert T. Parker.)

Q. Mr. Parker, did you make this entry and file your first papers for anybody other than yourself?

A. No, sir.

Q. Did you make it at the request of the Barber Lumber Company, or John Kinkaid, or Pritchard, or Rand, or anybody else? A. No, sir.

Q. These lawyer gentlemen here have started this lawsuit we are trying, and in the complaint they charge that you entered this land at the request of, and for the benefit of, the Barber Lumber Company and the other defendants. Is that true or is it false?

A. It is false.

Q. And they state in this complaint in this action that you agreed with them that you would enter the land and then you would go to the land office and swear falsely so as to defraud the Government out of the land and turn it over to them. Is that true or false? A. It is false.

Q. Did you ever, at any time, have any agreement with any person, firm, or corporation by which you were to transfer this title when you got it to them?

A. No, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. You bought this land for your own benefit, I suppose? A. Yes, sir.

Q. Did you expect to sell it?

A. Not at the time, sir.

Q. Didn't you have any idea as to when you would sell it?

A. No, sir; I got to thinking about a fire or some-

(Testimony of Bert T. Parker.)

thing and the timber burning down, so I thought if I got a show to sell it I would sell it.

Q. When you made the entry didn't you have any expectation of selling it? A. No, sir.

Q. You expected to sell it some time, I suppose?

A. Yes, I expected to sell, but I didn't know who to sell to.

Q. Didn't you know of any market for it at that time? A. No, sir.

Q. Wasn't there anybody buying timber at that time? A. Not that I know of.

Q. Hadn't heard of anybody selling timber claims? A. No, sir.

(Witness excused.)

At this time court adjourned until ten o'clock, A. M., Wednesday, February 24, 1909, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Merritt L. Twogood, on Behalf of the Complainant.]

MERRITT L. TWOGOOD, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Merritt L. Twogood?

A. Yes, sir.

Q. What is your occupation, Mr. Twogood?

A. Present chief of the fire department.

Q. How long have you been in the fire depart-

(Testimony of Merritt L. Twogood.)

ment? A. A little over four years.

Q. What was your occupation in September, 1902? A. Contractor and builder.

Q. Have you resided in Boise since 1902?

A. Yes, sir.

Q. How long before?

A. Twenty-four or twenty-five years.

Q. You took up a claim under the Timber and Stone Act in September, 1902, did you?

A. I did.

Q. I show you timber and stone land sworn statement dated September 13, 1902, and ask you if you signed that paper? A. Yes.

Q. I show you non-mineral affidavit of the same date of Merritt L. Twogood, and ask you if you signed that? A. I did.

Q. I show you the testimony of Merritt L. Twogood given on final proof, dated January 14, 1903, and ask you if you signed that? A. I did.

Q. I show you the cross-examination attached, of Merritt L. Twogood, and ask you if you signed that?

A. I did.

Q. I show you deed, dated February 12, 1903, by Ida Twogood and Merritt L., to Horace S. Rand, and ask you if you signed that deed? A. Yes.

Q. Is that your wife's signature? A. Yes.

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

A. Why, I don't think anyone spoke to me.

Q. Did you hear anybody speak about it?

A. Yes, it was common rumor here on the streets

(Testimony of Merritt L. Twogood.)

that there was these timber lands up there that was vacant to be taken up. I talked with several that had been up there and looked the ground over and they said they thought it was a pretty good opportunity to make a little money.

Q. Did you know a man by the name of Charlie Patterson? A. I did.

Q. Did he speak with you about taking up one of these claims?

A. Well, in conversation in the store where I was working then it came out that he had been up there and taken up a claim and sold it.

Q. Did he tell you who he had sold it to?

A. He did not.

Q. Did he tell you how much he made out of his claim?

A. He probably did, but I don't remember at this time.

Q. Did he introduce you to anyone, or tell you to go to see anyone? A. He did not.

Q. Did Patterson tell you he had made \$200 or \$300 out of his claim?

A. Well, I couldn't say how much he told me he made; he probably told me he made something, but it has been so long ago that I have forgotten how much it was.

Q. Did he tell you to go to see John I. Wells?

A. No.

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

A. I did.

Q. How did you happen to go to see him?

(Testimony of Merritt L. Twogood.)

A. Well, in different conversations with different parties he seemed to be the main man to get down to in order to take up this timber land, so with that information I went to him and told him I would like to go up and take up a claim; he gave me a note to the cruiser; let's see, his name is—

Q. Pat Downs?

A. Pat Downs, and I went up there.

Q. Where did you go to see Mr. Wells?

A. It was, I think it was what is called the Pack Building, on Idaho street.

Q. Did he tell you how much it would cost you to locate you?

A. He told me the cruising fees was \$25.

Q. Did you pay him? A. I did.

Q. Did you pay him before you went?

A. No, sir.

Q. I understood you to say that he gave you a letter to Patrick Downs? A. He did.

Q. Did you go alone or did your wife go with you? A. My wife went with me.

Q. Did she go to Wells' office with you?

A. I don't think she did at that time; I think I went alone.

Q. And did your wife ever go with you to Wells' office? A. I think she did when we came back.

Q. Where did you meet Mr. Downs?

A. Mose Kempner's place, on Crooked River.

Q. And you gave him the letter Mr. Wells gave you? A. I did.

Q. Did he locate you that day or the next day?

(Testimony of Merritt L. Twogood.)

A. We got in there in the afternoon, and it was the next morning when we went out.

Q. Just the two of you were alone, you and your wife?

A. No, there was several parties in the party that went out that morning; there was Mr. Bayhouse, Henry, and somebody else, and myself—I forget who the other party was now—and there was either two or three women, one of them being my wife.

Q. You and your wife went up alone, didn't you?

A. We went up in our own rig, yes.

Q. I understand that when Mr. Downs located you he took these other people out with you?

A. We all went out together in the morning, the one time.

Q. Do you know how far your wife's claim was from the main road?

A. Well, it was in the neighborhood of three miles, I should judge, three or three and a half miles, something like that; they went horseback.

Q. Did you have any talk with Mr. Downs about any particular claim?

A. No; only I was pretty well acquainted with that country. I know the first claim I went onto I said, "I don't want this one." I said I would rather go farther on; of course I had been in the country before, on a vacation, hunting and fishing, and all through there, and I knew where the good timber was, and my claim was five or six miles up Crooked River.

Q. Beyond the others?

(Testimony of Merritt L. Twogood.)

A. Yes, beyond the others.

Q. Did you and Mr. Downs go up there alone?

A. No, the other claims laid up in there, and Mr. Bayhouse and the other gentleman stayed together and went through all the claims.

Q. Was the claim anywheres near the Bayhouse claim?

A. Yes, it seems, I think it was an adjoining claim; I wouldn't be sure.

Q. And they were nearer to Kempner's?

A. Yes.

Q. And the rest of the party went up four or five miles? A. Yes, sir.

Q. Who went with you—Mr. Bayhouse and who else? A. Who the others were I don't know.

Q. Did they all locate in about the same locality?

A. Yes, we was all in about the same locality.

Q. Then you came back to Boise?

A. Came back the next day, yes, sir.

Q. And did you go to Mr. Wells' office that day?

A. Yes.

Q. What did you go there for?

A. We went up there to tell him we was located and to give him the location of the—well, the number, or whatever you call it, of the ground we was on, and to find out what to do further; of course we was ignorant in the matter; we didn't know what to do.

Q. Did you take the numbers up there, or did you go there to get the numbers?

A. We took the numbers up there.

Q. Who gave you the numbers?

(Testimony of Merritt L. Twogood.)

A. Patrick Downs.

Q. What else did Mr. Wells tell you to do when you went there that morning?

A. My recollection is that we went from there to the building on the corner of Eighth and Main, to Kinkaid's office—no, I take that back; we went from there to the land office, and—I can't tell whether we went up to Kinkaid's office and he give us the description and then we took it up to the land office, or whether we went to the land office first and then to Kinkaid's office, I don't remember.

Q. If you went to the land office first, what did you go to the land office for—to get the blanks?

A. No, I don't think so.

Q. What did you go to Mr. Kinkaid's office directly after you went to the land office for?

A. We must have went to Kinkaid's office first; it was either one way or the other.

Q. Did your wife go with you to Wells' office that morning?

A. I am pretty sure she did, yes; she also went to Kinkaid's office if we went there first; I am pretty positive we went there first and then to the land office.

Q. Do you know why you went to Kinkaid's office; do you know whether you were told to go there or not?

A. I couldn't say.

Q. You knew John Kinkaid?

A. I did then; I never knew him before; the first time I ever met the gentleman was the time I went to his office to see him.

(Testimony of Merritt L. Twogood.)

Q. Did you and your wife go alone, or did somebody else go with you?

A. My wife and I went alone.

Q. And this sworn statement I have shown you, and the non-mineral affidavit, I will ask you if you didn't get those papers from Kinkaid. They are the first papers you filed in the land office.

A. Those are probably the first papers I got, yes.

Q. Did you say that Henry Bayhouse and Alfred Bayhouse were up there with you, up to the land?

A. No, I said Henry Bayhouse, but I forget whether Alfred was along.

Q. Was Mr. James F. Belk up there?

A. Yes, he was up there, but I don't know whether he was in our party.

Q. Was Mr. George T. Ellis?

A. I don't know him.

Q. Who named those witnesses for you?

A. I named them myself; I probably named them all the first time. I see Ellis was there, he went out with us, and might have been in our party, but that has been seven years ago—

Q. Did you know of any market for timber claims at that time?

A. No, I did not. Of course I will answer that question this way: I knew we would get a chance to sell the ground, but knowing who it was to, or knowing of any market, I had no assurance of that of any kind.

Q. You knew of some people that had sold?

A. I did.

(Testimony of Merritt L. Twogood.)

Q. Didn't you inquire of any of them to whom they had sold? A. No.

Q. Then you and your wife went to the land office and filed your first papers. Do you remember what you paid at the land office?

A. I think it was about \$825.

Q. Not that time; I am speaking about the first time.

A. Oh, the first time at the land office?

Q. The first time you went to the land office.

A. It was a very small amount of money; it wouldn't amount to a great deal; it was for advertising, or something of that kind, maybe five or ten dollars, something like that.

Q. And you paid that for yourself and wife?

A. I did, yes.

Q. Then how long after that did you get notice that you were to make your final proof?

A. Sixty or ninety days, it seems to me, something like that.

Q. And were you notified by the land office, or did somebody tell you? A. I don't know.

Q. And do you remember the occasion of being at the land office to make your final proof?

A. I remember being there, yes.

Q. Do you remember who was with you?

A. No, I do not.

Q. You and your wife went together?

A. I think we had the examination the same day.

Q. And that day you paid in between eight and nine hundred dollars, did you say? A. Yes.

(Testimony of Merritt L. Twogood.)

Q. How did you pay that in check or cash?

A. I don't know whether it was on the first payment or some other payment we had some little squabble up there, and he wouldn't take no checks, and I had to get the money; I forget whether it was on this or the notice payment, so I couldn't say how we paid it, whether it was money or check.

Q. Did you get that money out of the bank?

A. Yes.

Q. Which bank?

A. Capital State. It was a firm then; it was Wilcox and Twogood, and the check was drawn from Wilcox & Twogood for about \$800, and the time we had this other examination here they asked me to see the check, and I went that time and got the check, and they told me to drop in and show it to them, and I dropped in and showed them the check, and I don't know what has become of the check; it is probably lost.

Q. What was that; was that the time you paid the money in? A. Yes.

Q. I understood you had been up there several days before with the check of your firm to your order, and they had declined to take that. Is that right?

A. No, you misconstrued me. I went up there and whether I paid the check or the money—Mr. Garrett was receiver, and he wouldn't take the check; I believe he said he would have to have United States coin; so I went back, I think, and got the check cashed and got money.

(Testimony of Merritt L. Twogood.)

Q. I understood you to say something about showing them the check.

A. That was when we was having this examination on this timber deal before, and I was called up as a witness, and I was examined and went through about the same I have here, and he asked me that question, asked me if I could get the check, and I said, "Do you want it to-day?" And he said, "No, any time within two or three days," and I went and got the check, and a couple of days after I got that check and brought it up here and showed it to him, and since then I don't know what has become of it.

Q. Did you borrow any money to put in the bank to make this check good?

A. No, sir, I didn't have to.

Q. Do you know how long the firm had had seven or eight hundred on deposit, or the balance of the firm at the bank had been more than that?

A. Our credit at the bank was good for \$10,000.

Q. Do you remember, Mr. Twogood, whether or not you didn't prove up when the time came that you had advertised to prove up? A. I don't know.

Q. You were advertised to make your final proof on January 6, 1903, and you didn't make your proof for eight days afterwards, January 14th. Do you know the reason you didn't make it at that time?

A. I probably do; we was putting up a large mill out at Neal, and I was probably out there and couldn't get away at that time; we had several buildings under construction, and of course—

Q. Do you remember whether it was because you

(Testimony of Merritt L. Twogood.)

couldn't get the money at the time you should have proved up that you didn't make your proof on the 6th of January?

A. No, sir, it wasn't anything of that kind.

Q. I show you affidavit signed Merrill L. Twogood, dated January 14, 1903, and ask you if you signed that paper? A. Yes.

Q. And swore to it? A. I did.

Q. Now read that over. (Hands witness paper.)

A. It says in there, "was not available" at that time; it might have been and it might not have been; it might have been that I was out there at that time and couldn't get in here to make me available, and lots of times in business you have six or seven thousand dollars in the bank, and you meet your bills and the next day you haven't got hardly anything until another payment comes in.

Q. You went to the land office the day you were to have proved up, which was the 6th of January—no, you didn't go on the 6th of January; that was it, wasn't it? A. I didn't notice.

Q. Then you went on the 14th and swore that the reason you did not appear on the 6th of January was that your money was in the business and was not available on the 6th of January or until the 14th.

A. Until the 14th.

Q. At this time did you know of anybody that was buying timber claims?

A. No, I don't think there was any timber claims being bought at that time.

Q. How long after the 14th of January was it

(Testimony of Merritt L. Twogood.)

that you started negotiations for the sale of your timber claim?

Q. Well, if the deed is there to the ground that will tell you, because the same day the negotiations were started the sale was made.

Q. Who spoke with you about purchasing this?

A. Well, I don't know; I was out at Neal at the time, and I got a telephone message to come in if I wanted to dispose of the claim, there was a chance to sell it, and I came in from out there.

Q. Do you know who telephoned you?

A. I forget now.

Q. Who did you go to see when you came in?

A. I think it was Kinkaid; it was somebody down there in the building on the corner of Tenth and Main.

Q. Pritchard?

A. It might have been Pritchard.

Q. You went directly to Mr. Kinkaid's office in response to the telephone message, is that it?

A. Yes.

Q. Did your wife go with you?

A. I don't think she did at that time, no. We went up to this office and I think the question was asked me if I wanted to sell my claim. I said, "I don't know; what are you paying?" And there was some little talk about the price and so on, and I said, "No, I have got to have \$50 more than that." and I said, "It is my claim anyway." Anyhow we held out and we got \$50 more for our claims.

Q. How much did you get?

(Testimony of Merritt L. Twogood.)

A. My recollection is either \$850 or \$900 apiece.

Q. Who do you mean by "we"?

A. Mr. Bayhouse went up with me at that time; he had a claim; he hadn't sold his claim.

Q. Was it Mr. Bayhouse that telephoned you?

A. I couldn't say.

Q. Did you make the deed while you were there, sign the deed while you were there?

A. I don't know whether it was that day or the next day that we signed up for it; we signed up either that day or the next day, I forget which.

Q. Do you remember whether it was the next day that you went and got your wife and went back and executed this deed?

A. I say I couldn't say whether it was this day or the next day, or whether it all happened the same day.

Q. Were you and your wife together when the deed was signed and executed? A. We were.

Q. Were you paid in cash or check?

A. Check on the First National Bank.

Q. Was it one check or two checks?

A. I couldn't say; I think it was two checks, although my recollection of it is—

Q. Do you know whose check it was, who made out the check? A. No.

Q. Do you remember on which bank it was drawn? A. The First National Bank.

Q. Did you take it there and cash it, or did you deposit it in your bank?

A. We took it there and cashed it, and then de-

(Testimony of Merritt L. Twogood.)

posited it in the bank I was doing business with, that is, my part of it.

Q. Did you read the deed over that you signed?

A. Yes.

Q. Did you know Horace S. Rand, the grantee in the deed? A. I did not.

Q. Had you ever heard of him before?

A. Never heard of him.

Q. Did you know that the consideration in the deed was \$1600?

A. I might have known at that time.

Q. Was Pritchard in Kinkaid's office when you signed the deed, or did you go out to Pritchard's office and acknowledge it?

A. I don't remember.

Q. And the day you made this deed, or the day before you made this deed, was the first time you had had an offer for the sale of it, or knew of any person that was buying timber claims; is that right?

A. Yes.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Merritt L. Twogood, dated September 13, 1902; his non-mineral affidavit of the same date; the testimony of Merritt L. Twogood given on final proof, January 14, 1903; the cross-examination attached; all of which have been identified by Merritt L. Twogood as having been signed by him; the notice of publication, dated September 13, 1902; the testimony of the other witnesses before the land office; the affidavit of Merritt L. Twogood, having been identified by the witness,

(Testimony of Merritt L. Twogood.)

dated January 14, 1903; the receiver's receipt, and the register's certificate, dated January 14, 1903; the deed, dated February 12, 1903, made by Ida Twogood and Merritt L. Twogood, husband and wife, to Horace S. Rand, consideration \$1600, having been identified by Merritt L. Twogood as having been signed and acknowledged by him and his wife, Ida Twogood; also certified copy of the patent, dated May 24, 1904; all to the northeast quarter of section 13, township 7 north of range 8 east, Boise Meridian. The deed also conveys the southwest quarter of the southeast quarter, and the south half of the southwest quarter of section 4, and the northwest quarter of the northwest quarter of section 9, township 7 north of range 8 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 117A to 117P, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Twogood, at the time you filed your first papers in the land office, making this entry, had you entered into any kind of agreement, express or implied, verbal or written, with the Barber Lumber Company, John Kinkaid, Rand, Palmer, Pritchard, or any other person, firm, or corporation whatever, by which you had agreed to turn over or transfer to them, or to such person as they should direct, the title which you might acquire from the Government of the United States? A. No, sir.

Q. Had you any such agreement with any person, firm, or corporation at the time you made your

(Testimony of Merritt L. Twogood.)

final proof, Mr. Twogood? A. I had not.

Q. Did you enter this land for the benefit of, or at the request of, any person other than yourself?

A. I did not.

Q. The United States of America, in this lawsuit we are trying, Mr. Twogood, has seen fit to charge that you made this entry at the request of, and for the benefit of, the defendants in this action. Is that true or false?

A. It is false; I didn't know any of them.

Q. And it is further alleged by the Government, through its attorneys, in this lawsuit, that, pursuant to agreement with the Barber Lumber Company and the other defendants, or some of them, you made entry of this land for the purpose of defrauding the United States, and that for the purpose of carrying out that fraud you deliberately went to the land office and testified to what you knew to be false, at the request of, and for the benefit of, and at the solicitation of, these defendants. Is that true or false? A. It is false.

Q. You stated that after you sold, you deposited the proceeds of your claim, your share of it?

A. Yes.

Q. You also received, I suppose, the money for your wife's claim?

A. No, she took care of her own money.

Q. That was her separate and independent property? A. Yes, sir.

Q. And she has kept it ever since in some form or other? A. Yes, sir.

(Testimony of Merritt L. Twogood.)

Q. You don't get your wife's property away from her any more than the rest of us? A. No, sir.

(Witness excused.)

[Testimony of J. K. Woodburn, on Behalf of the Complainant.]

J. K. WOODBURN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John K. Woodburn?

A. Yes, sir.

Q. Where do you reside, Mr. Woodburn?

A. Temporarily in Boise; I have been living in Boise County though, up to the last year; I have been out of there since then.

Q. Where did you reside in September, 1903?

A. I was at Grimes Pass, Boise County.

Q. How long had you been there?

A. Well, I had lived there off and on some portions of every year since 1900, and at that time it was my home.

Q. What is your occupation, Mr. Woodburn?

A. Mining.

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

A. Yes, sir, I think it was in September.

Q. I show you timber and stone land sworn statement dated September 14, 1903, and ask you if you signed that paper?

(Testimony of J. K. Woodburn.)

A. Yes, sir, that is my signature?

Q. I show you non-mineral affidavit, dated September 14, 1903, and ask you if you signed that?

A. Yes, sir.

Q. I show you the testimony of John K. Woodburn given on final proof, dated December 2, 1903, and ask you if you signed that?

A. Yes, sir, I think that is my signature.

Q. Mr. Woodburn, where is this claim that you located on, in what section of the country?

A. It is out from, I think you would call it between Centerville and Star ranch, about as near as I could locate it in that section of the country.

Q. And who located you?

A. Do you mean the man that showed me the ground?

Q. Yes. A. It was Pat Downs.

Q. How long before you filed on this claim were you located?

A. Well, sir, I couldn't say.

Q. Well, was it a week, or two weeks, or a month, or how long?

A. I couldn't remember, sir, just how long it was. You mean the time I went up there and saw the land and then located on it?

Q. Yes.

A. I couldn't say just how long.

Q. Did you go from Boise to locate on that land?

A. Yes, sir.

Q. Whom did you talk with about locating before you went up there?

(Testimony of J. K. Woodburn.)

A. A number of people that were going to take up claims. At that time I was extremely busy on another proposition, and they suggested that I go and take a claim.

Q. Who were some of these people?

A. Some of those locators, Harry Noble was one, and a man named Kinert was another, and several, and they says, "Why don't you go along?" And I says, "I am too busy." But I come to think the matter over and consulted with other parties, and I concluded that I would go and take the claim and cut out my business.

Q. Did you have a letter to Mr. Downs?

A. No, sir.

Q. What day of the week did you start from here, do you remember?

A. No, sir, I do not remember.

Q. Now, can't you tell us whether it was a week that you located before you came back here and filed, or how long it was?

A. No, sir, I could not; it is five or six years ago, and I was very busy at the time, and I made no memorandum of it, so I couldn't say.

Q. You remember the transaction, do you?

A. Yes, sir.

Q. And you remember going up there and coming back? A. Yes, sir.

Q. How long were you up to the claim, how long did it take you to go up to the claim from here?

A. I think it was two days, or two and a half.

Q. To go up?

(Testimony of J. K. Woodburn.)

A. No, one day to go up to the Star ranch.

Q. You started here and you got to the Star ranch the same day?

A. Yes, and stayed over night.

Q. And you were located that next day?

A. The next day, yes, sir.

Q. Then did you start back the same day you were located?

A. I rather think we did and made a night drive of it and got in here about eleven that night, that is my recollection of it.

Q. Does that refresh your memory as to how long after that you located?

A. Well, sir, I can't recall the time at all; I can't remember; I don't know.

Q. Who went in the party with you from here?

A. Mr. Harry Noble, and a man named K-i-n-e-r-t, I think that is the way he spells it; but we got a rig among ourselves, us three, and went up there.

Q. Was Mr. Charles Faraday along?

A. In that rig I went up in?

Q. Was he up there when you went there?

A. Yes, sir.

Q. Was Mr. Rice J. Harbaugh there?

A. I presume he was; I don't remember seeing him there.

Q. Did Mr. Downs take you out to a claim and show you one and locate you on that one?

A. Yes, he showed me the ground, and we went on that ground, and I was to locate on that particular piece, and I looked at the timber on there and

(Testimony of J. K. Woodburn.)

thought it looked very well, and I was perfectly willing to let it go that way; of course I was no judge of timber.

Q. Did you pay him anything for that?

A. Paid him \$25, if I remember.

Q. Did you pay him while you were up there?

A. No, sir.

Q. Did you pay it to him or to some one for him?

A. I paid it to my partner and I told him to pay Pat Downs and charge it to our partnership account.

Q. Who was your partner?

A. John Kinkaid.

Q. John Kinkaid? A. Yes, sir.

Q. Did Downs give you a description of the property?

A. Well, in a general way, yes; he spoke of it as a desirable claim in a general way.

Q. Had you talked to Mr. Kinkaid about taking up a claim before you went up there?

A. No, sir, only in this way: After I heard on the street about these parties going up to take up claims, I being very busy getting up a cyanide plant, I asked him, would it pay me to go up there and take up a timber claim, and he said, "Yes, I think it will," and I says, "Well, I am going; a lot of people are going and I will go up with them." I suggested going up myself to him.

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

A. I did not, no, sir, only in a general way; I never heard of anyone that was buying, directly.

(Testimony of J. K. Woodburn.)

Q. Did you know that Mr. Kinkaid was buying claims for anybody at that time?

A. No, sir.

Q. And you came back to Boise after viewing this claim? Did the others of the party come back with you?

A. Yes, sir, the same party that went up.

Q. Do you know who arranged for that party?

A. No, sir, I do not.

Q. Who told you that party was going?

A. A number of these people that was going up spoke to me about it first, and that is how I got the idea of taking a claim.

Q. Did Mr. Kinkaid prepare these papers for you? A. Yes, sir.

Q. Now, you got this sworn statement, and the notice of publication, and the non-mineral affidavit from Mr. Kinkaid, did you? A. Yes, sir.

Q. Now, do you remember when and where he gave you those papers?

A. In his office, at that time in the Pierce Block.

Q. When did you start to the land office to file these papers?

A. The date, you mean?

Q. Well, the day of the week?

A. Well, sir, I can't recall it at all.

Q. Did you go Saturday?

A. I couldn't say what day of the week it was.

Q. Did you stand in a line?

A. For filing?

Q. Yes.

(Testimony of J. K. Woodburn.)

A. I think we went into an office room there and waited there until our turn came.

Q. Did you wait over night in that room?

A. No, sir.

Q. Do you remember whether you went there on Sunday?

A. I couldn't say, sir, what day of the week it was; I don't remember.

Q. Do you know the time of day you went there?

A. My recollection is that it was before noon that I went there and waited some time.

Q. Your sworn statement was filed on September 14; that was Monday, wasn't it?

A. I couldn't tell you whether it was or not; I don't know.

Q. And how many people were in line when you got there?

A. My recollection is that we were not in line; we were sitting in an office there waiting our turn, and when we were wanted we were called into, I think, another room, and there the papers were signed.

Q. Who was to call you when your turn came?

A. The only one that I remember being there at that time was Milt Cage, I think, a lawyer; he is the only one I recollect being there at that time.

Q. Was that Milton G. Cage, an attorney of this city? A. Yes, sir.

Q. And he was to call you when your turn came?

A. I don't remember as he did the calling at all, but I remember of him, being well acquainted with

(Testimony of J. K. Woodburn.)

him, that he was there; that I wouldn't be positive about, but I am very sure he was; I wouldn't swear that he was.

Q. Do you remember being in that office on Sunday?
A. No, sir.

Q. You weren't there?

A. I wouldn't say.

Q. Wouldn't it be an unusual thing for you to go to the land office and sit down and wait to file papers?

A. Yes, sir.

Q. Wouldn't it impress you if you had been?

A. I think it would.

Q. Can you tell me whether you were there on Sunday?

A. I can't tell you, but I think if I had been, I think the chances are that I would remember it.

Q. Did you pay anybody to keep a place there for you?
A. No, sir.

Q. Did you take anybody else's place when you went there?
A. No, sir.

Q. Do you remember how much you paid in the land office when you filed these papers?

A. I don't know as I understand. When I filed that was when I first took up the claim, was it not?

Q. Yes.
A. No, sir, I do not.

Q. Did you pay anything?

A. I don't think I did; I don't remember; possibly I did; went through the usual form, whatever it was.

Q. Do you remember the occasion of making your final proof?
A. Yes, sir.

(Testimony of J. K. Woodburn.)

Q. Do you remember who went to the land office with you when you made your final proof?

A. As witnesses, you mean?

Q. Well, as witnesses or in any other capacity.

A. No, sir, I don't; I don't remember of anyone going with me.

Q. Do you remember who notified you to come to the land office? A. No, sir, I do not.

Q. Up to the time you went to the land office to make your final proof did you know of anybody that was buying timber claims?

A. Only in a general way; I had never talked to anyone in regard to it.

Q. You didn't know up to that time that Mr. Kin-kaid was buying timber claims, either for himself or somebody else? A. I did not, no, sir.

Q. Do you remember how much you paid in the land office when you made your final proof?

A. I couldn't say, no, sir, exactly what it was; it was \$400, or in that neighborhood.

Q. Do you remember whether you paid it in cash or by check? A. I think by check.

Q. Do you know which bank?

A. No, sir, I don't remember.

Q. Would you be positive whether you paid it in cash or by check?

A. Yes, I am quite sure by check.

Q. Your own personal check?

A. No, sir, I don't think it was.

Q. Whose check was it?

A. It was a check of a man named Royce.

(Testimony of J. K. Woodburn.)

Q. Do you remember his first name?

A. We never spoke of him only as Royce; I have forgotten his initials, it was E. R. or E. L., I wouldn't be positive.

Q. Do you remember how much that check was for?

A. It was for \$425, the check I got from him.

Q. Did you take that to the land office and they gave you change for it?

A. It is my recollection that I did, I took his check to the land office; that is my recollection.

Q. And you paid an even \$400 in the land office at that time? Do you remember whether they gave you \$25? Do you remember whether they gave you \$25 change?

A. I don't remember; it occurred five or six years ago, and I don't remember the transaction in detail at all.

Q. Do you remember what Mr. Royce gave you that check for? A. Yes, sir.

Q. Do you mind telling?

A. No, sir, I do not; I borrowed the money from him for this particular purpose, and gave him a lien on property I had for it.

Q. On this property?

A. No, sir, on an interest in the cyanide plant I had at that time.

Q. Do you remember how long you borrowed that money for, or when you told him you would return it?

A. It was either a sixty or a ninety day note; I

(Testimony of J. K. Woodburn.)

wouldn't be positive now, but I think it was a ninety day note.

Q. Do you remember, Mr. Woodburn, this question being asked you when you paid that money in the land office, and whether you made the answer which I shall read: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" Answer: "From the sale of other property. Sale was completed yesterday, December 1st." Do you remember that?

A. It was practically a sale at that time; it was a conditional sale under which I took this money.

Q. Conditional sale of what?

A. Of this cyanide interest, but I had the privilege, if I could, of returning the money with interest; otherwise it was a sale, and the additional money was to be paid me.

Q. In other words, you got this money, and if you didn't pay it back, he was to take the plant?

A. Yes, sir, but he was to pay me the balance of it, if he took it.

Q. You gave him a note and therefore considered it a loan?

A. Yes, sir, I considered it a loan, but with the understanding that if I couldn't take it up he was to pay me additional money and take a bill of sale for the cyanide plant.

Q. Then how long after that did you start negotiations for the sale of this timber claim, Mr. Woodburn?

(Testimony of J. K. Woodburn.)

A. Well, I didn't undertake to sell it, although I made inquiries, before I got the receipt for it, but it was after I got the final receipt that I was endeavoring to negotiate a sale, but previous to that I had made inquiries as to where and how I could sell, and to whom, and who was giving the most money for it, because I saw I was up against it and had to let it go.

Q. To whom did you sell?

A. I sold to John Kinkaid, or through John Kinkaid.

Q. He was your partner at that time?

A. Yes, sir, he was my partner at that time.

Q. And now how long after you got your final proof was it that he spoke to you about this, or you spoke to him?

A. Well, I spoke to him about it.

Q. The same day?

A. No, I don't think so, because I endeavored to sell and made inquiries among these other locators I knew, and asked them had they found anyone buying claims; I wanted to get the most money I could for it, and I finally found there was only one place I could sell and sell quickly.

Q. And that was through Kinkaid?

A. Yes, sir.

Q. Now, you made two deeds to this property, do you remember? A. Yes.

Q. Do you remember what the second deed was made for?

A. I do not; they told me there was some little

(Testimony of J. K. Woodburn.)

alteration they wanted to make in the deed, and it was—I signed it without reading it over.

Q. How far apart were those deeds made, what distance of time, what length of time?

A. I would think it was, my recollection is that it was three or four weeks.

Q. Now, the first deed that you made, in whose office did you sign it?

A. In John Kinkaid's.

Q. And the second deed?

A. It was in an attorney's office in the Wood Building.

Q. Did you know Louis M. Pritchard?

A. Yes, sir, that was the man.

Q. It was in his office?

A. It was in his office, if I remember rightly.

Q. How much did you sell this property to Kinkaid for?

A. I think it was \$800, \$750 or \$800.

Q. Was that payment made to you in cash?

A. It was made in this way: He and I was in partnership in other matters, and I says when I sold to him, "You make out a deed and I will sign it," I wanted some money, and I says, "When this money is paid you can credit my individual account with it, take up that Royce note, and credit my individual account," which was done, because his books afterwards showed it when I went over them, and I saw it.

Q. You didn't see any of the money which went through that channel?

A. No, sir, it was credited to my account.

(Testimony of J. K. Woodburn.)

Q. Was there a balance due to Kinkaid in that transaction, or did he owe you something after the money was paid?

A. In our final settlement I owed him \$19, I remember.

Q. That was in all of your transactions?

A. That was all the business I had in his office.

Q. Do you remember whether you were indebted to him at the time you told him you would sell to him and to credit your account?

A. I rather think I was; we had a running account, and I didn't figure it up then, but I considered myself somewhat in his debt, but I didn't know positively.

Q. You got your final proof December 2, 1903. Now, this first deed you made isn't dated, either in the acknowledgment or in the body of the deed. Do you know how long after you had made your final proof you made that deed, and had this arrangement with Kinkaid?

A. No, sir, I can't remember.

Q. Was it a week?

A. I have no recollection, sir, of the date; it was some time within two or three weeks, I think, after making final proof, or a shorter time, I don't remember, but it wasn't a great while.

Q. And you gave that deed and the receipts to Mr. Kinkaid at that time? A. Yes, sir.

Q. And did you see Mr. Pritchard in that transaction?

A. I rather think I acknowledged my signature

(Testimony of J. K. Woodburn.)

before Pritchard for that deed.

Q. I show you deed, blank date, John K. Woodburn, unmarried, North Star Mine, County of Boise, State of Idaho, party of the first part, to George S. Long, party of the second part, consideration \$800. The property conveyed is the southwest quarter of section 15, township 6 north of range 4 east, Boise Meridian, and ask you if you signed that deed.

A. Yes, sir.

Q. And acknowledged it blank date before Louis M. Pritchard? A. Yes, sir.

Q. Now, do you remember the circumstances under which you executed the second deed, who spoke with you about that?

A. I think it was Governor Steunenberg that spoke to me about that, asked me to step up to Pritchard's office and make an alteration or sign another deed, as the first one was faulty in some respect; that is my recollection of it.

Q. Did he meet you on the street, or did he come to see you?

A. I was in the Idanha Hotel, in the lobby, when he spoke to me.

Q. And whose office did he tell you to go to?

A. Pritchard's.

Q. And you went to Mr. Pritchard's office?

A. Yes, sir.

Q. The same day the Governor spoke to you about it?

A. I think so, right away, as soon as he spoke to me.

(Testimony of J. K. Woodburn.)

Q. Was the deed prepared when you arrived at Mr. Pritchard's office?

A. I don't think I was delayed there at all; I believe it was.

Q. Did you acknowledge it before him?

A. Yes, sir.

Q. You didn't receive any more money?

A. No, sir.

Q. There was no explanation given you other than that there was a mistake in the former deed?

A. That is my recollection of the conversation; he merely requested me to sign a new deed because the first one was faulty.

Q. I show you deed, dated October 24, 1904, made by John K. Woodburn, unmarried, to George S. Long, consideration \$800, and ask you if that is the deed you signed and executed before Pritchard.

A. Yes, I think it is.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated September 14, 1903, of John K. Woodburn; the non-mineral affidavit of the same date of John K. Woodburn; the testimony of John K. Woodburn given on final proof, dated December 2, 1903; and the cross-examination of John K. Woodburn attached to the examination in chief, all of which have been identified by John K. Woodburn as having been signed by him; the notice of publication; the testimony of the other witnesses given on final proof before the land office; the register's certificate, and the receiver's receipt, dated December 2, 1903; certified copy of the patent,

(Testimony of J. K. Woodburn.)

dated December 1, 1904; the deed, dated in blank, made by John K. Woodburn to George S. Long, consideration \$800, the description of which I have already read, and which has been identified by John K. Woodburn as having been executed and acknowledged before Louis M. Pritchard; also the deed of John K. Woodburn to George S. Long, dated October 24, 1904, consideration \$800, which has been identified by John K. Woodburn as having been signed and acknowledged before Louis N. Pritchard; all to the southwest quarter of section 15, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 118A to 118O, inclusive.)

Cross-examination.

(By Mr. FRASER.)

Q. Mr. Woodburn, before you filed on this land you had heard considerable talk around among the citizens of Boise and the neighbors in regard to the fact that there was timber lands open to entry in the Basin that a person who hadn't exercised his right could go and take up? A. Yes, sir.

Q. And that was generally talked around here for some time?

A. Yes, sir, several times I heard of it.

Q. And that people were exercising their rights?

A. Yes, sir.

Q. And I understood you to say that after making inquiries you had practically concluded to take it up when you asked Mr. Kinkaid about his opinion.

A. Yes, sir.

(Testimony of J. K. Woodburn.)

Q. You first approached Mr. Kinkaid in regard to the matter? A. Yes, sir.

Q. And you asked him if he thought it would pay you to leave your business here and take the time to go up there and file on this land?

A. Yes, sir.

Q. And he informed you that he thought probably it would? A. Yes, sir.

Q. He didn't at that time tell you definitely what he thought you could make out of it?

A. No, sir.

Q. At the time you filed your first papers in the land office you made this statement: "I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person, or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." Now, you made that statement. Was it true? A. It was true.

Q. It was true at the time you made it?

A. Yes, sir.

Q. And that statement would be true at the time you made your final proof, wouldn't it?

A. Yes, sir.

Q. At any of those times had you made any agreement with any person, firm, or corporation, by which they were to have any interest in this land, or the

(Testimony of J. K. Woodburn.)

timber at all on it? A. No, sir.

Q. And no agreement by which they were to get the title? A. No, sir.

Q. In fact you hadn't discussed that question with anybody prior to the time you made your final proof, had you?

A. No, sir, I had not.

Q. You knew Mr. Kinkaid for a long time?

A. Yes, sir.

Q. And as an intimate friend?

A. Yes, sir.

Q. And a business partner? A. Yes, sir.

Q. Your partnership related solely and entirely to the mining business, didn't it?

A. Entirely.

Q. His private affairs were things you had no knowledge of? A. That's right.

Q. You didn't know that Mr. Kinkaid was buying timber land, did you? A. No, sir.

Q. When you came to sell it you approached him, or did he approach you?

A. I approached him.

Q. Asked him to find you a purchaser?

A. I went into the office and I said, "I don't know any place I can dispose of this timber claim unless you are buying them, and if you are I will sell to you, and if you will make out the deed I will sign it." I had to have some money; I had to take care of this note.

Q. You had made inquiries in other quarters for the purpose of selling?

(Testimony of J. K. Woodburn.)

A. I had asked every locator I knew, and some I didn't know, I had approached.

Q. You mean entrymen; when you speak of locators you mean entrymen, don't you?

A. Yes, that is what I mean, people that took up claims at the time I did.

Q. You didn't consider that you were under any obligation to sell this to Mr. Kinkaid, did you?

A. No, sir.

Q. You didn't consider that he had a right to have the title turned over to him?

A. No, sir.

Q. And you would have sold to anybody else that you could have made a better bargain with?

A. Yes, sir.

Q. Or who would give you a higher price?

A. Yes, sir.

Q. When Downs took you up on this claim did he insist that you had to take that particular claim?

A. No, I don't remember it that way.

Q. You wouldn't have taken it if there had been no timber at all on it, would you?

A. No, sir, I could see the timber that was on the claim and I asked him "About how much timber is there on this claim, do you think," and he gave me an approximate value or number of feet, I don't know what it was now, and I said, "That's good enough for me."

Q. But you didn't consider that he was picking out that claim and that you had to take that claim or none, did you?

A. No, sir.

(Testimony of J. K. Woodburn.)

Q. That wasn't your understanding?

A. No, sir.

Q. In regard to making the second deed, Mr. Woodburn, I call your attention to the fact that the first deed which you claim to have made, that there is no date in it as to the execution of it, and there is no date as to the acknowledgment of that instrument. Now, did Governor Steunenberg or Mr. Pritchard, either one, suggest to you that the correction that they desired to make was to have a deed made with the date and the date of the acknowledgment placed in the deed?

A. I couldn't say, Mr. Fraser. My recollection of the conversation was that the first deed was faulty. He may have said "It lacks dates," or something to that effect; and he said, "We have made out an identical deed," or words to that effect, "and we would like to have you sign it."

Q. Well, as you understood it, it was just to correct some mistake or oversight?

A. Some mistake in the original deed.

Q. And he may have told you that the thing to correct was the date, that the date had been left off the acknowledgment and the execution?

A. Possibly, yes, but, however, I don't remember what the reason was now.

Q. Now, in this action which we are trying now, Mr. Woodburn the Government of the United States has charged in their complaint that you, together with a great number of the other citizens of the state, entered into a conspiracy to defraud the

(Testimony of J. K. Woodburn.)

United States Government, by which you were to take up this timber claim of yours, under an agreement that when you obtained title you would turn it over to the Barber Lumber Company or some of the other defendants mentioned in this bill of complaint. Is that allegation true or false?

A. It is false, as far as I am concerned.

Q. They also allege that the Barber Lumber Company and the other defendants induced and persuaded you to go before the land office at the time you made your entry and at the time you made your final proof, and swear falsely, for the purpose of obtaining title, and thereby transfer it to them. Is that true or false?

A. It is false.

Q. Your answers which you made at the land office, both at the time of making your entry and at the time of final proof, were true and correct?

A. They were, to the best of my recollection, everything was.

Q. You have no reason to think that they were not correct?

A. No, sir, none whatever.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Woodburn, as I understand, you had no arrangement with Mr. Kinkaid by which you were to sell this property to him, before you made your entry?

A. I had no arrangement whatever.

Q. Nothing had been said between you and Mr. Kinkaid before you went up to look at the land, or before you made this application, about the disposal of the title when you would get title?

(Testimony of J. K. Woodburn.)

A. No, sir.

Q. To whom did you expect that you would sell the land?

A. I didn't know, sir, at the time.

Q. Did you know of people who were buying?

A. I heard that there were people buying timber claims, but at that time I didn't know who was buying, or it didn't interest me much until I got my papers.

Q. Who had you heard was buying timber claims in September, 1903?

A. I hadn't heard of anyone, no name was mentioned, but I had heard on the street, these other locators, these other entrymen, that they thought they could sell, but they didn't say to whom, but they told me they thought there was someone who would buy these claims if we wanted to sell them.

Q. Who were these other entrymen?

A. Well, there was Harry Noble and Kinert, the fellow that went up in the rig with me, but I never knew of anyone positively.

Q. Before you go on, did Mr. Noble and Mr. Kinert take claims about the same time you did?

A. Yes, sir.

Q. Do you remember where they got their claims?

A. In the immediate neighborhood of mine.

Q. In the same township?

A. We were all together that day.

Q. When had you heard these gentlemen speak of the possibility of selling their claims?

A. Well, it was previous to the final proof, at the

(Testimony of J. K. Woodburn.)

time I got final proof.

Q. How long before you made your initial application, this sworn statement which you have read, had you heard these gentlemen speak about selling their claims, before you filed?

A. You mean before I went up there?

Q. Yes.

A. Well, I didn't know anything about it then at all; I didn't make any inquiries then, previous to my going up there.

Q. Hadn't you heard somebody speak of the possibility of selling these claims before you went up?

A. Perhaps I did, in a general way; I was talking to Harry Noble—he was one of the parties I went up with—and we discussed it in a general way, I think, but there was no names mentioned that I know of as to whether or not we could dispose of the claims.

Q. But it was clear in your mind before you made your arrangements to go up and look at the land that you were going to sell to somebody?

A. No, it was not at that time; I didn't know positively that I was going to sell; in fact, I didn't want to sell if I could help it, but business reasons compelled me to dispose of something.

Q. What did you want to do with it?

A. I thought it was a better proposition to hold it than to dispose of it at that time, that I would get more money for it later on if I could hold it.

Q. Do you remember the occasion when you went to the land office to make your original filing?

(Testimony of J. K. Woodburn.)

A. Yes, I remember of going there.

Q. Where was the land office then?

A. It was in the Sonna Block.

Q. On which floor?

A. Well, sir, I couldn't say.

Q. Was it upstairs? A. Yes, sir.

Q. You don't know whether it was on the second or third floor?

A. No, I am not positive.

Q. Do you remember being shown into this room that you have mentioned, where a number of intending entrymen were waiting?

A. I don't remember that I was shown there; I may have asked where to go.

Q. You found your way there?

A. Yes, I found my way there.

Q. How many people were there?

A. I think there must have been five or six there.

Q. What time of the day was it?

A. Before lunch, I think.

Q. Early or late in the morning?

A. Perhaps ten or eleven o'clock.

Q. Do you remember how many people were waiting there when you went there?

A. No, sir, they were all strangers to me; I don't believe there was an acquaintance in the room.

Q. Were all the people waiting in that room, or were they in the hall?

A. I think some were outside and some inside.

Q. How many were outside?

A. I don't remember, sir; I couldn't tell you; I

(Testimony of J. K. Woodburn.)

merely inquired where I could transact what business I was there for.

Q. Were there ten, or twelve, or twenty?

A. I have no recollection of it whatever.

Q. Do you remember how long you had to wait?

A. I think I waited some twenty or thirty minutes before I was called.

Q. I understood that Mr. Cage would call out the names of the people?

A. My recollection was that Cage was there; I didn't say that Cage called them in; I don't think Mr. Cage had anything to do with that.

Q. Was Mr. Cage then connected with the land office, or was he a practicing attorney?

A. I don't know, sir; I don't know his capacity at all.

Q. Was Mr. Cage acting as attorney for you?

A. No, sir.

Q. Did he notify you when your turn came?

A. No, sir, not that I remember of.

Q. Who told you when you could be received?

A. I don't know; I couldn't say.

Q. Was Mr. Kinkaid there? A. No, sir.

Q. When you went into the register's office to make your filing, did you find anybody else there?

A. No, I think not; only those connected with the business of the office.

Q. You mean the officers and clerks of the land office? A. Yes, sir.

Q. You mean that the room was vacant of other applicants? A. Yes, I think so.

(Testimony of J. K. Woodburn.)

Q. They were shown into this room one by one?

A. It was so long ago that I can't remember those details, as to who was and was not present, but there were no acquaintances of mine that I can recall in the room at the time when I was there.

Q. How about the hall?

A. There may have been people out there that I knew; I can't remember whether there were or not.

Q. You can't give us any idea as to how many people were there?

A. No, sir, I wouldn't pretend to say how many were there.

Q. You couldn't say whether it was five or six, or a dozen, or twenty?

A. No, sir, I would not; I wouldn't care to say anything, because I don't remember.

Q. Do you remember on what day you went up to view this land, what day of the week or month it was?

A. It was my recollection that it was the fore part of September that we went up there.

Q. Do you know what day of the week it was?

A. No, sir.

Q. What would you call the fore part of September?

A. Well, from the 1st to the 10th, or along there somewhere.

Q. Or from the 1st to the 15th?

A. Well, the first half of the month I am quite sure it was the first half of the month.

Q. Have you any recollection now as to how long it was that you went up to look at the land before

(Testimony of J. K. Woodburn.)

you made your original filing?

A. No, sir, I don't remember.

Q. Well, was it two days, or two weeks?

A. I don't remember.

Q. You don't remember going up there on Friday and then going to the land office Monday to make your filing?

A. No, sir, I have no recollection whatever of the day of the week, or the day of the month.

(Witness excused.)

[Testimony of Mrs. Ida Twogood, on Behalf of the Complainant.]

Mrs. IDA TWOGOOD, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Ida Twogood? A. I am.

Q. And you are the wife of Merritt L. Twogood?

A. I am.

Q. Mrs. Twogood, you took up a claim under the Timber and Stone Act in September, 1902, did you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 15, 1902, and ask you if you signed that paper?

A. It looks to be my signature.

Q. I show you non-mineral affidavit of Ida Twogood, of the same date, and ask you if you signed that? A. I did.

(Testimony of Mrs. Ida Twogood.)

Q. I show you the testimony of Ida Twogood given on final proof, January 16, 1903, and ask you if that is your signature to that paper?

A. It is.

Q. I show you the cross-examination on the same occasion, and ask you if that is your signature?

A. It is.

Q. I show you affidavit, dated January 16, 1903, made by Ida Twogood, and ask you if you signed that?

A. Yes, sir.

Q. Mrs. Twogood, who first spoke with you about taking up a timber claim?

A. My husband.

Q. Did he make the arrangements for you to take it up?

A. Yes, sir.

Q. And you went with him?

A. I did.

Q. And who else went along?

A. There was no one else in the rig with us, just he and I.

Q. Where did you go?

A. We went to Mose Kempner's, and from there went up the river, I think up Crooked River, I believe, some few miles, I couldn't tell you just how far.

Q. Did you meet Mr. Patrick Downs there?

A. I did.

Q. And he located you on a claim?

A. Yes, sir.

Q. Did he take you to any special claim and locate you?

A. He took me to some timber land and showed me around over it and said that was my claim.

(Testimony of Mrs. Ida Twogood.)

Q. And did you pay him there, or afterwards?

A. I couldn't tell you; I don't remember.

Q. Now, before you went up there—do you know Mr. John I. Wells?

A. I know him by sight.

Q. Did you go to his office with your husband before you went up to see this claim?

A. I went to his office one time, but I couldn't tell you whether it was before or after.

Q. Do you know what you went there for?

A. No, I don't remember that.

Q. Was your husband with you when you went?

A. I don't think he was when I went there; I don't remember that he was.

Q. Did you know of anybody that was purchasing claims at that time?

A. No, I knew of no one.

Q. Did you know of anyone selling them?

A. No.

Q. Did you know of a prospective purchaser?

A. No.

Q. Didn't know of any market whatever for timber claims?

A. No.

Q. Do you know Mr. Edward E. Butler?

A. Yes, sir.

Q. Was he up looking over the claims at the same time you were?

A. Yes.

Q. Do you know Mr. George Butler?

A. No.

Q. Did you ever speak to Mr. Edward Butler about taking up a timber claim?

A. No.

Q. Did he ever talk to you about it?

(Testimony of Mrs. Ida Twogood.)

A. No.

Q. You had known him before you went up to take up a timber claim? A. Yes.

Q. Now you advertised that you would make your final proof on January 7th, 1903; do you remember why you did not make it on that date?

A. No.

Q. Did you go to the land office and make an affidavit giving the reason that you didn't make your proof on that date?

A. Well, I really don't remember; it has been a good while ago, and I have forgotten a great deal.

Q. Do you know who prepared the papers I showed you, the sworn statement, and the non-mineral affidavit, that you filed in the land office, the first papers that you filed?

A. No, I couldn't tell you; Mr. Kinkaid fixed some papers for me, but I don't remember what they were.

Q. Do you remember coming back from Kemper's ranch? A. Yes.

Q. And how long after you came back did you file your papers in the land office?

A. I really don't remember.

Q. Was it the next day?

A. I really couldn't tell you at all whether it was the next day or a month after, or two months.

Q. Did you go to Mr. Kinkaid's office with your husband? A. Yes, sir, at one time.

Q. Who told you to go there? A. He did.

Q. Did he go with you?

(Testimony of Mrs. Ida Twogood.)

A. I couldn't tell you whether he was or not, but I think he was.

Mr. BUNDY.—You mean by that that your husband told you to go up there? A. Yes.

Mr. GORDON.—Q. And do you remember whether you paid any money into the land office the first time you went?

A. No, I don't remember that either.

Q. Do you remember the occasion on which you made your final proof?

A. I remember going there to make final proof, yes.

Q. Do you know how much money you paid in that day?

A. No, I don't remember that either.

Q. Have you an idea? A. No, I haven't.

Q. Well, did your husband go with you on that day?

A. I think he was there at that time.

Q. You paid in somewhere about \$400. Do you remember that?

A. I think it was something about \$400, but I couldn't tell you just the amount.

Q. Do you remember where you got that money that you paid in?

A. My husband gave it to me.

Q. Do you know how long before?

A. No, I couldn't remember how long before.

Q. The same day?

A. I really couldn't tell you that, whether it was the same day or not, I think so.

(Testimony of Mrs. Ida Twogood.)

Q. Up to this time did you know of anybody that was purchasing timber claims? A. No.

Q. Had you heard of anybody that had sold any claims? A. No.

Q. How long after that was it before you heard of somebody that was buying timber claims?

A. Well, I couldn't tell you just how long.

Q. A week, or a month, or how long?

A. I really couldn't say; perhaps a month.

Q. And you did sell your claim, did you?

A. I did.

Q. Do you know to whom you sold it?

A. No, I do not.

Q. Do you know in whose office you sold it?

A. Mr. Kinkaid made the papers out.

Q. Was that the second time you had been to Mr. Kinkaid's office?

A. That was the second time, yes.

Q. Did you go to Mr. Kinkaid's office to sign the deed, or was it sent to you to sign?

A. I went there to sign the deed.

Q. Did you know Mr. Louis M. Pritchard?

A. He was the notary, I believe.

Q. And you acknowledged the deed before him?

A. Yes, sir.

Q. You never made but the one deed?

A. That was all.

Q. Never were asked to make another deed?

A. That was all.

Q. Were you paid any money when you signed this deed? A. Yes.

(Testimony of Mrs. Ida Twogood.)

Q. How much was it? A. I think \$800.

Q. Was it one check or two?

A. No, I think he made a separate check for me.

Q. And what did you do with it, deposit it?

A. I had the check cashed, and deposited the money in the Capital State Bank.

Mr. GORDON.—We offer in evidence the sworn statement of Ida Twogood, dated September 15, 1902; the non-mineral affidavit of the same date; the testimony of Ida Twogood, given on final proof, dated January 16, 1903; the cross-examination attached thereto, of Ida Twogood; the affidavit of Ida Twogood, dated January 16, 1903, all having been identified by Ida Twogood as having been signed by her; the notice of publication, dated September 15, 1902; the testimony of the other witnesses, given on final proof; the register's certificate, and the receiver's receipt, dated January 16, 1903; also certified copy of the patent; and the deed is already in evidence with the testimony of Merritt L. Twogood; all to the southwest quarter of the southeast quarter, and the south half of the southwest quarter of section 4, and the northwest quarter of the northwest quarter of section 9, township 7 north of range 8 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 119A to 119M, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Twogood, in this lawsuit we are trying here, of the United States of America vs. the Barber

(Testimony of Mrs. Ida Twogood.)

Lumber Company, John Kinkaid, A. E. Palmer, Horace S. Rand, and others, the Government has seen fit to charge and does charge, that you made this timber and stone entry which you have testified about at the request of, and for the benefit of the Barber Lumber Company and some of the other defendants named in this action. Is that true or false?

A. It isn't true to any knowledge of mine; I didn't know anything of that.

Q. The allegation is that you were requested by these defendants to make this timber and stone entry.

A. I wasn't requested.

Q. Did you make it at their request or for their benefit?

A. I did not.

Q. At the time you made your first filing on this land, you swore in the land office that at that time you had no agreement, express or implied, directly or indirectly, by which you had obligated yourself or agreed to transfer the title you might acquire from the United States to any person, firm, or corporation whatever. That statement was true at that time, was it not?

A. It was.

Q. Was there any such agreement in existence at the time you made your final proof?

A. There was none.

Q. It is further alleged by these gentlemen representing the United States here that you entered into an agreement with the Barber Lumber Company and the other defendants by which you agreed not only to make this entry for their benefit, but for the purpose of defrauding the United States you

(Testimony of Mrs. Ida Twogood.)

agreed to go to the land office and testify, and that you did testify to what you knew to be false, pursuant to that agreement. Is that true or false?

A. That statement is false.

(Witness excused.)

At this time court adjourned until two o'clock, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of William B. Davidson, on Behalf of the Complainant.]

WILLIAM B. DAVIDSON, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are William B. Davidson, are you?

A. I am.

Q. What is your occupation, Mr. Davidson?

A. I am a lawyer.

Q. How long have you been practicing law?

A. I have been practicing law for nine years and over.

Q. And you have resided in Boise all of that time?

A. Not quite all of that time; I have resided in Boise since the first day of March, 1900.

Q. You took up a claim under the Timber and Stone Act in 1903, did you? A. I did.

Q. I show you timber and stone land sworn state-

(Testimony of William B. Davidson.)

ment of William B. Davidson, dated September 14, 1903, and ask you if you signed that paper?

A. I did.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that paper?

A. I did.

Q. I show you the testimony of William B. Davidson, given on final proof, December 3, 1903, and ask you if you signed that paper?

A. That is my signature.

Q. I show you deed, dated December 30, made by William B. Davidson and Hattie B., his wife, to George S. Long?

A. That is my signature.

Q. And that is the signature of your wife?

A. Yes.

Q. Did she take up a claim too? A. No.

Q. And you acknowledged that before a man by the name of Lee Hutchinson? A. I did.

Q. At the time you took up a timber and stone claim did you know Mr. John Kinkaid?

A. I did.

Q. Had you any business relations with him?

A. None at all, none but personal relations.

Q. Do you remember who first spoke to you about taking up a timber claim?

A. This particular tract of timber, or taking up a particular claim was first spoken to me about by John Kinkaid.

Q. What did he say about it, Mr. Davidson?

A. Well, he came to my office.

(Testimony of William B. Davidson.)

Q. Do you remember when this was, how long before you—

A. If you will let me see the papers, Mr. Gordon, I think I can. (Takes papers.) On Thursday preceding September 14th; if I remember, it was in the afternoon; he came to my office and told me that a party was being made up to go up and look at some timber, and that they had three, and if I would make the fourth he would like for me to go along. That was the date, on Thursday; we started Friday morning.

Q. And you got up there?

A. Friday night.

Q. And located Saturday?

A. Located Saturday and drove in Sunday.

Q. What time did you get in Sunday?

A. I would say between five and seven; I am not positive what hour; it was before sundown, or about sundown, as I remember.

Q. Did he give you the numbers of the claim you were to locate on? A. He did not.

Q. Who were of the party that went with you?

A. There was Mr. Willis Ross and his wife, and Mrs. Margaret Scully, an old lady.

Q. Now did he tell you at that time that the land you were to be located on hadn't been opened to entry? A. He did not.

Q. Did you know whether it had or not?

A. I did not; I presumed that it was open for entry or he would not have sent me out.

Q. Who located you? A. Patrick Downs.

(Testimony of William B. Davidson.)

Q. And you met Patrick Downs up there?

A. At the Star ranch.

Q. Friday night? A. Friday evening.

Q. And what time were you located Saturday?

A. Well, we went out in the morning, and I couldn't tell you the time now, Mr. Gordon; it is a long time ago; we went out into the timber, went over the land, and got back rather late in the evening.

Q. Had you met Mr. Patrick Downs before this?

A. I had not.

Q. Did he give you a letter to Mr. Downs?

A. He did not.

Q. Did you have any talk with Mr. Downs?

A. We talked generally, yes.

Q. And he took you how far from the ranch?

A. Well, I couldn't tell you; he told us at the time, but my memory fails me as to the exact distance; I know it was quite a ways.

Q. And now at this time did you know of any market for timber claims in that locality?

A. I didn't know; I knew that timber was being sold, but I didn't know who was buying, or of any particular market.

Q. Didn't know of any person that had sold a claim?

A. I don't recall now that I knew of one.

Q. You didn't know of any person that had bought one? A. No, I did not.

Q. Did Kinkaid tell you that you could sell the claim if you took it up? A. He did not.

Q. Did Mr. Downs take you and these other

(Testimony of William B. Davidson.)

people out to certain claims and point out one and say, "This is the one for you to locate on, Mr. Davidson"?

A. Yes, he says, he took us out on the claim, and he said, "You can locate on this claim, and you can locate on this," until he had shown each party a claim.

Q. And you took the one he showed you?

A. Yes, sir.

Q. Did he give you the numbers?

A. He did.

Q. What did you do with the numbers?

A. I kept them in my possession until the papers were made out.

Q. Who made the papers out for you?

A. If you will let me see them I will tell you. The timber and stone land sworn statement is in the handwriting of Mr. Lee Hutchinson.

Q. Who was he?

A. He was a friend of mine, and at that time we were associated together in the practice of law, we officed together, and were in fact partners. The main body of the notice of publication is in his handwriting; the non-mineral affidavit is in my own handwriting.

Q. And you got back here Sunday, you say?

A. Sunday evening.

Q. Then when did you go to the land office?

A. Went to the land office at nine o'clock next morning.

Q. How many people were in line when you got

(Testimony of William B. Davidson.)

there?

A. I couldn't say; it would strike me about—there was a line there when I went into line that I would judge was about twenty feet long, or thirty.

Q. Twenty-five or thirty people?

A. I should judge about twenty or twenty-five people; that is my best recollection.

Q. Did you get at the end of the line, or did somebody hold a place for you?

A. I got at the end of the line.

Q. Did you know when you went up there that there would be a line there?

A. I did not; I heard it before I got there, but I got to the office rather late and filled in my papers before I went to the land office.

Q. And that was Monday morning?

A. Yes, sir.

Q. You were not in line Sunday?

A. I was not in line Sunday.

Q. How long did you remain in line?

A. I couldn't say; it was just simply until in due course of business they had accepted the filings of the other persons ahead of me.

Q. How many got in line behind you?

A. I couldn't say; there was a good many people there, and a good deal of disturbance, and I couldn't remember.

Q. Do you know Mr. John K. Woodburn?

A. Yes, sir.

Q. Was he there that morning?

A. I didn't see him.

(Testimony of William B. Davidson.)

Q. Was Mr. Milton G. Cage there that morning?

A. I am not positive; there was one or two attorneys there; I wouldn't say that Mr. Cage was there; the best of my recollection is that Mr. Kingsley was there, but I wouldn't be certain about Mr. Cage.

Q. Was Mr. Frank Martin there?

A. I didn't see him; I didn't pay any particular attention to that, because I understood that the attorneys there had prepared papers for certain people in line, and as I had prepared my own papers I didn't pay much attention to it.

Q. And they brought them to the people in line?

A. No, I think the people had the papers, but they were simply there in case of any question, as I understood.

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

A. I don't think I had any personal acquaintance with Mr. Wells at that time.

Q. Do you know him now? A. Yes, sir.

Q. Is that the gentleman, here in the courtroom?

A. Yes, sir.

Q. Did you ever have any business relations with him in regard to this land? A. No, none at all.

Q. Do you remember the occasion on which you made your final proof? A. Yes, sir.

Q. Do you remember how much money you paid into the land office that day?

A. Well, I paid \$2.50 an acre and the testimony fees.

Q. Something over \$400?

A. Yes, sir, something over \$400.

(Testimony of William B. Davidson.)

Q. Did you have your own money, or did you have to borrow money?

A. I had some of my own, and I borrowed some.

Q. Do you mind telling who you borrowed it from?

A. I don't remember the amount, but I borrowed some from a Mr. Russell; I don't remember his name; he was a client of mine.

Q. About \$300?

A. I think that was the amount; I am not positive.

Q. Did you give him a note for it?

A. I did.

Q. When did you borrow it from Mr. Russell?

A. Just the day before, or a day or two before, if I remember correctly.

Q. I will ask you if at that time you knew of anybody that was buying timber claims?

A. I did not.

Q. Didn't know of anyone that was selling claims?

A. No, sir.

Q. Was your office in the same building with Mr. Kinkaid? A. No, it was not.

Q. Did you know Mr. L. M. Pritchard?

A. I had just met him; I will not say that I had had very much personal acquaintance with him at the time.

Q. How long after you made your proof did you start negotiations for the sale of this property, or did you hear of somebody that was purchasing?

A. To the best of my recollection, it was a day

(Testimony of William B. Davidson.)

or two before the date of the deed.

Q. To whom did you sell?

A. Mr. Kinkaid negotiated the sale, John Kinkaid.

Q. And what was the reason you negotiated with Mr. Kinkaid; did he come to see you, or did you go to see him? A. I went to see him.

Q. Who told you to go and see him?

A. Nobody; I simply met him and was talking to him, and I told him I had the claim and asked him if he knew of anybody that wanted to buy timber.

Q. What did he say?

A. He said he would see, and a day or two following that, I think perhaps on the date that the deed was drawn, he either came or telephoned to me that he had a purchaser who would give me so much.

Q. How much did he give you?

A. Let me see the deed.

Q. Eight hundred is the consideration in the deed, but did you get \$800?

A. I got \$700; he told me that if he made the deal he would charge a commission of \$100; that is what he told me.

Q. Did he offer you any less than that before that time?

A. Never did; that is the only offer he made.

Q. Then you got \$700? A. Yes.

Q. Did he prepare the deed for you?

A. No, he did not. If you will let me see it a moment—no, the best of my recollection is that I either prepared the deed myself, or that it was pre-

(Testimony of William B. Davidson.)

pared in my office; I know that he didn't prepare the deed, and either myself or Mr. Hutchinson prepared the deed.

Q. Is this the only deed you ever made to this property? A. It is.

Q. Were you ever asked to make another one?

A. Never was asked to make another one.

Q. You didn't know George S. Long?

A. I did not.

Q. Did you pay Mr. Downs a location fee?

A. I did.

Q. When did you pay that?

A. I paid him a location fee the day of filing, to the best of my recollection.

Q. Was he down here?

A. No; I was instructed that in case the filing would go through that I should leave the money with Mr. Kinkaid for him.

Q. And you left Mr. Kinkaid \$25?

A. Yes, that is the best of my recollection; I might be mistaken, but that is the best of my recollection.

Q. You didn't leave it with anybody else?

A. No, I had no dealings with anyone else.

Q. All of your dealings were with Mr. Kinkaid and Mr. Downs? A. That's correct.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of William B. Davidson, dated September 14, 1903; the non-mineral affidavit of William B. Davidson of the same date; the testimony of William B. Davidson, given on final proof, dated December 3, 1903; the cross-examination at

(Testimony of William B. Davidson.)

tached, all of which papers have been identified by William B. Davidson as having been signed by him; the notice of publication, dated September 14, 1903, identified by Mr. Davidson as having been filed by him; the testimony of the other witnesses, and the cross-examination thereto; the testimony given on final proof; the receiver's receipt, and the register's certificate, dated December 3, 1903; certified copy of the patent, dated December 1, 1904; the deed made by William B. Davidson and Hattie B., husband and wife, to George S. Long, consideration \$800, identified by William B. Davidson as having been signed by himself and wife, and acknowledged before Lee Hutchinson; all to the northeast quarter of section 20, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 120A to 120N, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Davidson, with reference to the manner in which Pat Downs located you, I think the inference would be sought to be drawn from your evidence that you had no option or election in the matter, that you simply were placed on a piece of land. Was that the way you understood it at the time?

A. I understood that he was showing us land that was open, that we could locate, and that had timber on it.

Q. You were satisfied with the one he showed you?

A. I was.

Q. Mr. Downs was acting as your employee and as

(Testimony of William B. Davidson.)

an expert in that matter, to select a suitable claim for you?

A. Yes, I understood when I went out that I could rely upon his statements in regard to the value of the claim, of the timber.

Q. If the claim hadn't been one that was satisfactory you were under no obligation to take it, were you? A. I did not have to take it, no.

Q. At the time you made your original entry, filing in the land office, was there in existence, Mr. Davidson, any agreement between you and any person, firm, or corporation, by which you had obligated yourself to sell or transfer to any such person, firm, or corporation, or any person they should direct, the title to any lands you might acquire from the United States, or any interest in it? A. There was not.

Q. Was there any such agreement at the time you made your final proof? A. There was not.

Q. Did you enter this land for the benefit of any person except yourself? A. I did not.

Q. It is charged in the complaint in this action that you made this entry at the request of, and for the benefit of, the Barber Lumber Company and the other defendants in this action. Is that true or false? A. It is false.

Q. And it is alleged that in pursuance of that agreement, at the solicitation of the Barber Lumber Company and the other defendants you went to the land office and testified falsely, for the purpose of defrauding the United States out of the timber, for their benefit. Is that true or false?

(Testimony of William B. Davidson.)

A. That is false.

Q. You paid Mr. Kinkaid a commission for selling your land?

A. I paid Mr. Kinkaid a commission; that is, it was understood that the full consideration of \$800 was to be paid, and that I should receive \$700; I understood that the \$100 should go to him, so that what I received was \$700.

Q. With reference to this line-up, Mr. Davidson, do you recall the fact that at the head of the line there was a stranger that no one knew, and it was currently reported at and about the land office, up and down the line, among you entrymen, that that fellow was there for the purpose of scripping the land?

A. That was the report that was out, that there was an attempt being made to scrip all the land we were after.

Q. And the line-up was to head off this scrip?

A. That is what I understood.

Q. Wasn't it understood that Governor Steunenberg was trying to scrip that land?

A. I don't know who it was.

Q. And it afterwards turned out that this strange man that was standing there was standing in line for Mrs. Scully?

A. I don't know about that. I will say that I was very innocent in the matter; I got down town about 8:30, but I didn't know of the line-up until about 8:50.

Q. But it was generally understood that the line-

(Testimony of William B. Davidson.)

up was caused by the fear that somebody would get in and scrip the land?

A. That was what I understood was the cause of the line-up, that was the cause of everybody getting in line.

(Witness excused.)

[Testimony of Lorin T. Kinert, on Behalf of the Complainant.]

LORIN T. KINERT, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mr. Kinert?

A. At the Government dam, gate-tender.

Q. How long have you held that position?

A. Since last fall some time.

Q. What was your occupation prior to that?

A. I have been in the Reclamation Service since the spring of 1905.

Q. What was your occupation in September, 1903?

A. My recollection is that I put in that month at Sinsel's at the packing-house, fruit packing establishment here in Boise.

Q. What was your occupation and where did you work in October, 1903?

A. I don't know whether my work extended through October—I think it didn't—at Sinsel's, and that I began at the grocery in the latter part—

(Testimony of Lorin T. Kinert.)

Q. What grocery? A. Boston grocery.

Q. What did they pay you?

A. I am not sure whether I started at forty and was raised to forty-five, or whether I started at thirty-five and was increased to forty.

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

A. Yes, sir.

Q. I show you timber and stone land sworn statement of Lorin T. Kinert, dated September 14, 1903, and ask you if you signed that paper?

A. That is my signature.

Q. I show you non-mineral affidavit made by Lorin T. Kinert, of the same date, and ask you if you signed that paper.

A. It's my signature.

Q. I show you testimony of Lorin T. Kinert on final proof, December 23, 1903, and ask you if you signed that? A. Yes.

Q. I show you deed dated March 3, 1904, by Lorin T. Kinert to George S. Long, and ask you if that is your signature to that. A. It is.

Q. And you executed and acknowledged that before John M. Haines, a notary public?

A. Haines, I believe, in the Pierce Building.

Q. Mr. Kinert, did you know of any persons that were selling timber claims at that time?

A. No. What time do you mean?

Q. When you made your entry. A. No.

Q. Did you know of any person that was purchasing claims? A. No, I did not.

(Testimony of Lorin T. Kinert.)

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

A. I think it was Mr. Townsend.

Q. What are his initials? A. L. L.

Q. He is your uncle? A. He is.

Q. What did he say to you about it?

A. He said that if I wished to take up a claim and had an opportunity that he would loan me the money.

A. And did he take up a claim at the same time you did? A. No, he did not.

Q. Had he already taken up one?

A. No, not to my knowledge.

Q. And he suggested it to you—you didn't go to him and ask him?

A. I can't say how it came up, how it came to be mentioned first.

Q. Did you see Mr. John Kinkaid with reference to taking up a claim? A. No.

Q. Did you go up with a party?

A. I went up with John Woodburn and Harry Noble and I together.

Q. Do you remember when you went up to look at the claim? A. Not the exact date, no.

Q. Do you remember what day of the week it was? A. No, I don't.

Q. Was it Sunday? A. No, I think not.

Q. See if you can remember what day you went up there. A. Well, I can't.

Q. How long did you go up there before you filed on your claim?

(Testimony of Lorin T. Kinert.)

A. I don't know the exact time of that even.

Q. How long did you return to Boise before you filed on your claim?

A. It might have been one day, or two or three; I don't know.

Q. Do you remember the day of the week you returned? A. No.

Q. Do you remember the day you went to the land office to file?

A. I believe it was on Monday morning.

Q. Did you go to the land office Monday or Sunday?

A. I think the crowd formed on Sunday night.

Q. You went into the crowd Sunday night?

A. Yes.

Q. Do you remember who told you to go down there and get in line? A. No, I don't.

Q. Did I understand you to say that you had been up there and returned two or three days before that?

A. It was anywhere from one to probably two or three days, I don't know exactly.

Q. And this sworn statement I have shown you, this first paper you filed in the land office, who prepared that paper for you?

A. Mr. Kinkaid, I believe.

Q. Do you know where he prepared it? Did you go to his office? A. At his office; yes.

Q. And you went to his office? A. Yes.

Q. When was it that you went to his office?

A. I haven't no record of that; I don't remember at all.

(Testimony of Lorin T. Kinert.)

Q. Was it on Sunday, or Saturday that you went there? A. I don't know.

Q. Was it brought to you while you were in line?

A. No, it wasn't brought to me while I was in line, I am sure.

Q. How many people were in the line when you got there? A. I don't remember.

Q. What is your best recollection?

A. Well, probably ten; that is as near as I can recall.

Q. And when you went there you took the last place in the line, is that it?

A. At that time, yes.

Q. I mean you were about tenth.

A. Something like that.

Q. And all that came after were behind you.

A. I can't make any positive statement as to that.

Q. I mean you took the last place at the end of the line when you got there. A. Yes, sir.

Q. There wasn't anybody holding a place in the line for you? A. No.

Q. And did you see Mr. Kinkaid before you went up to locate on this land?

A. He prepared the papers.

Q. I mean before you went up to Placerville, or wherever it was you went, to the Star ranch.

A. Nothing more than I have stated.

Q. Had you gone to see him before you went up to the Star ranch, before you first looked at the land up there?

(Testimony of Lorin T. Kinert.)

A. Just in making out the papers.

Q. Did he make them out before you went up there?
A. I believe so.

Q. Who went there with you—to Kinkaid's office?

A. I don't believe there was anyone with me at the time.

Q. Who told you to go to his office?

A. I don't know that anyone told me.

Q. Did he give you a letter to Mr. Downs?

A. No.

Q. And you had never met Mr. Downs before?

A. No, I believe not.

Q. And when you saw Mr. Downs you told him you wanted to be located on a claim?

A. No, I didn't.

Q. What happened when you got there?

A. I went with the party, and it seemed that the party had someone to locate claims.

Q. Did you understand that before you started?

A. No, I didn't; I had gone down to work, and was told that some parties were going, and I started off with them.

Q. Somebody telephone you?

A. No, my uncle came down and told me.

Q. Where were you working them?

A. At Sinsel's.

Q. And you left your work and joined the party?

A. Yes, I happened to be not working that morning.

Q. Did you have any conversation with Mr.

(Testimony of Lorin T. Kinert.)

Downs about what he would charge you for his fee?

A. Not at that time.

Q. When did you have a conversation with him about it?

A. It was after I had filed, I am sure.

Q. Was it after you sold?

A. No, it was before I sold.

Q. Did you pay Mr. Downs, or did you leave the money with someone else for him?

A. I paid him.

Q. You gave it to him? A. Yes, sir.

Q. When you went up there to look at this land did he take you out and show you a claim and say "This is the one for you, Mr. Kinert," or how did he do?

A. He pointed out what he said was the claim.

Q. And did he say "This is the one for you to locate on"? A. Yes, sir.

Q. And did he give you a description of it?

A. He gave me a map of it.

Q. Did he write the numbers out for you?

A. Yes, I believe he did.

Q. Then you came back to Boise?

A. Yes, sir.

Q. Now, do you remember whether it was before you went to the Star ranch or after you returned to Boise that you went to Mr. Kinkaid's office, or both, that you went to Mr. Kinkaid's office and had these papers you have identified prepared, or was it after you returned; your best recollection is what we want.

Mr. BUNDY.—The question is all balled up.

(Testimony of Lorin T. Kinert.)

A. I really can't say.

Mr. GORDON.—Q. What is your best recollection?

A. As I understand it, you want to know whether it was after I returned from the claim or before?

Q. Yes. The papers you filed in the land office.

A. I don't know.

Q. What is your best recollection?

A. My recollection is poor.

Q. Who told you to go down to the land office and get in line?

A. I couldn't say that I had any instructions on that point.

Q. Was it talked about on the way up there, or on the way back, by the parties you went with?

A. No, I don't remember anything of that kind.

Q. You knew the land office wasn't open on Sunday, didn't you? A. Yes.

Q. Wasn't it unusual for people to go and stand in line over night in the land office waiting for it to open at nine o'clock Monday morning?

A. Well, it depends on whether they wanted to lose their chance of filing, I suppose.

Q. Who intimated to you that you were going to lose your chance of filing if you didn't go there Sunday night?

A. I don't know but what I understood it from parties that had been around the building; they seemed to be forming in line, so I thought it was best for me to get in.

Q. Where was the land office at that time?

(Testimony of Lorin T. Kinert.)

A. In the Sonna Block.

Q. How far did you live from the Sonna Block?

A. Upstairs.

Q. You lived over the land office?

A. Yes, sir.

Q. And persons were forming in line inside of the building, weren't they? A. Yes.

Q. Do you remember how much you paid at the land office on that occasion?

A. I paid some newspaper fees for advertising, but I don't know the amount.

Q. Where was Mr. Kinkaid's office at that time?

A. It was in the Pierce Block, I believe.

Q. How far is that from the Sonna Block?

A. My recollection is that it was in the Pierce Block.

Q. How far was that from the Sonna Block?

A. Well, it is probably half a block from the entrance, between the entrances.

Q. Did you see Mr. Kinkaid that Sunday evening; did he come down there Sunday night some time? A. I don't remember seeing him.

Q. Did you see Mr. Sonna there that evening?

A. Yes, Mr. Sonna, I remember that; he wanted the crowd to get out of the building.

Q. And did Mr. Kinkaid come down there then and tell the crowd not to go out of the building?

A. I don't remember seeing Mr. Kinkaid there at that time at all.

Q. Did you see Mr. Pritchard there?

A. No.

(Testimony of Lorin T. Kinert.)

Q. What time did you get away from the land office on Monday?

A. I don't know the time; it was in the forenoon, I believe.

Q. Mr. Woodburn went up with you and returned with you, did he? A. Yes, sir.

Q. And then it came time to make your final proof. Is that correct? In about three months?

A. Yes, sir, about three months.

Q. And do you remember the occasion of going to the land office and making your final proof?

A. It was while I was working at the Boston grocery.

Q. Do you remember the occasion?

A. Yes.

Q. Did you say you borrowed about \$300 to make this final proof? A. More than that.

Q. How much did you borrow?

A. The payment to the Government was \$400.

Q. And did you borrow all of it?

A. Yes, all of it.

Q. Who did you borrow it from?

A. L. L. Townsend.

Q. Did you give him a note?

A. No, he wouldn't accept a note.

Q. How long did you borrow that money for?

A. There was no time stated; he told me just to consider that my own.

Q. Did you say that Mr. Townsend was your uncle? A. He is.

Q. When did you return that money to Mr. Town-

(Testimony of Lorin T. Kinert.)

send, or repay the loan?

A. Immediately after I received payment.

Q. And how long after you made your final proof did you receive payment for it?

A. Well, the only way I have of remembering is that it was on the anniversary of my father's death, the 3d of March.

Mr. BUNDY.—That is the exact date you made your deed.

Q. And how long before that did you start negotiations for the sale of this land?

A. I think it was in February that I went to Page Mott, and they couldn't give me any definite—they couldn't tell me that they would take it; there was snow that prevented their getting men in there to examine it.

Q. And who did you sell to?

A. I sold to a party—Long, I believe his name is.

Q. Did you know Mr. Long? A. No, sir.

Q. Had you ever seen Mr. Long?

A. No, sir.

Q. Had you ever heard of Mr. Long before?

A. No, sir.

Q. Who did you conduct the negotiations for the sale of this property with? A. Mr. Kinkaid.

Q. How did you happen to go to Mr. Kinkaid?

A. Well, I had asked him also; I forgot to state that I asked him if he knew of anyone that wanted to buy the timber.

Q. And did he make you an offer at that time?

A. No, he didn't.

Q. Did he tell you he didn't know of anybody

(Testimony of Lorin T. Kinert.)

that was buying timber?

A. Well, I don't know whether those are the exact words, but at any rate he didn't give me any assurance that he knew of anyone.

Q. And how long after that did you sell to him?

A. I think that was probably in February; it was after I had gotten out of employment in February, so it would be some time between.

Q. How much did he offer you for it when you did sell to him? A. \$800.

Q. He gave you \$800? A. Yes, sir.

Q. Did he give it to you in cash?

A. Well, I took the papers to the bank on the corner of Eighth and Main.

Q. What bank is that?

A. First National, I believe.

Q. What papers did you take there?

A. I took the deed.

Q. Where did you get the deed?

A. Kinkaid made out the papers.

Q. And gave them to you, is that right?

A. Yes.

Q. And you took them to the bank?

A. Yes.

Q. Who did you see at the bank?

A. I don't know the party's name.

Q. And you went up with this deed to the bank and they gave you the money? A. Yes.

Q. Wasn't it a check that you were paid in?

A. No, sir, it was in gold.

Q. Who went to the bank with you?

(Testimony of Lorin T. Kinert.)

A. There wasn't anyone with me.

Q. You just handed that deed into the window and they gave you \$800?

A. I think there were some instructions with it; I don't remember.

Q. Was the deed in an envelope?

A. I think not.

Q. And what did you do with that money?

A. Well, I sent some to my mother.

Q. I mean did you deposit it or did you keep it out of the bank?

A. I kept it out of the bank, yes.

Q. And returned to your uncle what you had borrowed from him? A. Yes.

Q. Mr. Kinkaid didn't charge you a commission for selling this, did he? A. No.

Q. You never paid him anything for preparing your papers, did you?

A. I don't remember paying him anything.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Lorin T. Kinert, dated September 14, 1903; the non-mineral affidavit of Lorin T. Kinert, of the same date, the testimony of Lorin T. Kinert, given on final proof, dated December 23, 1903; the deed made by Lorin T. Kinert to George S. Long, consideration \$800, dated March 3, 1904, identified by Lorin T. Kinert as having been executed and acknowledged by him, all of said papers having been identified by Mr. Kinert as having been signed by him; the cross-examination of Mr. Kinert, given on final proof, also identified by him as

(Testimony of Lorin T. Kinert.)

having been signed by him; the testimony of the other witnesses on final proof; the receiver's receipt, and the register's certificate, dated December 23, 1903; certified copy of the patent, dated December 1, 1904; all to the southwest quarter of section 21, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 121A to 121N, inclusive.)

Q. Mr. Kinert, did you ever make another deed besides the one I have shown you? A. No, sir.

Q. Were you ever requested to make another deed? A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Kinert, do you remember where you acknowledged the deed, before whom?

A. Mr. Haines, I believe.

Q. Was he in the bank?

A. He was in the bank that time.

Q. Let me refresh your recollection: Didn't Mr. Kinkaid make out the deed for you, and you signed it, then didn't he give you a check and tell you to go and have the deed acknowledged, and send instructions to the bank to cash the check after you had acknowledged the deed?

A. Maybe that was the way of it.

Q. That is your signature, isn't it?

A. Yes, sir.

Q. And that is the check Mr. Kinkaid gave you, isn't it, for your land, \$800?

A. I don't remember anything more about it.

(Testimony of Lorin T. Kinert.)

Q. You never had any other check from Mr. Kin-kaid, did you? A. No.

Q. Doesn't that refresh your recollection that they simply sent you down with the deed, and told you to have it acknowledged, and instructed the bank to cash the check after you had acknowledged the deed?

A. I should judge so from that.

Q. And you acknowledged the deed before Mr. Haines there in the bank, and they then cashed the check for you? A. Yes, sir, I guess so.

Q. You said you got in line Sunday night?

A. That is my recollection; I am not positive.

Q. You lived there in the Sonna Block?

A. Yes, sir.

Q. And you saw this crowd around there and so you got in line?

A. Well, there were people getting in line.

Q. And that is what prompted you to get in, was seeing the rest?

A. Well, I don't know.

Q. Do you remember the talk among the entry-men there in line as to why it was necessary to be on the spot promptly at nine o'clock?

A. No, I don't.

Q. Don't you remember, Mr. Kinert, that they were discussing that some people were going to scrip it, and if they did you would lose your entries?

A. They probably did; I remember hearing parties mention scrip, but as to its effect on the entries I don't know.

(Testimony of Lorin T. Kinert.)

Q. There was a discussion there that there was danger of that land being scripped, wasn't there?

A. I believe I did hear something like that.

Q. You said you wasn't certain whether Mr. Kin-kaid made out your papers before you went up to the Star ranch or after you returned. You remember that at the time you went up to Star ranch you didn't know then what land you was going to have, did you? You didn't know what land you were going to locate on at all until it was pointed out to you, did you? A. No.

Q. So that when Downs gave you a description you brought that down and went and had your papers made out from that description, didn't you?

A. I can't say positively.

Q. You wouldn't have known and nobody would have known.

A. That is logical, yes.

Q. If you will look at the first papers you filed, Mr. Kinert, you will see that the description of the land is there in them. Here is the first paper you filed, September 14, 1903, that is your application to purchase the southwest quarter of section 21, township 6, range 4. You didn't have that information until after you had been up there and Downs had given it to you, did you? A. I don't know.

Q. Where did you find out what land you were going to locate on, who told you?

A. It must have been Downs.

Q. Of course it was Downs; he gave you a description of the land he pointed out, and that was

(Testimony of Lorin T. Kinert.)

the first time you had any description, wasn't it?

A. Yes, I guess it was.

Q. Now, thinking of that it must have been after you returned with the description that you went to have these papers made out, wasn't it, Mr. Kinert, in your judgment?

A. It looks that way.

Q. There is no question about it, I guess. You couldn't very well have the papers made out until you knew what you was going to locate. Now, at the time Downs located you you didn't understand that you had to take the piece he was pointing out to you, did you? If it hadn't suited you you wouldn't have had to take it, would you?

A. I don't know that my understanding of it is very definite on that.

Q. You understood that Mr. Downs was employed by you as a locator?

A. Yes, sir.

Q. And you was paying him?

A. Yes, sir.

Q. And he was working for you, and if he had pointed out a claim that hadn't had any timber on it you wouldn't have taken it, would you?

A. No, sir.

Q. The one he showed you satisfied you?

A. Yes, sir.

Q. So there wasn't any discussion about any other?

A. No, sir.

Q. You said you tried to sell to Page-Mott in February. Were they lumbermen engaged in business here?

A. Yes, sir.

Q. And were they the first ones you tried to sell

(Testimony of Lorin T. Kinert.)

to? A. I believe so.

Q. Had anybody, prior to that, made you any offer for it, or had you made any offer to sell it?

A. Not an offer; a friend of mine, Mr. T. F. Halverson, had told me, after he knew I took up a claim, that in case I wanted to sell he knew of a buyer, but I told him I didn't want to make any statements at that time that would make it appear that I had made any agreement.

Q. So you didn't have any talk at all further than that? A. Nothing further than that.

Q. Mr. Kinert, when you filed your first papers, you said, among other things, that you had entered into no agreement of any kind or character, express or implied, verbal or written, with any person, firm or corporation, by which you had agreed or promised to turn the title you might acquire from the United States over to any person whatever. That was true, was it not? A. Yes, sir.

Q. Was there any agreement at the time you made final proof? A. No, sir.

Q. Was there ever any agreement by which you had obligated yourself to transfer this land to anybody? A. None in the least.

Q. It is charged in this complaint that you made this timber and stone entry at the request of, and for the benefit of, the Barber Lumber Company, Kinkaid, Rand and the other defendants named in this action. Is that true or false?

A. It is false; I had no agreement with any of them.

(Testimony of Lorin T. Kinert.)

Q. And it is charged in this complaint that you undertook to make a timber and stone entry and go before the land office and testify to what you knew to be false, in order to defraud the United States out of certain lands. Is that true or false?

A. False.

Q. And it is charged by the attorneys here that, acting under an agreement with the Barber Lumber Company or some of the defendants, that you testified falsely at the time you made your filing and again testified falsely when you made final proof. Is that true or false? A. It is false.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. You say that Mr. Halverson spoke to you between the time of your original filing and the time of final proof and suggested to you that he would like to make some arrangements for you?

A. No, he just merely said that he understood that I had a claim, and that in case I wanted to sell he thought he could get me a buyer.

Q. And you declined to discuss that with him because you thought it was wrong to make any negotiations before final proof? A. I did.

Q. Do you still think so? A. Yes, sir.

Q. That is your understanding of the law, that it would be unlawful for you to make any arrangements for the sale of this land before you made final proof, and that if you did so it would be the commission of an offense against the United States?

A. Yes.

(Witness excused.)

[**Testimony of Rice J. Harbaugh, on Behalf of the Complainant.**]

RICE J. HARBAUGH, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Rice J. Harbaugh?

A. Yes, sir.

Q. What is your occupation, Mr. Harbaugh?

A. At the present time an engineer.

Q. What kind of an engineer?

A. Steam engineer.

Q. What was your occupation in 1903?

A. I was working for Judge Morgan, John T. Morgan.

Q. This gentleman here?

A. Yes, sir, Mr. Morgan.

Q. What was your occupation then?

A. I was working on his ranch for him at that time.

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

A. Yes, sir.

Q. I show you timber and stone land sworn statement of Rice J. Harbaugh, made September 14, 1903, and ask you if you signed that paper.

Q. Yes, sir.

Q. I show you non-mineral affidavit of Rice J. Harbaugh of the same date. Is that your signature to that paper?

A. Yes, sir.

(Testimony of Rice J. Harbaugh.)

Q. I show you testimony of Rice J. Harbaugh, given on final proof, December 7, 1903, and ask you if that is your signature to that paper.

A. Yes, sir.

Q. And the cross-examination attached. Is that your signature? A. Yes, sir.

Q. I show you deed, dated January 6, 1904, made by Rice J. Harbaugh, and Mina E., husband and wife, to George S. Long. Is that your signature to that deed? A. Yes, sir.

Q. And is that the signature of your wife?

A. Yes, sir.

Q. And you both acknowledged that deed before W. R. Prinn? A. Yes, sir.

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

A. Mr. Coleman.

Q. What Mr. Coleman? A. William R.

Q. What did Mr. Coleman say about it?

A. He said there was—he asked me first if I had ever used my right, and I told him I hadn't, and he said that the chances would be good for me to.

Q. When was this, how long before you filed?

A. Well, I don't know as I could call to memory just how long it was; it wasn't very long though.

Q. Was it a week?

A. Yes, I should think it was; possibly it might have been more.

Q. Was anything said at that time about an opportunity to dispose of this land?

A. No, sir, I don't think there was anything said

(Testimony of Rice J. Harbaugh.)

at that time.

Q. Well, did he say anything to you the next time you saw him about disposing of it?

A. He said he understood it could be disposed of.

Q. I mean before you filed you had that conversation with Mr. Coleman?

A. Yes, before we filed.

Q. Did he tell you how much could be made out of it? A. No, sir, I don't believe he did.

Q. Did he tell you he had taken up a claim?

A. No, sir.

Q. (By Mr. BUNDY.) He took one at the same time you did, didn't he? A. Yes, sir.

Mr. GORDON.—Q. Did he tell you to go and see anyone about it?

A. No, sir, he did not.

Q. Did he arrange a party for you to go up and look at this land? A. Yes, sir.

Q. Who were of the party?

A. He was one himself, Charles Faraday, and Alexander Ellis.

Q. That is Alexander Ellis, the blacksmith?

A. Yes, sir.

Q. Where did you go—to the Star ranch?

A. Yes, sir.

Q. Did you meet anyone there?

A. The next morning we met Pat Downs there.

Q. Did you know Pat Downs before that?

A. No, sir, I did not.

Q. And when you saw Mr. Downs did you have any conversation with him about what it would cost

(Testimony of Rice J. Harbaugh.)

you to locate?

A. Why it was supposed to be \$25; that was what it was to be.

Q. Who told you that? A. Mr. Coleman.

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

A. No, sir, I did not.

Q. Do you know him now?

A. Nothing only just by sight.

Q. Never talked with him? A. No, sir.

Q. And you went to the Star ranch and the next day you went out to view this land?

A. Yes, sir.

Q. Do you remember what day of the week that was?

A. I wouldn't be positive, but it seems that it was on Friday; I might be mistaken.

Q. Of course we want to know your best recollection. That was the Friday before you located?

A. That we looked at the land, I think it was.

Q. Did all of them go over the land at the same time? A. We all went together, yes, sir.

Q. Did Mr. Downs point out a piece that was for you to locate on?

A. Yes, he said we was at the corner of the land I was to locate on.

Q. Did you go over the land?

A. We went down across it.

Q. Did you go to all the corners?

A. No, I don't suppose I did, because I don't know where they were.

Q. Where is this land situated?

(Testimony of Rice J. Harbaugh.)

A. In Boise Basin.

Q. How far from the Star ranch?

A. I should judge about three and a half miles; it might be further.

Q. Where were you living at that time?

A. I was living on Judge Morgan's ranch.

Q. How far is that from Boise?

A. I think about three miles.

Q. And then you returned to the ranch?

A. Yes, sir.

Q. And how long did you remain there before you filed?

A. I think on Monday morning I came in; I think that on Saturday, if I remember right, I came in to John Kinkaid; Pat gave me the numbers and told me to go to him and he would make them out.

Q. And you went in there Saturday?

A. Yes, sir, I think it was Saturday afternoon.

Q. Did you go alone? A. Yes, sir.

Q. Now, what did you do when you went into Kinkaid's office?

A. I gave him the numbers.

Q. Did he have the filing papers already?

A. Well, sir, I can't call to memory whether he did or not.

Q. What is your best recollection.

A. Well, I don't know, but it seems to me as if the papers was made—now I may be mistaken; I wouldn't be positive as to that.

Q. You handed him the numbers and he handed you the papers; is that right?

(Testimony of Rice J. Harbaugh.)

A. I don't remember whether he handed me, or whether he finished making them out, but it seems to me that they were made out, or nearly made out; I know I waited a few minutes, it seems as if I did; anyway I got the papers there; I am positive of that.

Q. They were your first filing papers, the sworn statement and the non-mineral affidavit, and the notice of publication? A. Yes, sir.

Q. Did any of those other people that went with you to view this land, were they at Kinkaid's office at that time? A. No, they were not.

Q. What time of the evening was this that you went to Kinkaid's office?

A. I wouldn't say, but it seems to me as if it was after I got—I wouldn't say whether it was in the afternoon or after I got through work in the evening; I wouldn't be positive. A good many times we would fetch in things to the judge off the ranch in the afternoons and along towards evening, and I wouldn't be positive whether it was in the afternoon or evening.

Q. Did you pay Kinkaid anything for preparing these papers? A. I think I did.

Q. That is your best recollection now?

A. It seems to me as if I paid him; I wouldn't be positive.

Q. How much did you pay him?

A. That I don't know, I can't call to memory.

Q. You testified at the Borah trial, didn't you?

A. Yes, sir.

Q. I will ask you to refresh your recollection,

(Testimony of Rice J. Harbaugh.)

whether or not you remember this question being asked you and this answer being given: "Had you paid Kinkaid anything to make out your filing papers? A. Well, not to my knowledge, I don't think I did. Q. Did he make them out in your presence? A. I don't think so; I think the papers were made out. Q. When you got there? A. I think so; I would not be positive, but I think they were." Do you remember those questions being asked you and those answers being made by you?

A. I think I remember those questions being asked me, but, as I say, I wouldn't be positive, but it seems to me though that it might be that they wasn't made out when I was there; I wouldn't swear to that, that they was, and I wouldn't swear that they wasn't; I can't call to memory.

Q. How about the fee you paid, whether or not you paid a fee to Kinkaid for making out these papers for you?

A. Well, sir, I don't know. I don't know whether I did or whether I didn't. I wouldn't be—a year ago is a whole lot of difference than now. I might have paid him, and I might not have paid him a cent. I can't call to memory at all whether I paid him or not; I might have paid him; sometimes it seems as though I paid him \$1 or \$1.25, and I can't call to mind whether I did or whether I didn't, and I might not have paid him a cent.

Q. You paid a locating fee, did you?

A. Yes, sir.

Q. To whom did you pay that?

(Testimony of Rice J. Harbaugh.)

A. Pat Downs.

Q. When did you pay that?

A. Well, sir, I can't remember; I know I paid it shortly after I came down from there.

Q. At that time did you know of anybody that was purchasing timber claims? A. I did not.

Q. Did you know of any person that was selling timber claims? A. No, sir.

Q. And that was the first time you had ever seen John Kinkaid, was the time you went to his office to get your papers?

A. Yes, sir, that was the first time.

Q. And when he gave you the papers did you go home with them that evening? A. Yes, sir.

Q. Where was home—up on the ranch?

A. Yes, sir.

Q. And when did you return again?

A. I think I came in Monday morning, early in the morning.

Q. Did you come in Monday morning or Sunday night?

A. Well, sir, I can't call to memory whether I come in Sunday night or Monday morning.

Q. Didn't Mr. John Kinkaid tell you to come in and get into line Sunday night?

A. I can't remember; I know there was something in regard to standing in line, that there were a number standing there; whether I came in Sunday night or Monday morning I can't remember.

Q. Can't you remember whether you stayed in

(Testimony of Rice J. Harbaugh.)

line over night?

A. I can't remember whether I did or not.

Q. See if this will refresh your recollection: "And you went home? A. Yes, sir. Q. Out on the ranch? A. Yes, sir." Do you remember those questions being asked you and those answers made by you?

Mr. BUNDY.—I want to caution you, Mr. Harbaugh. The question he asks you now is just whether you now recall those precise questions being asked and those precise answers being made; the question is whether you now recollect those questions having been asked you on the Borah trial.

Mr. GORDON.—Q. Do you remember those questions and answers?

A. They surely must have been asked me if they are there.

Mr. BUNDY.—You are saying that because he is reading, rather than from your recollection. You don't know whether he is reading it right or wrong. But this question goes to your present recollection, your independent recollection. Do you know what the questions were that were asked you in the Borah trial?

A. I couldn't call many of them to my mind. If that is my testimony it surely was as I remember it at that time.

Mr. GORDON.—Q. I will ask you if this question was asked you: "Then did you come back to town? A. I think I came back Sunday evening." Do you remember whether that question was asked

(Testimony of Rice J. Harbaugh.)

you and whether you made that answer?

A. It seems to me that I remember the question being asked, and—

Q. What is your recollection as to whether you came back Sunday evening?

A. Well, sir, I can't call it to memory at all; that is a positive fact.

Q. If you had stayed in line all night in the federal building you wouldn't remember it?

A. There is a whole lot that I don't remember in three years; a man that is working has other matters in mind besides that.

Q. Don't you remember whether you stayed in line in the Sonna Building the Sunday night before you filed your papers?

A. I couldn't say; I wouldn't be positive; it seems to me I remember standing in line, but I can't call to memory standing all night; I might have done it, without a doubt. If I said I did, my mind might have been fresher on that a year ago than it is now, a good deal.

Q. I will ask you if this question was asked you, if you remember it: "How did you happen to go back there on Sunday evening to the land office and get in line? A. He told me to come back and get into line." Do you remember that question being asked and that answer given?

Mr. FRASER.—Who does "he" refer to?

Mr. GORDON.—I don't know.

Mr. GORDON.—Q. Do you remember that or don't you remember?

(Testimony of Rice J. Harbaugh.)

A. No, sir; I will tell you right now I remember something about a line.

Mr. BUNDY.—The question is, do you remember that question being asked you? He is asking you now about what you remember of your evidence in the Borah trial.

Q. (Second preceding question read by the stenographer.)

Mr. FRASER.—That question wasn't asked in the Borah trial.

The EXAMINER.—I don't think there is any question but what this question is proper. I think the question is proper, to call the circumstance to his mind.

The WITNESS.—I will tell you, the idea is this: I want to tell you the truth of this matter, but I can't call it to memory; that is a positive fact; I might have been here.

Mr. FRASER.—It isn't a question of the truth, Mr. Harbaugh, but a question of whether you remember that question being asked.

The EXAMINER.—You can state, Mr. Harbaugh; if you don't remember about it you can state it, without any instructions from anybody.

Mr. FRASER.—Counsel is misquoting the record too.

Mr. GORDON.—I object to counsel making such a statement as that. I have the copy of the record of the Borah trial that I got from the files of the clerk's office, and which has been on file ever since the Borah trial. I am reading what the record says,

(Testimony of Rice J. Harbaugh.)

and am not misquoting the record. All I know is that I got it from the files of the clerk's office.

The EXAMINER.—There isn't any question as to whether that answer was true; if he don't remember it he can say so.

Mr. GORDON.—Q. Let me ask you this question again: Do you remember the question I have read you, was it put to you on the Borah trial, "How did you happen to go back there on Sunday evening to the land office and get in line?" and whether this answer was made in response to it: "He told me to come back and get into line." Do you remember that?

A. I can't call that to memory now; that is a positive fact.

Q. Do you remember whether anybody told you to come back and get into line?

A. I remember there was something said about a line.

Q. Who said it to you?

A. I can't call to memory whether it was Coleman and the other boys that was with me or not. I know there was something said about coming back and getting into line, but the positive fact of it, calling it to memory now, I can't do it.

Q. Were you in Kinkaid's office with Coleman and the other people? A. No, I was not.

Q. Did you meet them Saturday evening? Did you meet them after you left Kinkaid's office?

A. I see them, yes sir.

Q. I will ask you if you remember this question

(Testimony of Rice J. Harbaugh.)

being asked you on the Borah trial: "What time did you get in here on Sunday evening?" and whether you made this answer: "That is hard to say, but it seems to me as if it was in the fore part of the evening." Do you remember whether that question was asked you and that answer made by you.

A. No, I can't call it to memory at all; not but what the question might have been asked; it undoubtedly was my answer, but so far as my remembering it now, I can't call it to memory.

Q. I will ask you if this question was asked you: "Did you get in line?" A. Yes, I did."

A. I know I was in line, I know that.

Q. When was the first time you remember being in line?

A. It was along in the morning, Monday morning.

Q. What time Monday morning?

A. That I can't recall; I can't remember that at all.

Q. Did you go out of line to get your breakfast, or did you get your breakfast in line?

A. I must have got it before I got into the line, either that or I didn't have any; that is the truth of that.

Q. How many people were in line ahead of you?

A. That would be hard to say; I know there was several.

Q. Were there ten, or twenty?

A. That would be hard for me to say, but I know there were quite a number of people there; I

(Testimony of Rice J. Harbaugh.)

wouldn't say how many there were.

Q. What time did you file your papers at the land office on Monday?

A. I can't call that to memory at all.

Q. And was it afternoon or evening, or when?

A. I can't call it to memory at all, but I know it was some time Monday.

Q. Did you see Mr. Kinkaid shortly after you filed these papers he gave you in the land office?

A. I think it was some time after, if I remember right.

Q. Where did you meet him then?

A. I met him on the street.

Q. Did he say anything to you about this property? A. Yes.

Q. What did he say to you?

A. I can't call to memory what he said.

Q. What is your best recollection of what he said? Did he ask you anything about proving up or having money to make final proof?

A. No, sir; no, I am sure he didn't at that time; I am sure—I think that I am mistaken there; I don't remember of seeing Kinkaid until, it was some time afterwards, after, about the time I was to make final proof, if I remember right.

Q. Did he say anything about your making final proof at that time? A. That I see him?

Q. Yes.

A. Yes, that was the only time I see him, I believe.

Q. What did he say then?

A. He asked me if I was prepared to make final

(Testimony of Rice J. Harbaugh.)

proof.

Q. What did you tell him?

A. I told him I wasn't.

Q. And what did he say?

A. If I remember right it was the last day, it was the last day to make final proof, and he asked me if I was prepared, and I told him the money I expected to get wasn't here and I intended to let it go, I told him I was going to let it go; those are the words I spoke to him.

Q. What did he say?

A. He said, "I will see," or "we will see," or something like that, "that you get the money." He told me to go down and have a talk with Alexander Ellis.

Q. Alexander Ellis was the blacksmith?

A. Yes, sir.

Q. And you went to his shop?

A. Yes, sir.

Q. And did you get it that day?

A. Yes, sir.

Q. Did Ellis have it at that time?

A. Yes, sir.

Q. Was anything said to you about whose money you should say it was? A. Yes, sir.

Q. What did they say?

A. Ellis told me—I told him I expected to get that out of the proceeds of a place I had in the east at that time—and he said "here is the money and you can go there and say it is off of your place"; he said, "It is your money," and he handed me the money.

(Testimony of Rice J. Harbaugh.)

Q. And you took that money and went to the land office and told them you got it off your place?

A. Yes, sir.

Q. How much money was given you?

A. I think it was \$400.

Q. Did you give him a note for it?

A. I can't call to memory; my wife says I gave a note, but I can't remember.

Q. Did your wife take up a claim too?

A. No.

Q. Was she with you at the time?

A. No, but she was with me at the time I sold, at the time I deeded it away, but I can't call it to my memory of ever giving a note; I possibly might have.

Q. To your recollection you don't remember giving a note? A. No, sir.

Q. But your wife told you she thought that when you got the money she saw a note returned to you, is that it? A. Yes, sir.

Mr. FRASER.—Was your wife with you when you got the money? A. No, she was not.

Q. I mean at the time you deeded the property.

A. Yes, sir.

Q. She was present at that time?

A. Yes, sir, she was present at that time.

Mr. KEIGWIN.—Q. In what form was this money that Mr. Ellis gave you?

A. I can't call to memory what form it was, whether it was gold or paper money, or what it was.

Q. It was cash? A. Yes.

Mr. GORDON.—Q. When you went to the land

(Testimony of Rice J. Harbaugh.)

office you gave the money to Mr. Garrett, the receiver? A. Yes, sir.

Q. And he gave you a temporary receipt for it?

A. Yes, sir.

Q. And what did you do with that receipt?

A. I kept it for some time; then Mr. Kinkaid said he wanted it.

Q. You finally gave it to Mr. Kinkaid?

A. I finally gave it to Mr. Kinkaid later on, yes, sir.

Q. Now at that time did you know of anybody that was purchasing timber claims?

A. At that time?

Q. Yes. At the time you made your final proof.

A. I don't remember; it seems to me though as if I did; I can't call to memory; it seems as if I did.

Q. Who was it that you knew that was buying?

A. Why, supposed to be the Barber Lumber Company, I believe.

Q. When did you first learn that the Barber Lumber Company was buying?

A. I can't call to memory at all.

Q. Was it before you made your final proof, before you got this money from Ellis, do you remember?

A. Well, sir, I can't call to memory; I might have known it before that; it seems to me as if I did, but I wouldn't be positive.

Q. Ellis tell you of anybody that was buying?

A. I don't think so; I think Coleman was the first one that told me about it.

(Testimony of Rice J. Harbaugh.)

Q. When did Coleman first tell you that the Barber Lumber Company was buying claims?

A. I can't call that to my memory now.

Q. Do you know whether it was before you went up to look at the land?

A. I know at the time I went to look at the land I wasn't positive who I was going to sell it to.

Q. But you had in mind somebody you didn't know would buy it?

A. That was the supposition—Mr. Coleman—at any rate I took his word for it and related it to my wife. I wouldn't say who was going to buy it, or anything about it.

Q. Now you turned this final receipt you had over to Mr. Kinkaid before you made the deed, as I understand you.

A. Yes, sir.

Q. How long before?

A. Well, sir, I can't call that to memory.

Q. Well, was it shortly after you received the receipt?

A. I can't remember; it don't seem to me though as if I had the receipt very long.

Q. And when you handed him the receipt did he tell you to come back again?

A. I don't remember what the conversation was or whether there was any conversation at all.

Q. Did he say anything to you about selling the land at that time?

A. I can't remember.

Q. Did you see him afterwards, after you gave him the receipt, before you sold to him?

(Testimony of Rice J. Harbaugh.)

A. I met him on the streets.

Q. And what did he say to you?

A. Some time after that, and he said he had found a buyer for the land and for me to come up and make out a deed and he would pay me the money for the land, or something like that; that might not possibly be it, but that is the substance of it.

Q. Does this refresh your recollection: "What conversation took place on the street? He told me whenever I got ready to turn the deed over that the money would be ready for me, that they were ready to buy the land." Do you remember that question and answer? A. It seems to me I do.

Q. What did you do, how long after that was it before you went to sell this land?

A. I can't call that to memory at all, how long it was.

Q. Several days?

A. I couldn't say; I wouldn't be positive how long it was.

Q. Well, you finally did go to Mr. Kinkaid's office to make a sale of this land?

A. Yes, sir.

Q. What did you say to him when you went?

A. I told him I had come up to sell him the land.

Q. And how much money did he give you?

A. He give me \$412, or something like that; I wouldn't be positive; it might not have been over \$400, but it was something like that.

Q. And do you remember whether anything was said at that time about the money you got from Ellis?

(Testimony of Rice J. Harbaugh.)

A. I can't call to memory at the present time, no.

Q. You don't know whether anything was said about the money you got from Ellis or not?

A. No, sir, I can't call to memory whether there was or not; there might have been and there might not have been.

Q. And when you went there was this deed that you signed already made out?

A. Yes, sir, I think it was.

Q. And you signed it at that time?

A. Yes, sir.

Q. Was your wife with you at that time?

A. Yes, sir.

Q. Did you ever pay Ellis back his \$400?

A. Not to my knowledge.

Q. Was anything said in Mr. Kinkaid's office between you and him about money?

A. I don't think there was.

Q. You left it to Mr. Kinkaid as to what he should give you, did you?

A. Oh, in regards to the price of the land?

Q. Yes.

A. Well, I do too, there was something said in regard to the price.

Q. What was said?

A. I told him I didn't think it was enough for the land.

Q. What did he say?

A. He said that was all they were paying for any of it.

Q. Do you remember whether this question was

(Testimony of Rice J. Harbaugh.)

asked you on the Borah trial: "What was said about the \$400 you got there or about the amount you were to get, if anything? A. Well, I was expecting to get more out of the place than that myself." Do you remember that question being asked you and that answer being made by you?

A. Yes, I think I do.

Q. And the next question: "Did you leave that matter to Kinkaid? A. Yes, I left it to him." Is that right? A. I guess that is right.

Q. "Did you say anything when he handed you \$400? A. I don't remember whether I did or not at the present time." Is that right?

A. Yes, sir.

Q. "In what shape was the money handed to you? A. Gold."

Mr. BUNDY.—What are you putting this evidence in for, Mr. Gordon—to impeach, or what?

Mr. GORDON.—No, I am trying to refresh his recollection. If you have any objection to the way I ask these questions make your objection.

Mr. BUNDY.—Life is too short.

Mr. GORDON.—It wouldn't take up quite as much time as it does with you talking all the time.

Q. In what shape was the money handed to you?

A. I think it was in gold, I wouldn't be positive.

Q. Did Mr. Kinkaid say anything to you at that time about that you understood the proposition?

A. I can't call to memory now.

Q. You don't know whether he did or not?

A. I can't call to memory, no.

(Testimony of Rice J. Harbaugh.)

Q. Did you ever make any other deed but the one I have shown you?

A. Not to my knowledge.

Q. Were you ever asked to make another deed?

A. No, sir.

Q. I think you said something about that they told you, Mr. Ellis told you to say that you had gotten the money from your property.

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, what Mr. Ellis told him, Mr. Ellis not being party defendant.

Mr. GORDON.—Is that right?

A. Yes, sir.

Q. You remember when you went to the land office that you were asked questions as to where you got the money you were paying for this land?

A. Yes, sir.

Q. And I will ask you if you didn't make this reply: "From the rent of my farm in Michigan. Just received money to-day." You made that answer?

A. Yes, sir.

Q. And the money you paid in you got from Mr. Ellis?

A. Yes, sir.

Q. I will show you an affidavit made by Rice J. Harbaugh, December 7, 1903, and ask you if you signed that?

A. Yes, sir.

Q. And swore to it before Mr. Syms, the register?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Rice J. Harbaugh, dated September 14, 1903; the non-mineral affidavit

(Testimony of Rice J. Harbaugh.)

of the same date; the testimony of Rice J. Harbaugh, given on final proof, dated December 7, 1903; and the cross-examination attached, all of which have been identified by Rice J. Harbaugh as having been signed by him; the notice of publication, dated September 14, 1903; the affidavit identified by Rice J. Harbaugh, as having been signed by him, dated December 7, 1903; the testimony of the other witnesses on final proof; the receiver's receipt, and the register's certificate, dated December 7, 1903; the deed, made by Rice J. Harbaugh and Mina E., dated January 6, 1904, to George S. Long, consideration \$800, which has been heretofore identified by Rice J. Harbaugh as having been signed and executed by himself and wife; certified copy of the patent, dated December 29, 1904; certificate of recordation; all to the south half of the southwest quarter, and the northwest quarter of the southwest quarter, and the southwest quarter of the northwest quarter of section 22, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 122A to 122O, inclusive.)

Mr. KEIGWIN.—Let me ask you some questions, Mr. Harbaugh. How far is this land which you entered from Boise?

A. I should think about thirty-five miles.

Q. How long did it take you to go up there?

A. If I remember right, we left here about nine o'clock in the forenoon; it might have been later; I wouldn't say; anyhow we drove to the Star ranch that afternoon of that day.

(Testimony of Rice J. Harbaugh.)

Q. Where did you start from in Boise?

A. The rig started from here. I met them, it seems to me as if I met them out there, and I wouldn't say positive whether I started from here with them or not.

Q. How did you get up to the Star ranch?

A. With the team.

Q. That was the team you started with from here? A. Yes, sir.

Q. Do you mean you joined them on the road?

A. I wouldn't be positive whether I did or whether I didn't.

Mr. BUNDY.—They went by your ranch, didn't they?

A. No, they didn't go by the ranch; they did go close to it though.

Mr. KEIGWIN.—Q. You got up there in the afternoon of the one day? A. Yes, sir.

Q. And looked at the land the next day?

A. Yes, sir.

Q. And got back late in the evening?

A. Yes, sir.

Q. Do you remember how much a team would cost you to go up there and back?

A. I can't call to memory how much it did cost; I remember we paid it anyway.

Q. Can you tell how much such a team would cost now? A. Well, sir, I have no idea at all.

Q. Have you any idea how much it did cost at that time?

A. No, I just told you I couldn't remember; I

(Testimony of Rice J. Harbaugh.)

can't remember exactly what the team cost; I remember the four of us hired the team, and I paid my share of it.

Q. You paid one-fourth? A. Yes, sir.

Q. Do you remember how much you paid at the time you made your filing in the land office?

A. No, I can't recall that to memory, how much I paid.

Q. Do you remember that you paid a fee?

A. I paid a fee anyway, but just what it was I can't call to memory.

Q. Do you remember that you paid about \$7.50 for advertising?

A. I know there was a fee for advertising and filing fees.

Q. But you don't know how much?

A. I can't just call to memory; it might have been \$7 and it might have been \$12; I wouldn't say positive, but I paid it anyway.

Q. At the time you made the filing you were working for Judge Morgan; what were you doing for him? A. Working on his ranch.

Q. In what capacity?

A. Working his place.

Q. In what capacity—were you foreman?

A. Just a common laborer was all.

Q. Do you remember what the judge paid you at that time?

A. I don't know as I could call to memory just what the judge did pay me—maybe I could—I can't call to memory; I know it was my first season in

(Testimony of Rice J. Harbaugh.)

Idaho, I remember that, and I remember the wages wasn't very heavy.

Q. Do you know what was usually paid for that kind of work? A. No, sir.

Q. Were you still working for Judge Morgan at the time you made your final proof?

A. No, sir, I was not.

Q. For whom were you working then?

A. I don't know who I was working for.

Q. Do you remember that at that time you were working for the Peaseley Transfer Company?

A. I think that's right.

Q. You did work for the Peaseley Transfer Company?

A. Yes, after I quit Mr. Morgan, yes, sir.

Q. This was in the winter of 1903? Do you remember what you were employed for by the Peaseley Transfer Company? A. Yes, sir.

Q. Do you know what it paid you?

A. \$60 or \$65 a month, something like that.

Q. How old were you at that time, Mr. Harbaugh? A. About twenty-nine.

Q. You know how old you are now?

A. Pretty near; I can count my fingers.

Q. Were you married?

A. Yes, sir, I was married.

Q. Did you have any children?

A. Yes, sir.

Q. How many? A. Two children.

Q. How old were they?

A. One was about three years old, and the other

(Testimony of Rice J. Harbaugh.)

two, I guess, something like that.

Mr. BUNDY.—Are you trying to demonstrate that Mr. Harbaugh was too poor to take up a timber claim?

Mr. KEIGWIN.—No, not trying to demonstrate, but I want to find out the situation sometimes.

Q. Did you have a farm in Michigan?

A. Yes, sir.

Q. What did you do with it?

A. I sold it.

Q. When?

A. Two or three years ago, something like that.

Q. Do you remember how much you got for it?

A. I sold and traded it together; it would be hard to say how much I did realize out of it.

Q. Was that a farm you owned, or was it an interest in your father's estate?

A. It was a farm I owned.

Q. In 1903? A. Yes, sir.

Q. What was the area of the farm?

A. It was a fractional piece of land, a fractional thirty-seven acres at that time.

Q. What was it worth?

A. Well, I don't know.

Q. Ten dollars an acre?

A. I guess it was, and then some.

Q. But you don't know whether you sold it for as much as \$10 an acre?

A. Yes, I got more than \$10 an acre out of it when I did sell it; I don't know as it is a positive fact that I need to tell how much I did get for it.

(Testimony of Rice J. Harbaugh.)

Q. You needn't tell if you don't want to.

A. I don't think it has any bearing on this case; at least I don't think so.

Mr. BUNDY.—The Government wants to show that you are a pauper and couldn't have made an entry.

Mr. KEIGWIN.—I should like to inquire whether that is a proper remark to be made to a witness who is under examination.

The EXAMINER.—We would better proceed with the examination.

Mr. KEIGWIN.—I will take the ruling of the Examiner for the time being.

The EXAMINER.—I think that Mr. Bundy, of course, should make objection to your questions whenever he wishes.

Mr. BUNDY.—I make that as an objection, and I ask that all questions relating to his farm in Michigan be stricken out as incompetent, irrelevant and immaterial.

Mr. KEIGWIN.—That doesn't meet my suggestion.

The EXAMINER.—Of course, Mr. Bundy understands that it is not proper for him to suggest—

Mr. BUNDY.—I am not trying to suggest anything to you, Mr. Harbaugh, at all.

The EXAMINER.—Proceed with the examination, if you please.

Mr. KEIGWIN.—I simply wish to record this objection then for use in court, and we ask that the comment of Mr. Bundy be accorded such considera-

(Testimony of Rice J. Harbaugh.)

tion and such treatment as it appears to the court to merit.

Q. At the time you made this entry did you own any property here in Idaho?

A. No, sir, I think not at the time I made that filing.

Q. At the time you made your final proof had you bought any property? A. Yes, sir.

Q. Was it a home? A. Yes, sir.

Q. You made a part payment on it?

A. Yes, sir.

Q. And you are still in debt for the balance?

A. No, sir.

Q. Did you owe anything on it?

A. I did at that time, yes, sir.

Q. You were at that time still in debt for the balance? A. Yes, sir.

Q. Do you remember how much the balance was at that time?

A. I can't call to memory just exactly what it was.

Q. Do you remember that there was a mechanic's lien or builder's lien—

A. I paid that off; I traded and paid it off; I bought it subject to that.

Q. Do you remember the amount of that lien?

A. If I remember right, it was something less than \$100.

Q. Wasn't it something more than \$100?

A. No, I think not; still it might have been; I think though that it was something less than \$100.

(Testimony of Rice J. Harbaugh.)

Q. When you went to see Mr. Kinkaid after you had made your proof and took your receipt to him, do you remember that you said anything to him about your understanding that the land was worth a good deal more than he wanted to pay for it?

A. I don't know as it was the time I took that final receipt there; I don't know in regard to that; there was something said, if I remember right, at the time I made the deed.

Q. At that time what was said?

A. I can't call to memory just what was said.

Q. Do you remember this, that when Mr. Downs showed you this land he told you that there was about a million and a half feet of lumber on it?

A. It seems to me it was.

Q. And that it was worth about \$1 a thousand, which would make about \$1,500. Do you remember that?

A. It seems as if I do.

Q. Do you remember that you told Mr. Kinkaid on that occasion that you thought you were to get \$1200 or \$1500 for the land?

A. There was something said; I can't call to memory just the conversation, what it was; I know there was something said in regard to the price of the land, but I can't call it to memory.

Q. Do you remember as a fact that you expected to get something like \$1200 or \$1500 for the land, upon Mr. Downs' estimate?

A. I know I expected to get more than I got out of the land.

Q. What did Mr. Kinkaid say when you ex-

(Testimony of Rice J. Harbaugh.)

pressed that idea?

A. He said that was all they was paying for any of it, that they had bought the land around it, or something in regard to it, and he said that was all they was paying for any of it.

Q. Did Mr. Kinkaid say to you that he thought that you had understood what you were to get for it?

A. I don't know; he might have; I can't call to memory what he said in regard to that.

Q. Do you remember that Mr. Kinkaid on that occasion, or on some other occasion about that time, said to you, in substance, that he supposed all along that you understood how much you were to get for it?

A. I can't remember; it seems as if there was something said in regard to that, but I can't just call to memory; I know that I didn't understand nothing, as far as that is concerned.

Q. Do you remember that Mr. Kinkaid said to you that he supposed you understood?

A. I don't know; he might have said that; there was something that passed anyway; whether that was it exactly or not it would be hard for me to recall, but I know I was expecting to get more out of the land than what I got out of it.

Q. Do you remember that Mr. Kinkaid said to you on that occasion, or on another occasion at about that time, that if you didn't sell for \$800 they would cut the timber off of it?

A. I can't call that to memory at all.

Q. You think he didn't say that?

(Testimony of Rice J. Harbaugh.)

A. I don't know; I ain't positive that he didn't, but I haven't any memory of that.

Q. Do you remember then that someone else, in advising you to sell to Kinkaid, suggested to you that if you didn't sell at that price that they would cut the timber off?

Mr. BUNDY.—Who do you mean by "they"?

A. I don't remember.

Mr. KEIGWIN.—Q. You never had that advice from anybody?

A. I don't know; I can't call it to memory; I might have had.

Q. If you did have that advice you don't recall it now? A. No, I don't recall it now.

Q. Do you remember that in the month of March, 1907, you gave an interview to the then United States Attorney of this district, Mr. Ruick, in regard to this entry of yours?

A. I think that it was 1907; I know it was two years ago, if I remember right, yes, sir.

Q. Who else than Mr. Ruick was present at that interview? A. Mr. Johnson.

Q. Mr. Johnson was the assistant district attorney.

A. Mr. Wade, I believe, I think his name was Wade.

Q. And who else?

A. His stenographer was with him.

Q. Who was his stenographer?

A. I don't know I am sure.

Q. Mr. Oppenheim?

(Testimony of Rice J. Harbaugh.)

A. I wouldn't be positive.

Q. What sort of a looking man was he?

A. I don't know as I would know him if I see him.

Q. Young man or old man?

A. I don't know; I think he was a young man.

Q. Twenty-five or thirty?

A. You have got me.

Q. Short and curly hair?

A. I wouldn't know him if I see him. I know they was going to cinch me right away; they was going to have me in the pen right away if I didn't go on and do what they said, and they went on, and if I meet them out on the street they would keep their distance from me, the whole bunch of them, as far as I am concerned.

Q. What do you mean by that?

A. I intended to tell them the truth, and I did tell them the truth, and they didn't believe it, and I will state right here in court, and they went on and Mr. Johnson called me a liar, and of course he had the best of me; he was an officer of the law, but if he had been out doors I wouldn't care for his size, it wouldn't cut no ice with me whatever.

Q. You did tell them the truth?

A. I was telling them the truth right along.

Q. So that you were not induced by any threats—

A. They said if I would come out and tell them the truth that was all they wanted; they said the Government wasn't after me, they was after the corporation, and if I would come out and tell the truth it would be all right, and if I didn't they would cinch

(Testimony of Rice J. Harbaugh.)

me right away.

Q. All they asked was that you tell the truth?

A. Yes, sir.

Q. And you told the truth?

A. Yes, sir; I told the truth as near as I remember.

Q. And you didn't tell them anything that wasn't the truth?

A. I didn't intend to; some of these lawyers, you can't tell, they will make you lie whether you want to or not.

Mr. BUNDY.—Did they tell you you were lying?

A. Yes, they called me a liar right to my face. I never met this Mr. Johnson, but I think the time will come when I will meet him, and we will have a satisfactory settlement, if it costs me a month's wages.

Mr. KEIGWIN.—Q. But all his threats and all his offensive language didn't get anything out of you that was not true?

A. I didn't want it to anyway.

Mr. BUNDY.—Q. Do you know whether they put it down the way they thought was the truth or the way you told them?

A. I don't know what they put down. Undoubtedly those questions if they put it down. What I answer here was supposed to be the truth, as near as I remembered. That is what I am here for.

Mr. KEIGWIN.—Q. Now, Mr. Harbaugh, will you follow my reading and tell me as best you can whether or not, on the occasion of your interview, concerning which you have testified, with the late

(Testimony of Rice J. Harbaugh.)

United States attorney, these questions were put to you and these answers made by you, which I now proceed to read: "Q. You had a talk with Wells and Kinkaid, didn't you about this land? A. No, sir; Mr. Wells was a man that I never met. Kinkaid came to me shortly after that and told me, or Downs told me he could find a buyer for this land. Q. For how much? A. The price paid him and me didn't suit me. Q. What was it? A. He was only paying \$800. Q. Well, what took place? A. Kinkaid come to me and told me, he says, 'That is all we will pay and all we will pay anyone.' Q. All we will pay? A. Yes, sir, that is just the way he spoke; he says, 'That is all we will pay anyone,' he says, 'we will cut around you and leave your timber here.'" Now, Mr. Harbaugh, do you remember whether or not those questions were put to you and those answers made by you on that occasion?

A. I think I do.

Q. Were they or were they not?

A. I think they were.

Q. And can you tell now whether or not those answers were correct according to your understanding at that time? A. I think they were.

Q. Now, Mr. Harbaugh, I will ask you to give me your attention for a moment again, and ask you whether or not you remember these questions as being put to you on that occasion and these answers as being made by you which I now read: "Q. Wasn't it the context showing that the pronoun refers to the deed, wasn't it turned down so that you couldn't see

(Testimony of Rice J. Harbaugh.)

the top of it? A. It possibly might have been; I know Kinkaid asked me three or four different times, and he spoke to me and he says, 'You understand this proposition,' and I says, 'No, sir; I never understood this proposition at all,' nor did I until I got pretty well through the deal. Q. What do you mean by that? A. After I got into it, and got straightened up, I saw how the thing was worked." Now do you remember those questions as being put to you and those answers as being made by you on that occasion?

A. I don't remember all of them; there is some of them there that might be all right.

Mr. BUNDY.—It isn't a question of being all right, but whether you remember them.

Mr. KEIGWIN.—What do you remember as having been put to you? (After a pause.) Well, do you remember that you gave this answer, that Mr. Kinkaid had said to you that you understood this proposition and you told him "No, sir, I never understood this proposition at all"?

A. I can't call it to memory; it is impossible for me to do it. Some of it there I can remember and some of it I can't remember.

Q. Now, I will put the question to you in this way, Mr. Harbaugh. Does this so far refresh your memory that you can say whether or not you ever had a conversation of that kind with Mr. Kinkaid?

A. I never had a conversation with Mr. Kinkaid in regard to the sale of this timber at all; not in the least; that is a positive fact.

(Testimony of Rice J. Harbaugh.)

Q. Not until you went there to sell the land?

A. No, sir; not until I went there to make the deed.

Q. On that occasion did he say to you that he thought you understood that proposition?

A. It seems as if he did.

Q. Well, then, this report may be correct?

A. It might be, and again it might not be; it might not be worded just exactly the way that was.

Q. Now, I will ask you to listen to this again, Mr. Harbaugh, and see if it refreshes your memory again in any way: "Q. Give us the conversation as near as you can, what he told you that caused you to have that view. A. Well, there was only a few words passed; he says, 'You certainly understood this proposition,' like that, when I thought it was too little money to let a piece of timber go for that amount, and he spoke up and says, 'You understood this proposition,' and I says, 'No, sir, I didn't understand this.'" Do you now remember those questions being asked of you and those answers given by you on that occasion?

A. I can't call them to my memory; I remember there was something said in regard to that, but whether—

Mr. BUNDY.—Something said in the sweat-box, do you mean? A. Yes, sir.

Mr. KEIGWIN.—You understand, Mr. Harbaugh, that in asking these questions I don't expect you to testify as to the exact language that was employed, but only whether or not substantially what

(Testimony of Rice J. Harbaugh.)

I am reading occurred.

A. Yes, I don't doubt though, but what the substance of it might have been that way. I can't call to memory just exactly what it was. I know there was something like that, but I can't call it to memory. Two years makes a whole lot of difference. A man that has nothing else on his mind—

Mr. BUNDY.—I desire now to interpose an objection to the evident attempt to impeach this witness, who has been called by plaintiff, and I desire further to object to the manner of laying the foundation of impeaching evidence and asking him if he stated the substance, after reading the words, my understanding being that if he is impeached by any sweat-box statement it should be the exact language used.

Mr. KEIGWIN.—Do you remember, Mr. Harbaugh, upon your examination in the trial of Senator Borah, that these questions were asked you and these answers given by you, which I now read: “Q. Now, do you remember Kinkaid stating in that connection that you certainly understood the proposition, or words to that effect? A. Why it seems to me as if he did. Q. What was said, as near as you can now recollect it? A. I don't know as I can recall just what he said. Q. Give us the substance, as near as you can give it. A. I don't know. That would be impossible for me to do. I think that was all that was said; I think he said, ‘You understood the proposition’; I think that is about all he said. Q. What did you say? I told him I didn't understand it that

(Testimony of Rice J. Harbaugh.)

way. I took the money and went out." Now referring to your testimony at the trial of Senator Borah, do you remember those questions being asked you and those answers given by you?

A. I think that is right.

Q. That is a correct statement of your testimony?

A. I think it is.

Q. Well, now, having thus gone over this matter—

A. It seems to me as if I have answered that two or three times, that same statement. If I remember right, I told you before that I didn't understand the proposition.

Q. I don't think you did.

A. Yes, I told you a long while ago, in the fore part of my statement, that I didn't understand the proposition.

Q. You didn't tell me whether you remembered making the statement.

Mr. BUNDY.—The question isn't at all, Mr. Harbaugh, as to the fact; the question is as to your recollection of the testimony.

The EXAMINER.—You are not required to verify these statements at all. The question is, whether you recollect these questions being asked you.

A. I remember those questions being asked me in the Borah trial.

The EXAMINER.—We are not asking you whether they are correct or not.

Mr. KEIGWIN.—Q. I understand that you do

(Testimony of Rice J. Harbaugh.)

now remember, as a matter of fact, that Mr. Kinkaid did say to you that he thought you had understood the proposition, and that you told him you had not. Do you remember that? A. Yes, sir.

Q. Now, Mr. Harbaugh, at the time of your interview with the district attorney, which Mr. Bundy has so felicitously characterized as the sweat-box, do you remember that these questions were asked you and that these answers were given by you, which I now read: "Q. After you had your final receipt what did you do with it, take it to Kinkaid? A. No, not at that time, I didn't. Q. When was it, the next day, or the day after that? A. No, I don't remember just how long it was; it seems to me it was quite a few days afterwards; it was quite a little while afterwards anyway; he kind of looked me up about it. Q. He sent for you, did he? A. No, he looked me up personally, if I ain't mistaken. Q. Anyway he found you? A. Yes, sir. Q. Where was you when he found you? A. I can't remember, but at that time Peasley's office was right where the Idaho Trust & Savings Bank is, and he sent for me and asked me if I had the final receipt, and he asked me why I didn't come around; I told him I didn't know it was necessary for me to turn it over to him. Q. What did he say? A. He said that he had to have that, that they had furnished the money, and I told him I didn't know whether it was his money or whose it was. Q. He said it was his? A. No, he mentioned 'we.' Q. What did he do, ask you to come to the office? A. He told me to fetch that up to

(Testimony of Rice J. Harbaugh.)

the office, and I did so." Do you remember these questions being asked you and those answers given at your interview with the district attorney?

A. I can't call them to memory now.

Q. I understand you don't know whether they were asked you or not?

A. I can't call them to memory at all.

Q. Now, Mr. Harbaugh, as a matter of fact, do you now recall whether or not Mr. Kinkaid looked you up and told you that he wanted your final receipt and said that they had furnished the money?

A. I can't call that to memory. I remember he met me there by Peasley's office and said he wanted the final receipt, but I don't remember any such conversation as that taking place.

Q. He did meet you and ask you for the final receipt?

A. Yes, I remember his asking me for the final receipt, but I can't call to memory any conversation like that.

Q. Was that before or after you made your final proof?

A. I couldn't very well get it before I made final proof unless things was changed a little bit.

Q. Was it when you had your temporary receipt or final receipt? I want to find out what the witness can tell me. Did you have a temporary receipt, Mr. Harbaugh?

A. I had a receipt when I paid the money, the \$400.

Q. That was the only receipt you got?

(Testimony of Rice J. Harbaugh.)

A. Yes, sir.

Q. And it was after that that Mr. Kinkaid asked you to let him have that receipt? A. Yes, sir.

Q. Do you remember that he gave you any reason for wanting that receipt?

A. I can't call it to memory now.

Q. He might have told you that it was because he furnished you the money?

A. More likely not to have been.

Q. More likely not to have been.

A. Yes, sir, I can't call that to memory at all.

Q. You don't remember that you told the district attorney anything of that kind?

A. I can't call it to memory, no, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. I want you to look this sweat-box scheme over with me here, just so you will notice, Mr. Harbaugh, that it is all questions and answers; that is what I want to call your attention to. Calling your attention to the fact that it is all question and answer, now, Mr. Harbaugh, I have shown you a typewritten document here, headed, "Statement of Rice J. Harbaugh, Boise, Idaho, March 22, 1907," consisting of twenty pages, typewritten matter, all of which appears to be in the form of question and answer, and which counsel for the Government has had before him as he has examined you. Now, in your conversation with the district attorney there was a good many things said, was there not, besides questions and answers? A. Some, yes.

(Testimony of Rice J. Harbaugh.)

Q. And from that statement and from your knowledge of that fact, I will ask you as to whether or not this statement contains all you told them or whether it contains a part of it.

A. I am positive it don't contain all.

Q. I am too, Mr. Harbaugh.

A. They very likely wouldn't take it down and present to the court all I told him.

Q. You never have seen that document before?

A. Not to my knowledge.

Q. It wasn't shown to you after it was run off to see that they correctly recorded your answers?

A. No, sir.

Q. And many of these things you have no recollection of at the present time, of ever stating to the district attorney; isn't that so?

A. I can't call a good many of them to mind.

Q. Now, Mr. Harbaugh, you and Mr. Coleman and Mr. Alexander Ellis together went up to take up this land, and another gentleman by the name of Faraday.

A. Yes, sir.

Q. Mr. Ellis was at that time a blacksmith here in the city?

A. Yes, sir.

Q. And Mr. Coleman worked for him?

A. Yes, sir.

Q. And Mr. Coleman is a brother in law of yours?

A. No, sir; a second cousin to my wife.

Q. And is he a relative of Ellis'?

A. No, sir.

Q. And are you a relative? A. No, sir.

Q. You three gentlemen, Ellis, Coleman, and

(Testimony of Rice J. Harbaugh.)

yourself, were very intimate friends at that time?

A. Yes, sir.

Q. And those two were really your most intimate friends, were they not? A. Yes, sir.

Q. And the first idea of taking up timber claims originated within the three of you somewhere?

A. Yes, sir.

Q. And acting upon the suggestion you finally went up to the timber in question and Pat Downs located you? A. Yes, sir.

Q. You have already said that you paid the expenses of going up there and livery team.

A. I did.

Q. Your share of it? A. Yes, sir.

Q. And paid your expenses, if there were any, up at the hotel? A. Yes, sir.

Q. And paid Patrick Downs a locating fee of \$25? A. Yes, sir.

Q. And came back to the land office here and filed your original papers and paid whatever fees were required by the land office? A. Yes, sir.

Q. And all of those payments were made by you from your money that you had earned, without borrowing from anybody? A. Yes, sir.

Q. Up to that time, up to the time you filed your first papers, Mr. Harbaugh, had you any arrangement or agreement or contract, in writing or verbal, express or implied, with any person, firm, or corporation whatever, by which you had agreed to turn over or transfer to them or to such person as they should direct the title which you might acquire from

(Testimony of Rice J. Harbaugh.)

the United States? A. No, sir.

Q. Was there any such agreement in existence, of which you were a party, or of which you knew, at the time you made your final proof?

A. No, sir.

Q. Did you enter this land for the benefit of any person other than yourself?

A. No, sir; I did not.

Q. Did any person other than yourself have any interest whatever, as a mortgagee, or under any kind of contract, in the title which you acquired from the United States? A. No, sir.

Q. It is charged in the complaint in this action, Mr. Harbaugh, by these gentlemen who have called you on behalf of the Government, that you entered this timber and stone claim for the benefit of and at the request of the Barber Lumber Company and the other defendants in this action. Is that true or is it false? A. It is not true.

Q. And it is alleged in this complaint in this lawsuit we are trying that you entered into an agreement whereby you undertook to make an entry at the request of and for the benefit of the Barber Lumber Company and the other defendants and then go before the land office and at their request and at their solicitation testify falsely, in order to defraud the United States out of one hundred and sixty acres of timber land. Is that allegation, as far as you are concerned, true or false? A. No, sir.

Q. The question is, is it true or false?

A. It is not true.

(Testimony of Rice J. Harbaugh.)

Q. At the time you filed on this land, by which I mean when you filed your first papers, had you thought of the method by which you would pay for it when the time came around? A. Yes, sir.

Q. And how did you expect to pay for it at that time?

A. I expected to get part of it from my place and part of it from my father.

Q. Did you, before this money was paid to you by Mr. Ellis, make an effort to get the money elsewhere?

A. I wrote east for it, yes, sir.

Q. And how long before the time you got the money from Mr. Ellis was it that you learned that you would be unable to get it from that source?

A. It wasn't very long before that, because I think it was about three months before that I wrote to my father, and he was away at that time, he was in Ohio, and the letter didn't get to him, and when he came back he said it would be impossible for him to get the money by that time.

Q. By the time you proved up?

A. By the time of proving up; that was what he said.

Q. So that up to the time you got word from your father that it would be impossible for him to accommodate you, you had depended upon getting the money from that source?

A. I had depended on getting it from that source, yes, sir.

Q. Had you, up to that time, had any talk with Kinkaid, Mr. Ellis, Mr. Coleman, or anybody else

(Testimony of Rice J. Harbaugh.)

here with reference to furnishing you money to prove up on? A. No, sir; I did not.

Q. At the time Mr. Ellis gave you this money didn't he also get some money for Mr. Coleman, or didn't you know anything about that?

A. I didn't know anything about that; no, sir.

Q. Did you understand from Mr. Ellis that the money that was being furnished to you was John Kinkaid's money?

A. No, I did not; he didn't say.

Q. Do you know now whose money it was?

A. No, sir; I couldn't swear whose money it was.

Q. At the time Mr. Ellis gave you this money did he say to you in substance or in effect that by taking that money you were selling your land?

A. No, sir; he did not.

Q. Did he say to you or give you to understand in any way that by taking that money any other person, firm, or corporation thereby acquired a lien or interest on the title you might acquire?

A. No, sir.

Q. Did you understand, Mr. Harbaugh, when you took that money from Mr. Ellis, that by doing that anybody else had any right, title, or interest in that claim? A. No, sir.

Q. Never did understand it? A. No, sir.

Q. Now, at the time you were in this, what I call the sweat-box, did the Government officers tell you that by borrowing money or taking money from anybody to prove up with you had violated the law?

A. Yes, sir.

(Testimony of Rice J. Harbaugh.)

Q. And did they tell you at that time that unless you testified as they thought the truth was that they would prosecute you for so doing?

Mr. KEIGWIN.—For doing what?

Mr. BUNDY.—For taking the money from someone else and proving up on the land.

Mr. KEIGWIN.—How did they know you got the money from someone else? A. I told them.

Q. It was after that that they threatened prosecution? A. Yes, sir.

Mr. BUNDY.—Q. So that at the time they had you in the sweat-box they told you that it was against the law for you to take this money from someone else to make this proof? A. Yes, sir.

Q. You are not a lawyer? A. No, sir.

Q. And so far as you knew that was the law?

A. Yes, sir; I didn't know it until a year ago, something like that.

Q. It never was, but they told you it was. Now, after you had taken this money from Mr. Ellis and paid it to the land office and got your final receipt, you say that you didn't take it to Mr. Kinkaid?

A. No, sir; I didn't.

Q. Had anybody up to that time told you to take it to Mr. Kinkaid? A. No, sir.

Q. Did Mr. Ellis tell you to take it to Kinkaid?

A. No, sir.

Q. When did you first learn that that was Mr. Kinkaid's money?

A. I don't know to this day; I couldn't take my oath that it was Mr. Kinkaid's money.

(Testimony of Rice J. Harbaugh.)

Q. It was, Mr. Harbaugh, but we won't discuss that. When were you first told that it was his money?

A. I don't know; he didn't say anything about the money; he says, "Have you the final receipt"? And I says, "I have," and he said, "Where is it"? And I says, "Up home," and I asked him why he wanted it, and anyway I give him the final receipt.

Q. And you gave it to him at that time on the presumption that it was as security for the money he had advanced you? A. I supposed it was that.

Mr. KEIGWIN.—Q. Did he tell you that he wanted it as security for that money?

A. I don't remember that he did.

Mr. BUNDY.—Q. You gave it to him on the supposition, as I understand it, that it was security for the money.

A. Yes, that is the way I looked at it.

Q. Then some time after that you went to Mr. Kinkaid and gave this deed, at which time he told you that \$800 was what they were paying, and you objected to that, as you have testified, and then he said in substance, asked you if you didn't understand the proposition. A. Yes, I think so.

Q. What proposition did he refer to—the price?

A. I don't know unless it would have been in regard to the price of the land.

Q. When he told you he supposed you understood the proposition you understood him to mean that he supposed you understood what the claims were selling for? A. Yes, sir.

(Testimony of Rice J. Harbaugh.)

Q. Did you understand that the proposition meant anything else than the price that was to be paid for those timber claims?

A. The price that was to be paid, yes.

Q. Now with reference to this line up that has been testified to here: You remember, don't you, what occasioned that line up and why they were all so anxious to get there promptly on Monday morning?

A. I can't remember only that somebody was going to cover it with scrip, or something to that effect; that is the only thing I remember, but I can't remember going to the line up; I might have gone there on Sunday afternoon, but to call it to my memory at the present time it is hard to say.

Q. It was discussed all around the line there that it was to be scripped? A. Yes, sir.

Q. Mr. Harbaugh, don't you remember that the general impression in the line up was that it was Governor Steunenberg that was about to scrip that land? A. Something like that, yes.

Q. Someone acting for the Barber Lumber Company? A. Yes, sir.

Q. And you fellows were there for the purpose of getting your entries in before it could be scripped?

A. Yes, that was what we was there for.

Q. Instead of being there for the Barber Lumber Company, you were in line to prevent the Barber Lumber Company from getting that scripped?

A. I don't remember about the Barber Lumber Company, but I remember something about Steunenberg being there to cover it with scrip.

(Testimony of Rice J. Harbaugh.)

Q. Did you pay Mr. Kinkaid any commission for selling this land for you?

A. No, sir, not to my memory.

Q. Did you understand at that time who Governor Steunenberg was acting for in scripping it?

A. No, I did not.

Q. But it was just the general talk there that Governor Steunenberg was going to scrip it?

A. The general talk was that it was going to be covered with scrip.

Q. Then you never understood, Mr. Harbaugh, and don't yet, do you, that the loan of \$400 which you got from Mr. Ellis, or whoever Mr. Ellis represented, had anything whatever to do with the sale or transfer of this property?

A. No, sir.

Q. Didn't so understand it at that time?

A. No, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. From whom did you understand that that \$400 came?

A. I didn't know who it come from; that's a positive fact.

Q. You had a suspicion at the time, didn't you?

A. I had a suspicion that it come from John Kinkaid, but I didn't know, and don't know positively to this day.

Q. Mr. Bundy says it was, and he ought to know. What was your understanding as to why Mr. Kinkaid was going to advance you \$400?

A. I don't know, unless he wanted to purchase the

(Testimony of Rice J. Harbaugh.)

land.

Q. How long had you known Mr. Kinkaid?

A. I hadn't known him only just as I told you; the first time I knew him to know who he was was when I went up there to get my papers to make filing.

Q. That was the first time you had ever seen him?

A. Yes, sir.

Q. At the time you were examined in the district attorney's office and your statement was taken was it read over to you? A. No, sir.

Q. Did you ever see this paper before?

A. No, sir, not to my knowledge.

Q. Have you read it to-day?

A. No, sir, I have not; just looked it over with the attorney.

Q. But you know that you said some things that are not in this paper? A. Yes, I know that.

Q. Although you haven't read this paper?

A. At least what you haven't sketched over anyway; I didn't know but what maybe you had sketched the substance of it all.

Q. I haven't read the tenth part of it.

A. If you had you might have heard some pretty high-toned language in places.

Q. On this occasion Mr. Johnson told you that if you had borrowed money for final proof you had committed a crime? A. Yes, sir.

Q. Was that the first time you had ever heard that? A. Yes, sir.

Q. Hadn't you ever been told before that it was against the law to borrow money to make final proof?

(Testimony of Rice J. Harbaugh.)

A. No, sir.

Q. Then when you made final proof you didn't understand that it would be unlawful to borrow the money? A. No, sir.

Q. You had never heard anything about it except from Johnson and Ruick. Have you ever heard it since?

A. I have heard it since. Judge Dietrich says that you have a perfect right to borrow money; I didn't hear him say so, but I heard that he said so.

Q. But at the time you made your final proof you had never heard it suggested that there was any impropriety in borrowing money to prove up with?

A. No, sir, I didn't know it was against the law at all.

Mr. BUNDY.—Or anybody else, I guess, except Ruick.

Mr. KEIGWIN.—Q. Why was it necessary to conceal the fact that you borrowed the money?

A. I don't know as I did.

Q. Had anybody said to you that—

A. Nobody else except Ellis. I should have told them direct where I got the money; that is the only mistake I made, and I have regretted it a thousand times that I didn't tell exactly, and I don't know why I didn't. I know that is a mistake that I made; that is very true; I am willing to acknowledge it, as far as that is concerned. That is the only mistake I made; I understand that just as well as you do. I should have told them direct where I got that money and if they didn't want to accept it it would have

(Testimony of Rice J. Harbaugh.)

been all right; that is what I should have done.

Q. It wasn't until some time after that that Mr. Ruick told you that it was unlawful to make proof on borrowed money, was it?

A. It was not until they had that examination here before the grand jury.

Q. It was about four years afterwards?

A. Three or four. I know I made a mistake right there; I know that and I am willing to acknowledge it, as far as I am concerned.

Q. Did anybody ever tell you that it would be improper for you to make an agreement before you made your filing, make an agreement to sell before you made your filing?

A. I don't know as they ever did. I never had much talk about the timber proposition; it was new to me; you never hear of it in the east where I come from; it was a new proposition to me altogether.

Q. What I mean is this: Had you been told before you made your final proof that it would be improper for you to make an agreement to sell before your filing, I mean before your original application was filed? A. I can't remember as I was.

Q. Have you heard it since?

A. Yes, I have heard it since.

Q. What is your present understanding on that subject?

A. I understand, as near as I understand is this: That if you have made an agreement before you make your filing on the land that it is unlawful.

Q. Is it your understanding that it would be a

(Testimony of Rice J. Harbaugh.)

criminal offense? A. Yes, sir.

Q. That is your present understanding?

A. Yes, sir.

The EXAMINER.—Understand, Mr. Harbaugh, that you can't be prosecuted for that now, that the time has passed.

A. Yes, a false statement; but the idea of it is this: Ruick pictured it out that I could be punished for making a false statement; I told him I had made a false statement, I was willing to acknowledge that, and he said I could be punished for that if I didn't come out and tell the truth about these other men, what I knew about it, and I didn't want to tell him anything that wasn't true; that is the positive fact; I didn't know anything about it; I had no contract with any people; all I went on was what Mr. Coleman said. He said we would go up there and file on the land, and he said he thought we could find a sale for the land later on.

Q. Mr. Harbaugh, this is my question, did you understand then, and do you understand now, that it would be an unlawful thing to make an agreement before your first filing? A. Yes, sir.

Q. And that you might be punished for that?

A. No, sir, I didn't understand it then, but I understand it now.

Mr. BUNDY.—But you didn't understand that you could be punished for making an agreement, but for testifying falsely?

A. Yes, sir, but I think for making the agreement too.

(Testimony of Rice J. Harbaugh.)

Q. No, not for that. You do know, don't you, that Mr. Ellis and Mr. Kinkaid were very friendly?

A. Yes, sir.

Q. Do you know, Mr. Harbaugh, that Mr. Ellis had gone to Mr. Kinkaid with reference to loaning money to you and Mr. Coleman?

A. I have heard something about that.

Q. You have heard at least that Mr. Ellis was the man that arranged the loan for you?

A. Yes, sir.

Mr. KEIGWIN.—Did you ask Mr. Ellis to go to Kinkaid?

A. No, I didn't ask nobody, because I had made up my mind to let the timber go; I was out forty or fifty anyway on expenses, and I said, "We will let it go," but what I should have done, I should have re-advertised and got my own money.

(Witness excused.)

At this time court adjourned ten o'clock, A. M., Thursday, February 25th, 1909, at which time the taking of testimony was resumed, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Charles B. Faraday, on Behalf of the Complainant.]

CHARLES B. FARADAY, produced as a witness on behalf of complainant, being first duly sworn, testifies as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Charles B. Faraday, are you?

(Testimony of Charles B. Faraday.)

A. Yes, sir.

Q. What is your occupation, Mr. Faraday?

A. Well, I have got several: I am a merchant, a rancher, a cattle man, and in the real estate business besides.

Q. And at present a member of the Idaho legislature?

A. Yes, sir, a member of the Idaho legislature this winter.

Q. Were you in the same business, with the exception of the legislating business, in September, 1903?

A. Well, except that I wasn't handling any real estate in a business way; I was in business in town here, in the fuel and feed business at that time; that was my main business at that time in Boise.

Q. Where did you live at that time?

A. I either lived at 1311 Main, Boise, or 531 State, I don't remember which.

Q. You lived in Boise? A. Yes, sir.

Q. Where is your home now?

A. Mountainhome.

Q. How long have you been in Idaho, Mr. Faraday?

A. Seventeen or eighteen years, '92 when I came.

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

A. I don't know whether it was in 1903 or not, but I took up a timber and stone claim.

Q. I show you timber and stone land sworn statement dated September 13, 1903, and ask you if

(Testimony of Charles B. Faraday.)

that is your signature to that paper.

A. That is my signature, yes, sir.

Q. I show you non-mineral affidavit of Charles B. Faraday of the same date. Is that your signature to that paper?

A. Yes, sir.

Q. I show you the testimony of Charles B. Faraday, given on final proof, December 17, 1903. Is that your signature?

A. Yes, sir.

Q. I show you deed, dated the 13th of February, 1904, made by Charles B. Faraday and Eva D., husband and wife, to George S. Long, and ask you if that is your signature to that deed?

A. Yes, sir.

Q. And also the signature of your wife, Eva D. Faraday?

A. Yes, sir,—not my wife now, however.

Q. Both of you acknowledged that before John M. Haines?

A. Yes; I don't recall that part of it, but we did, I guess; I don't remember about that.

Q. Did your wife take up a timber claim at that time?

A. No, sir.

Q. Is she dead?

A. Yes.

Q. Mr. Faraday, who first spoke with you that you remember with reference to taking up a timber claim?

A. I can't recall; I think, though, that it was my partner, J. M. Neal, if I remember rightly; I remember that he took up a claim earlier than I did, and I went to him and asked him if there was anything else there, and he said he didn't know, that I would

(Testimony of Charles B. Faraday.)

probably have to wait until next year; and who mentioned it the next time I don't remember, but it was through him, as near as I recall it, that I knew anything about a timber claim.

Q. That was the winter before? You took up your claim in September.

A. I guess that was probably a year before that; I don't recall exactly.

Q. Do you remember who you went with to view this timber?

A. Well, the locator, the fellow I paid for showing me the timber, is about the only one I recall; I see several faces here, but I don't remember the names.

Q. Patrick Downs was the locator?

A. Yes, sir, Pat Downs.

Q. Was Alexander T. Ellis, the blacksmith, among them? A. Yes, sir.

Q. Mr. Rice J. Harbaugh?

A. Yes, sir, the gentleman that was on the stand here yesterday.

Q. William R. Coleman?

A. I don't know; there was a sandy mustached fellow with us.

Q. Frank R. Martin?

A. I don't recall; I see several faces here, but Ellis and this man Harbaugh are the only ones I remember.

Q. Did they go up in the team with you?

A. There was Ellis and myself and two other men.

(Testimony of Charles B. Faraday.)

Q. Was Harbaugh with you?

A. I don't know; I was talking with him yesterday out there, and I don't remember whether it was him, but I think it was this man Coleman, the sandy mustached fellow, but what I can swear to was that Ellis was with me.

Q. Do you know who arranged for that party?

A. No, I don't; if I remember right Sandy Ellis came down in front of my business and said, "Faraday, are you ready to go to the hills," or something like that, "to take up a timber claim"? And I said, "Yes, any time."

Q. Had you ever talked to him before?

A. I don't recall.

Q. Did you know John Kinkaid at that time?

A. Yes.

Q. Had you ever talked to him about taking up a timber claim? A. I never did.

Q. Did you know of a market for timber claims at that time? A. No, sir.

Q. Did you know of anybody that was buying timber claims?

A. No, I didn't know of anybody that was buying timber claims.

Q. Did you know of anybody that was selling timber claims?

A. Not in this part of the country.

Q. What do you mean by "this part of the country"?

A. I know down on the coast they were selling claims, down at Portland, Seattle, and that part of

(Testimony of Charles B. Faraday.)

the country.

Q. I meant in Idaho.

A. No, not here.

Q. And your best recollection is that the arrangements for you to go were made by Mr. Alexander Ellis?

A. No, he got—he arranged for the team, as I understand—I didn't hear him, but I paid him my portion of it, but what it was I don't recall.

Q. You didn't know Harbaugh?

A. Yes, I think that I recollect him working for me; I don't remember for sure, but I think at one time or another he worked for me; I was in the transfer and fuel and feed business, and had quite a number of men, from fifteen to thirty at times.

Q. And you went up to what place to view this land—the Star ranch?

A. Well, I stayed all night at what is called the Star ranch, and then walked about two and a half or three miles from the Star ranch.

Q. And you met Mr. Patrick Downs at the Star ranch, did you? A. If I remember right, I did.

Q. Was that the first time you ever met Mr. Downs?

A. To know him or be introduced to him, I think it was, but I had met him in town here.

Q. You mean after you had met him there was a casual conversation on the street? A. Yes, sir.

Q. You never had any business with him?

A. No, not that I recall; of course, I knew of Pat Downs, but I don't remember of having any conver-

(Testimony of Charles B. Faraday.)

sation with him in a business way.

Q. Did you have any talk with him about taking up a claim, how much it would cost you?

A. I don't remember whether I had it with him or with J. M. Neal; I think I got my information from Neal as to how much it would cost me.

Q. And did you pay Mr. Downs anything?

A. Yes.

Q. Did you pay it while you were up there, or after your return? A. I don't recall.

Q. What is your best recollection?

A. I don't recall paying him; I know I paid him either up there or down here in Boise.

Q. How long before you located on this land did you go up there to look at it?

A. I don't think it was a week; it wasn't over seven days; I don't remember exactly; I remember we was up there and looked at it and came back here and eventually came back here and filed; I remember standing in line there.

Q. Do you remember how many days you were in town before you filed, after you returned?

A. I can't say; it wasn't over a week after I looked at the ground before I filed on it.

Q. Did you know whether the land was open to entry when you went there or not?

A. Not till I got to the land office, of course; not till I got into the land office and inquired did I know that.

Q. Did you have any talk with Mr. Downs about that? A. Well, I don't recall that.

(Testimony of Charles B. Faraday.)

Q. Did he tell you that the land that you were going over with the view of locating or entering was open to entry at that time?

A. He left me under that impression, but I don't recall him saying in so many words that it was open; of course, I knew that he could show me a piece of land and collect his fee for locating me, and if I got to the land office and it was filed on, I knew I couldn't file on it.

Q. You knew that he could do that before you went up there?

A. Certainly I knew that anybody could do that.

Q. Does that refresh your recollection as to whether you paid him after you returned or not?

A. Oh, I didn't pay him in advance, I know that; that's the only thing I know that I didn't know.

Q. And did he take you out and show you one piece of land with the rest of these people and say, "This is the piece for you to locate on, Mr. Faraday"?

A. I don't recall that; I remember him telling me, "Here is a nice quarter section," I think I remember he called it, and I asked him what he thought it would scale, and I don't remember how many thousand or million feet he said it was, and that is about the extent of the conversation, only he showed me the points it took in and what it would scale.

Q. You located on that, did you?

A. Yes, sir.

Q. Did you go over all the land?

A. Yes, sir.

(Testimony of Charles B. Faraday.)

Q. Around on all four quarters?

A. Yes, sir, on all four quarters and corners; if I remember right the corners were blazed.

Q. Did he give you the numbers or description of that land? A. Yes, sir.

Q. And what did you do with that?

A. I must have put it in my pocket at that time.

Q. Eventually what did you do with it?

A. I used them in inquiring at the land office if that was filed on.

Q. And do you remember what day you went to the land office to make that inquiry?

A. No; oh, at the time I made the filing I made that inquiry, if I remember rightly.

Q. Do you remember who made your filing papers out for you? A. No, I don't.

Q. Now, when did you go to the land office to file on this land?

A. If I remember right, I think it was Sunday night.

Q. And do you remember how many people were there the Sunday night you got there?

A. Well, there was about a hundred yards of them in length, standing one after the other, down the stairs, and pretty near out in the street.

Q. And you stood in line with the rest of them?

A. Not all night.

Q. Did you get somebody to hold your place in line? A. Yes, sir.

Q. Who did you get?

A. If I remember right, it was a coon; I don't

(Testimony of Charles B. Faraday.)

remember his name.

Q. Did you pay him to stand in line for you?

A. Yes, sir.

Q. How much? A. I don't recall that.

Q. What you call a "coon" is a negro, isn't it?

A. Well, yes.

Q. I mean, that is what is spoken of as a "coon" in the south? A. Yes, a negro.

Q. And then you returned at what time?

A. I don't recall that; the next morning some-time—Monday morning, I guess that would be.

Q. And now were your papers brought to you when you were in line, or where did you get them?

A. What papers?

Q. The papers you filed in the land office.

A. I don't recall that.

Q. Did you go to John Kinkaid's office after them? A. No, sir.

Q. Did Mr. John Kinkaid bring them to you?

A. No, not that I remember of; I don't recall that about the papers at all; this is the first I have had it recalled to my mind since the day I filed.

Q. Of course, you knew you had to have papers to file in the land office?

A. No, I didn't; I did have the numbers, of course, but I don't recall the papers.

Q. I will ask you whether or not this sworn statement that I have shown you was prepared for you by John Kinkaid?

A. I don't know; that is my signature there.

Q. And this notice of publication?

(Testimony of Charles B. Faraday.)

A. I don't know who prepared it.

Q. And the non-mineral affidavit.

A. I don't know.

Q. You have no recollection whatever where you received those papers? A. I haven't the least.

Q. What was the occasion of your going to the land office on Sunday night?

A. Well, if I remember rightly, it was to try and be the first one that was after this land, knowing there was so many people in that country and supposing and judging that they were after timber claims, fifty or a hundred of them, or twenty-five or thirty we saw going up and coming down from that country.

Q. When did you learn that that land was open for entry, on which you located?

A. Positively open for entry?

Q. Yes.

A. When the Government accepted my filing.

Q. Then before you went up there you didn't know whether it was open for entry or not?

A. No, not positively.

Q. Did you know that it wasn't open for entry until the State had made its selection in that locality?

A. Well, as I understand, you never know it is open until the Government accepts your filing, because five minutes before you, anybody else could file on it that wanted to.

Q. I am speaking whether or not it was open to entry by the public, not only by you, but by any other citizen.

(Testimony of Charles B. Faraday.)

A. I don't understand the question, quite.

Q. Did you know whether or not the plats of the property upon which you located had been filed in the land office when you went up to go over it?

A. I don't remember whether I did or not.

Q. And did anyone—how far do you live from the land office, or at that time how far was your residence from the land office?

A. About a quarter of a mile, if I lived on Main street.

Q. You give your address as living on Main street. And did anyone tell you that people were lining up at the land office?

A. I don't recall that.

Q. And when you got to the land office did you see Mr. Alexander Ellis? Was he there that Sunday evening?

A. I don't recall that he was there.

Q. Did you see Mr. Harbaugh there?

A. I don't recall that; I think they were there, but I wouldn't say positively.

Q. How long did you remain in the line?

A. Oh, I can't tell that—in the evening sometime I got tired and hired some man to take my place.

Q. And then the next morning you filed, Monday morning you made your filing?

A. I think it was Monday morning I made the filing, yes, sir.

Q. And you have no recollection whatever where you received the papers that you filed?

A. No, I haven't; none whatever, where I re-

(Testimony of Charles B. Faraday.)

ceived those papers.

Q. And after you filed, in the course of several months, you made your final proof?

A. Yes, sir.

Q. Do you remember going to the land office to make your final proof?

A. No, sir. I don't recall it; I know I did; I remember paying for advertising, and so forth, but I don't recall proving up on it.

Q. You remember this final proof paper I showed you, the testimony. Do you remember the occasion on which you answered those questions and signed that paper, which was in December?

A. No, sir.

Q. Do you remember being at the land office with reference to this property on any other occasion other than the one you have related that you filed your papers?

A. No, sir; I know that I got information at the land office, but at what time—I know I did owe the newspaper so much money, but I don't remember when I got that information.

Q. Was that the only money you remember paying at the land office?

A. No when I proved up I gave a check.

Q. Do you remember how much you paid when you proved up? A. No, sir.

Q. You have no idea?

A. Oh, yes, several hundred dollars.

Q. And you say that you paid that in check?

A. No, I don't recall whether it was a certified

(Testimony of Charles B. Faraday.)

check, or currency, or how; I remember—I don't recall in the exact way; I drew a check for the money, but I don't think I used the check at the land office. The reason don't think I did, I think the land office wouldn't take a personal check, but up to this time I thought I used a check; I can't recall, though, positively.

Q. And was that your own money, or had you borrowed it shortly before?

A. No, that was my own money.

Q. And you had had that money in the bank, or an amount that large, on deposit for several years?

A. Yes, sir; for several years.

Q. At what bank?

A. Bank of Commerce; the balance hadn't been at the Bank of Commerce for any great length of time; the First National Bank of Caldwell had had my money, but when I came here I put it in here.

Q. Do you remember which bank you drew the check on?

A. I am pretty nearly certain it was the Bank of Commerce.

Q. At that time did you know of anyone that was buying timber claims? A. No, not at that time.

Q. Did you know of anyone that was selling timber claims? A. No, sir.

Q. How long after you made your final proof did you start negotiations for the sale of this property?

A. I don't know.

Q. Was it a week, or six months, or how long?

A. Well, it was over a week, but I don't remem-

(Testimony of Charles B. Faraday.)

ber the time.

Q. Who did you negotiate with for the sale of the property? A. I think it was John Kinkaid.

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

A. In going to and from my office I met him every day, off and on, for a long while, and I don't recall—I think it was on the street in front of his office that I met him.

Q. And what did he say to you?

A. I don't recall the conversation at all.

Q. Did he make you an offer for it?

A. He certainly made an offer; I don't remember whether it was that one time; I saw him every day, but he made me an offer sometime or other.

Q. Do you remember how long before you sold it it was that he first spoke to you about it?

A. I don't think it was a great while, but I don't recall the length of time.

Q. Did you decline to sell the first time he offered you a price? A. I don't recall that.

Q. Did you sign this deed in Mr. Kinkaid's office?

A. I think I signed it in John Haines' office, W. E. Pierce & Co.; I couldn't swear to that, it was either in John Haines' office or in the W. E. Pierce & Co. office.

Q. Do you remember whether your wife was with you or whether it was sent to her to sign?

A. I had her with me.

Q. You don't recall which office it was?

A. I don't recall which one it was; it was either

(Testimony of Charles B. Faraday.)

John Kinkaid's or John Haines.'

Q. Were they far apart?

A. John Kinkaid was in the Pierce Block, second floor, and John Haines was in the neighborhood of Tenth and Main.

Q. Were they several squares apart?

A. No, in the same block, in the neighborhood of Tenth and Main; the bank has moved and I don't recall now just exactly where they were.

Q. Do you remember whether he paid you in check or cash?

A. I don't recall, but I think it was a check.

Q. Did you know who the grantee in the deed was?

A. No, I thought it was John Kinkaid.

Q. George S. Long is the grantee. Did you know George S. Long?

A. No, I didn't know George.

Q. You say you think he paid you by check?

A. I think so.

Q. And did you ever make another deed to Mr. Kinkaid or at the suggestion of Mr. Kinkaid or anybody else for this property?

A. No, I don't think I did; I don't recall that. Another deed?

Q. Yes, did you make a deed prior to this one, which they returned to you when you made this deed?

A. I don't recall that.

Q. You don't know whether you did or not?

A. I do not.

Mr. GORDON.—We offer in evidence timber and

(Testimony of Charles B. Faraday.)

stone land sworn statement, dated September 14, 1903, of Charles B. Faraday; the non-mineral affidavit of the same date; the testimony given on final proof by Charles B. Faraday, dated December 17, 1903; the cross-examination of Charles B. Faraday thereto attached, all of which have been identified by Charles B. Faraday as having been signed by him; the notice of publication of Charles B. Faraday, dated September 14, 1903; testimony and cross-examination of the other witnesses before the land office on final proof; the receiver's receipt, and the register's certificate, dated December 17, 1903; certified copy of the patent, dated December 1, 1904; the deed, dated February 13, 1904, made by Charles B. Faraday and Eva D., husband and wife, to George S. Long, consideration \$800, which has been identified by Charles B. Faraday as having been signed, executed, and acknowledged by himself and wife; all to the northwest quarter of section 28, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 123A to 123N, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Did I understand, Mr. Faraday, that you are in the legislature at present? A. Yes, sir.

Q. Which branch? A. The House.

Q. You say you don't recall ever making any other deed. A. I don't think I did.

Q. I don't think you did either. Have you any recollection of ever making any other deed?

(Testimony of Charles B. Faraday.)

A. No, I have no recollection of it, no.

Q. Or of ever being asked?

A. I have no recollection of it.

Q. Mr. Faraday, at the time you filed on this land, filed your first papers, had you entered into any agreement, express or implied, written or oral, with any person, firm, or corporation whatever, by which the title you might acquire from the United States, or any interest in it, would inure to the benefit of any person other than yourself? A. No, sir.

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

A. No, sir.

Q. Did any person, firm, or corporation, have any interest in, or lien upon, the land you acquired from the United States prior to the time you sold it?

A. No, sir.

Q. The United States has seen fit to charge you, with others, Mr. Faraday, in this action we are trying by their complaint in this action, with having entered this land at the request of, and for the benefit of, the Barber Lumber Company, John Kinkaid, A. E. Palmer, Horace S. Rand, Pritchard, and the other defendants. Is that true or false, so far as you are concerned? A. That is false.

Q. And it is charged in this complaint that you, as a part of that same agreement, undertook and agreed to make the entry and thereafter, at the defendants' request, to go before the land office and testify falsely, for the purpose of defrauding the United States out of this particular tract of land.

(Testimony of Charles B. Faraday.)

Is that true or false? A. That is false.

Q. Something has been said about a long line-up at the land office. Did you hear any talk in the line-up and was it generally understood by those in the line-up and around town that one of the purposes of being on hand promptly at nine o'clock Monday morning was that Governor Steunenberg or someone else had some scrip they were going to place up in this country?

A. I can't recall that; I have a faint recollection of something like that, but I don't recall that conversation; I don't remember why I was there—because the rest of them were there and to get in first, I suppose.

Q. To get in first and head off anybody else.

A. Yes, to head off anybody else, scrip or anything else.

(Witness excused.)

[Testimony of Wheeler H. Martin, on Behalf of the Complainant.]

WHEELER H. MARTIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Wheeler H. Martin?

A. Yes, sir.

Q. What is your occupation, Mr. Martin?

A. At the present time I am operating a moving-picture show at Nampa. I am an engineer by trade, locomotive and stationary.

(Testimony of Wheeler H. Martin.)

Q. What was your occupation in 1903?

A. Well, I was doing a little of everything then, tending bar most of the time, I guess, at Centerville.

Q. Who were you employed by at that time?

A. Mr. Carroll.

Q. What were your wages at that time?

A. Let's see; I think I was getting about—I was getting \$60 and board, about \$85 a month.

Q. Were you married at that time?

A. Yes, sir.

Q. Have any children? A. One.

Q. And where did I understand you to say you resided in 1903?

A. Centerville; I was there several months.

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

A. Yes, sir.

Q. I show you timber and stone land sworn statement of Wheeler H. Martin, dated September 14, 1903, and ask you if you signed that paper?

A. Yes, sir.

Q. I show you non-mineral affidavit of the same date, by Wheeler H. Martin, and ask you if you signed that paper? A. Yes, sir.

Q. I show you testimony you gave on final proof before the land office, dated December 11, 1903, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you deed dated August 19, 1904, by Wheeler H. Martin and Lavella Martin, husband and wife, to George S. Long, and ask you if you signed

(Testimony of Wheeler H. Martin.)

that paper? A. Yes, sir.

Q. And that is your wife's signature to the deed also? A. Yes, sir.

Q. And you acknowledged that before Fred Mock? A. Yes.

Q. Mr. Martin, at the time you took up this timber claim did you know of any persons who were purchasing timber claims? A. Yes, sir.

Q. Who was purchasing?

A. That is, I know those that was taking them up; I didn't know who was purchasing.

Q. You knew people that were locating?

A. Yes.

Q. Did you know any of those people that were locating that were selling?

A. I don't know whether my father had sold or not at that time; I am not sure whether he had or not.

Q. Did your father afterwards sell?

A. If he hadn't sold before, he did.

Q. Who was your father?

A. William H. Martin.

Q. And are you any relation to Frank Martin, an attorney in Boise? A. No, sir.

Q. Mr. Thomas B. Martin? A. No, sir.

Q. And to whom did your father sell?

A. Kinkaid, I believe.

Q. And who spoke with you about taking up a timber claim? A. My father.

Q. And what did he say about it?

A. He said he would see Downs and see if he

(Testimony of Wheeler H. Martin.)

could get me a timber claim.

Q. How long was that conversation before you located?

A. Well, it was probably a couple or three months, something like that.

Q. How far from Centerville, where you resided, is the timber claim which you located?

A. About five miles, I guess, something like that.

Q. How far did you live from the Star ranch?

A. It must have been about five miles, something like that, I think; I am not right sure.

Q. I just wanted it approximately.

A. Yes; that is where I met Mr. Downs.

Q. And had you met Patrick Downs before that time?

A. I had seen him; yes, I was introduced to him on the street here.

Q. Do you remember how long you saw Downs with reference to taking up a claim before you located?

A. I never had any real talk with Downs about it, but my father—I was working up there—he said they would phone to me whenever they got ready to come up, and he would phone to me so I could go up there to meet my brother.

Q. What was your brother's name?

A. Frank Martin.

Q. And was your father living in Boise then?

A. Yes, sir.

Q. And did he telephone you when the time came?

A. Yes, sir.

(Testimony of Wheeler H. Martin.)

Q. And what did he tell you when he phoned to you?

A. He told me when they was going to be up there.

Mr. BUNDY.—Let's get this thing right. Your brother is Frank R. Martin? A. Yes, sir.

Mr. GORDON.—I thought you said your father was William R.

A. William H., and my brother is Frank R.

Q. And so your father telephoned you from Boise that there was a party going up, or that the people would be there, or what was it he said?

A. Yes, I was to meet them at the Star ranch.

Q. How long was that before—

A. Before they came up?

Q. Yes.

A. It was a couple of days anyway; I had to go up in the mountains; my brother was mining up there, and that was sixty miles.

Q. How long did it take you to go up there?

A. Two days, one going up there and one coming down.

Q. How long after your brother came back to Centerville with you did you locate?

A. We located the same day, I am pretty sure.

Q. Do you mean that you had ridden sixty miles and then went out and located the same day, or did you wait over night?

A. Well, sir, we got in early; anyway I forget just how that was; I think though that we left up there early and got to the Star ranch just about dark,

(Testimony of Wheeler H. Martin.)

I think, I am pretty sure.

Q. And then you located the next day?

A. The next day, yes, sir.

Q. Do you remember what day of the week it was that you located? A. No, I don't.

Q. How long after you saw Mr. Downs and he carried you out to this land did you come to Boise to file?

A. Well, we came the next day; we came right down, rode down with the people that come up there with the rigs.

Q. Who had come up there?

A. Well, there was EhrmantROUT, and Faraday, and Ellis, and Harbaugh, and my sister, Mrs. Snow, at that time.

Q. Was that Mrs. Cleora Snow?

A. Yes; and there was some others; I can't just recall their names.

Q. And did you come back the same time they did? A. Yes, sir.

Q. Do you remember what day of the week you reached Boise? A. No, sir, I do not.

Q. Haven't you any idea what day of the week it was? Well, no, I haven't.

Q. How long were you here before you filed?

A. It wasn't long; I forget just how long.

Q. Well, two or three days?

A. A day or so; I forget just how long it was; I didn't pay much attention to it at the time.

Q. When you went over this land did Mr. Downs point out a quarter section to you and say, "This is

(Testimony of Wheeler H. Martin.)

the one I will locate you on”?

A. Yes, he took us over it and said “This is yours,” and then go on a little further and say “This is yours,” and so and so; we was gone nearly a day.

Q. And did you pay him anything for locating you? A. \$25.

Q. Did he give you the numbers of the property?

A. He did, yes.

Q. And did he tell you where to take them?

A. I think he did.

Q. Where did he tell you to take them?

A. To Kinkaid.

Q. That is John Kinkaid? A. Yes, sir.

Q. And did he say that Mr. Kinkaid would make your papers out for you? A. Yes, sir.

Q. When was it you went to Mr. Kinkaid’s office for the purpose of having your papers made out?

A. I don’t know just what day it was.

Q. How long before you filed?

A. Why, just a day or so, a day, something like that, I think.

Q. And you gave him the numbers a day or so before you filed? A. I think so.

Q. And then you went to the land office on Sunday night?

A. Yes, I believe it was Sunday night.

Q. And you stood in line all night?

A. Yes, sir.

Q. Did you see Mr. Faraday there that evening?

A. I don’t know whether I saw Mr. Faraday there or not; I think he was, though.

(Testimony of Wheeler H. Martin.)

Q. Did you see Mr. Ellis there?

A. I think I did, yes.

Q. And Mr. Harbaugh?

A. I am not sure about Harbaugh; I think Ehrmantrout was there, and Tom Martin, I think he was fifth in line; I think Tom Martin was the one that told me to get in.

Q. Tom Martin told you to get in line?

A. Yes, sir.

Q. What time did he tell you about it?

A. Along in the afternoon some time.

Q. That was Sunday? A. Sunday.

Q. And were your papers brought to you in line?

A. No, I think not, no.

Q. Where did you get your papers?

A. I got them from Kinkaid.

Q. Did you get them the night before, or Sunday?

A. I couldn't say.

Q. After Mr. Thomas Martin spoke to you about it, did you go up to Kinkaid's office that day and get them? A. No, I couldn't say whether I did.

Q. Do you remember whether Mr. Kinkaid was down to the Sonna Building or the land office that Sunday evening?

A. No, I don't remember seeing him.

Q. Do you remember seeing Mr. Sonna there?

A. Yes, sir.

Q. Do you remember him telling you that you would have to get out? A. Yes, sir.

Q. Do you remember Mr. Kinkaid coming down there and telling you that you didn't have to get out?

(Testimony of Wheeler H. Martin.)

A. It don't seem like it was him; it don't seem to me it was Kinkaid.

Mr. FRASER.—It was Hawley, wasn't it?

A. Yes, I think it was; I remember he was there.

Mr. BUNDY.—Hawley was mayor and told you to hold your places, didn't he?

A. I don't remember who did say that; I remember seeing him there.

Q. Do you remember the person that stood immediately in front of you in line?

A. I think Tom Martin was right in front of me.

Q. Do you remember who was immediately behind you? A. No, I do not.

Q. Did you get your breakfast in line the next morning?

A. I got a sandwich, I believe, something like that.

Q. When Mr. Kinkaid prepared your papers for you did you pay him anything for that?

A. No, sir.

Q. Now at this time did you know whether Kinkaid was buying timber claims?

A. I understood he was, yes, sir.

Q. Did he tell you that he was?

A. He didn't tell me, no, sir.

Q. At that time did you have the money with which to make your final proof?

A. No, I didn't; not on Sunday, I didn't.

Q. I mean did you have it when you made your filing? A. I got the money, yes.

Q. Where did you get the money?

(Testimony of Wheeler H. Martin.)

A. I got it at the Bank of Commerce.

Mr. BUNDY.—What are you talking about now—the time of proving up or the time of filing?

Mr. GORDON.—I was talking about the time he filed.

A. Yes, I had that.

Q. You had the filing fees? A. Yes, sir.

Q. You didn't have the purchase price of the property? A. No.

Q. You got the money at the Bank of Commerce?

A. That is, for the final proof.

Q. Did you have it in the Bank of Commerce?

A. No, sir.

Q. How did you get it at the Bank of Commerce?

A. I borrowed it, and my father signed the note.

Q. When did you draw that money out of the Bank of Commerce—the day you made final proof?

A. Yes, sir.

Q. You remember the occasion of making final proof, do you? A. I remember, yes, sir.

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

A. Four hundred and twelve dollars or four hundred and twelve dollars and fifty cents, something like that.

Q. At that time did you know of anybody that would purchase your claim?

A. Of course I had an idea that Kinkaid would buy it; of course that was the way it was talked; my father had sold his at that time, I am pretty sure.

Q. Did you expect to sell to Kinkaid when you

(Testimony of Wheeler H. Martin.)

entered this land? A. Well, I expect I did.

Q. Now, the sworn statement I have shown you, and the notice of publication, and the non-mineral affidavit, they are the first papers you filed in the land office, and I understood you to say that they are the papers that Kinkaid prepared for you.

A. He prepared some for me; I suppose they are the ones.

Q. I mean he prepared the first papers you filed in the land office. A. Yes, sir.

Q. Now, do you remember where you got those papers? A. I got them from Kinkaid.

Q. At his office? A. Yes, sir.

Q. And do you remember how long you got them from there before the Sunday you went to the land office?

A. I do not; it was not very long, though.

Q. Was it a day or two before?

A. Probably a day, something like that.

Q. Now when was the first time that you had a talk with Mr. Kinkaid about selling this property to him?

A. It was some time after I filed, probably a couple of weeks.

Q. That was after your first filing?

A. That was after I made final proof.

Q. After you made your final proof?

A. Yes.

Mr. BUNDY.—You must be careful, Mr. Martin, in speaking sometimes about filing and sometimes about final proof.

(Testimony of Wheeler H. Martin.)

Mr. GORDON.—Q. And where did he see you about it? A. I went up to his office.

Q. And did he offer to buy it from you?

A. He put me off for a little while.

Q. How long did he put you off?

A. Probably a month, I think, or something like that, quite a while.

Q. And then did you sell to him about a month after that?

A. I forget just how long; it was a couple of months or something like that, that I sold to him.

Q. And did he make you an offer the first time you went to see him?

A. Well, it was understood that I was to get \$800; that was what they all was getting; I believe that was customary.

Q. When did you understand that?

A. Of course I understood that; of course it was talked around here; that was what my father got; that was what I was supposed to get; that was what they was supposed to pay.

Q. And you say he put you off. Did he give any excuse?

A. No, he didn't; he just said to come up so and so, or something to that effect; I know he put me off, I think he put me off twice a week or two, something like that, two or three weeks.

Q. And then you finally accepted his offer, or he finally agreed to buy the property?

A. Yes, sir.

Q. And did you give him your final receipt at

(Testimony of Wheeler H. Martin.)

that time? A. When he bought it?

Q. Yes. A. Yes.

Q. And did you make a deed? A. Yes, sir.

Q. The first time, when he bought it and paid you the money? A. Yes, sir.

Q. And how many deeds did you make?

A. I don't remember; I made one afterwards awhile.

Q. You first made one deed and then afterwards you made another deed?

A. You see my wife didn't sign the first one, and then he got out another one and had my wife sign that.

Q. Did he give you the other deed back when you made the second deed?

A. He tore it up; I seen him tear it up.

Q. What was the length of time between making the first deed and the second deed?

A. It was several months; I don't know just how long it was.

Q. Did he tell you when you made the first deed that later you would be expected to make another deed? A. No, sir.

Q. How did you come to go to make the second deed? Did he send for you or did you go down there to see him? A. He sent for me.

Q. Who did he send?

A. I think he told my father and my father wrote down.

Q. And you came up to make the second deed?

A. Yes, sir.

(Testimony of Wheeler H. Martin.)

Q. You came from Centerville?

A. No, I was at Nampa then.

Q. Did you pay your own expenses, or did they pay your expenses?

A. No, I paid my own expenses.

Q. Do you know who Mr. Kinkaid was buying this property for? A. No, sir.

Q. Did you know Mr. George S. Long?

A. No, sir.

Q. Had you ever heard of him?

A. No, sir.

Q. Did Mr. Kinkaid pay you in cash?

A. He paid me in cash, gold.

Q. Now the second time you came up, did you bring your wife with you?

A. No, sir, I got the papers and had it acknowledged in Nampa.

Q. And where did you acknowledge the deed?

A. The same place.

Q. And how long after that did you send the deed back, how long after you received the deed—did you have it acknowledged the same day?

A. I think so.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Wheeler H. Martin, dated September 14, 1903; the non-mineral affidavit of the same date, made by Wheeler H. Martin; the testimony of Wheeler H. Martin, given on final proof, dated December 11, 1903; the cross-examination attached, all of which have been identified by Wheeler H. Martin as having been signed by him;

(Testimony of Wheeler H. Martin.)

the testimony of the other witnesses on final proof; the notice of publication, dated September 14, 1903; the receiver's receipt, and the register's certificate, dated March 9, 1904; the deed made by Wheeler H. Martin and Lavella Martin, husband and wife, to George S. Long, dated August 19, 1904, consideration \$800, identified by Wheeler H. Martin as having been signed and acknowledged by himself and Lavella, his wife; certified copy of the patent, dated December 29, 1904; all to the southeast quarter of section 21, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 124A to 124P, inclusive.)

Q. Mr. Martin, I understood you to say that the final proof money you got from the bank the day you proved up. A. Yes, sir.

Q. And your father endorsed your note?

A. Yes, sir.

Q. Did anybody tell you where you should say, when you went to the land office, that you got that money from? A. No, sir.

Q. Do you remember when you went to the land office this question being asked you and this answer made by you: "Where did you get the money with which to pay for this land and how long have you had same in your actual possession"? Answer: "From my earnings and have had money about two years." Do you remember that?

A. Yes, sir.

Q. Was that true?

(Testimony of Wheeler H. Martin.)

A. Well, I had had some money, yes, sir, but I didn't have that much at the time, no. Of course I sent some home; I supposed it was due me, but that money I proved up with I got out of the bank.

Mr. BUNDY.—You had that much credit.

A. Practically.

Mr. GORDON.—You mean that his credit was good for that?

Mr. BUNDY.—With his father, yes. I suppose if a man is worth \$1,000 or can get \$1,000, he has \$1,000, whether he has it in his pocket or credit.

Mr. GORDON.—Q. Mr. Martin, your claim was held up for some time, wasn't it? A. Yes, sir.

Q. And in December, 1903, you paid the \$400 and some odd dollars in the land office the day you made your final proof. Is that right? A. Yes, sir.

Q. And then you didn't get your final receipt until the following March. A. No, sir.

Q. Now they gave you a temporary receipt when you paid that money in, did they?

A. Yes, sir.

Q. How long after that was it that Mr. Kinkaid spoke to you about purchasing this land?

A. I don't remember; I don't think there was much said about it until I got final receipt.

Q. Did he say anything to you before about it?

A. Not that I remember, no.

Mr. KEIGWIN.—Q. Mr. Martin, what did you say was your salary at the time you made this application? A. Why, \$60.

Q. For what, what were you doing?

(Testimony of Wheeler H. Martin.)

A. Tending bar.

Q. At Centerville? A. Yes, sir.

Q. Was it \$60 in cash, or was it \$40 a month and board?

A. Well, I think it was—it was \$65, I guess that was the way of it; it was \$40 and board, and board was \$25, which would make \$65.

Q. You said at first this morning that it was \$60 and board.

A. I got it mixed; it was \$40 and board in place of \$60 and board.

Q. It was \$40 and you counted your board at \$25.

A. Yes, sir.

Q. Did that include board for your wife and child too?

A. No, sir, my wife wasn't up there.

Q. How much of this money that you used to pay for this land did you borrow from your father?

A. Well, I borrowed the \$400 of the bank.

Q. You borrowed it from the bank?

A. Yes, that is, to make final proof. Of course this other money that I used in running around with, of course I had that myself.

Q. Didn't you get any money from your father to assist you in making final proof?

A. To make the final proof I got money at the bank.

Q. Your father endorsed the note?

A. I have the note.

Q. Do you remember how much that note was for?

(Testimony of Wheeler H. Martin.)

A. \$400; I have it in my possession.

Mr. BUNDY.—You have the note, you say?

A. Yes, sir.

Mr. KEIGWIN.—Q. Isn't it a fact, Mr. Martin, if you will refresh your memory, that the amount you borrowed from your father, or through your father, was only \$300, and that the remainder was money you had had of your own?

A. No, sir; I counted that as what he owed me, as practically what I could call my own.

A. How much did he owe you?

A. I don't remember how much it was.

Q. Approximately—\$50 or \$100 or \$500?

A. I don't know just how much; I never figured it all up; I never kept track of it; I just sent it home, what I did send.

Q. When had you been sending money home?

A. Oh, off and on before I was married quite a while, a year or so, something like that, *was* I was up to Centerville.

Q. How long had you been married, in 1903?

A. Let's see, I was married in 1901—two years.

Q. About two years? A. Yes, sir.

Q. Was your wife living at your father's home?

A. Her father's home.

Q. Was it to her or to your own father that you had been sending these remittances?

A. That was quite a while before this, you know, before I was married, that I sent the money home.

Q. Was that money you sent to be saved for you, or was it to help the family?

(Testimony of Wheeler H. Martin.)

A. Yes, sir, to help keep the family.

Q. You were assisting your father, as I understand, before you married.

A. Yes, sir.

Q. And somewhat after you married too?

A. No, sir.

Q. After you married you had all you could do to take care of your own family?

A. I had all I could do to take care of myself.

Q. What was your father's occupation?

A. He was a farmer.

Q. In this State? A. Yes, sir.

Q. Do you know whether or not he had made an entry under the timber and stone land law?

A. Yes, he made an entry.

Q. How long before yours?

A. Why, let's see, it must have been a year, or something like that.

Q. Do you know where the land was that he entered?

A. Yes, it was up on the other side of Idaho City some distance; he was up there one summer; I don't know just where; it is up near—well, I don't know.

Mr. BUNDY.—Mose Kempner's?

A. Mose Kempner's ranch; that is where he was located at.

Mr. KEIGWIN.—Q. Do you know what he had done with it?

A. I guess he had sold it.

Q. Whom did he sell it to?

A. Kinkaid, I think.

(Testimony of Wheeler H. Martin.)

Q. Now, if you will think again, isn't it a fact that your father told you that he had sold his land to Kinkaid?

A. Oh, yes, that was understood; if he sold it I knew who he sold it to, of course, my father told me.

Q. Did he tell you how much he got for it?

A. I am not sure whether he got \$800, or what he got for it; I am not sure only just what I got for my own.

Q. Now, I show you here an affidavit which purports to have been signed by you, under date of December 19, 1903. Has that been shown to you by Mr. Gordon? A. No, sir.

Q. Well, will you look at it and tell me whether you recognize that as your affidavit? (Hands witness paper.)

A. I don't remember what it was.

Mr. BUNDY.—What is this which is being shown?

Mr. KEIGWIN.—Affidavit of December 19, 1903, explaining where he got the money, or rather explaining some statements in his cross-examination.

The WITNESS.—I think that is the same.

Q. Is that your signature to that affidavit?

A. I guess it is; it looks like it.

Q. Do you remember the occasion of your making and filing that affidavit?

A. I think so, yes, sir.

Q. What was it? A. The occasion?

Q. Yes, what was the reason of it?

A. That was, I guess, when my timber claim was held up.

(Testimony of Wheeler H. Martin.)

Q. Yes.

A. And I don't know as it was necessary to make it.

Q. Who advised you to make that affidavit?

A. Mr. Kinkaid.

Q. Did Mr. Kinkaid draw that affidavit?

A. I think Mr. Kingsley did.

Q. Mr. Charles Kingsley, an attorney of this city?

A. Yes, sir.

Q. Did Mr. Kinkaid advise you to go to Mr. Kingsley? A. Yes, sir.

Q. Do you remember how much you paid Mr. Kingsley for making that affidavit?

A. Yes, sir.

Q. How much? A. \$25.

Q. Where did you get the \$25 you paid Mr. Kingsley? A. Got it out of my pocket.

Q. Was it your own money?

A. Yes, sir.

Q. Money you were carrying in your pocket?

A. Yes, sir.

Q. Didn't get it from your father?

A. No, sir.

Q. Or from Mr. Kinkaid? A. No, sir.

Q. Do you remember where you were living and what you were doing? This was in December, 1903, about a week after the date of your final proof.

A. I don't remember whether I was living at Nampa at that time, or Boise.

Q. Well, do you remember what you were doing at the time you made your final proof, and in the

(Testimony of Wheeler H. Martin.)

week following?

A. I think I was doing a little carpenter work.

Q. Here in the city?

A. Yes, here and at Nampa.

Q. Are you a carpenter by profession?

A. No, rough work is all; not by profession, no.

Q. What wages are paid for that kind of rough work in the carpenter trade?

A. I got \$3.50 a day, the same as they paid the other men.

Q. This affidavit was made then on account of the fact that your final proof was suspended?

A. Yes, sir.

Q. And you wanted to clear up the difficulty?

A. Yes, sir.

Q. Do you remember that at the time you made your final proof, in addition to the questions that were put to you on that printed blank which you have seen, marked as cross-examination, the register, Mr. Syms, asked you a number of other questions as to where you got the money and about some other things?

A. He asked me several questions.

Q. They were taken down in typewriting, were they not?

A. I think so; I don't know; I am not sure.

Q. I show you now this paper, consisting of four typewritten pages, entitled: "Examination of Wheeler H. Martin, T. & S. No. 1038," and ask you whether or not you recognize your signature at attached to the last page.

(Testimony of Wheeler H. Martin.)

A. Yes, sir, that is my signature.

Q. That is to say, after the register had asked you these questions and reduced the questions and your answers to typewriting, you signed and swore to the truth of them, did you not?

A. Yes, sir; that is my signature, that is, it looks like it.

Mr. KEIGWIN.—We offer in evidence this supplemental cross-examination of the witness, taken in connection with his final proof, and we offer also in evidence an affidavit dated in the United States Land Office, Boise, Idaho, December 19, 1903, the signature to which has been recognized by the witness as his own, which purports to have been subscribed and sworn to before the receiver of the land office on the 19th of December, 1903.

(Marked Exhibit 124 ———.)

Q. Now, Mr. Martin, do you recall how much money you had sent to your father?

Mr. BUNDY.—Let me see the affidavit you are offering, will you.

A. No, sir.

Mr. BUNDY.—I want to interpose an objection here to the reception of this so-called supplemental examination of Wheeler H. Martin before the United States Land Office, dated December 11, 1903, relative to where he was getting the money to make final proof, for the reason and upon the ground that such inquiry and examination was wholly incompetent, irrelevant and immaterial, that the land office had no business asking, and the witness had no occasion for

(Testimony of Wheeler H. Martin.)

stating, where he got the money, and that the so-called cross-examination of the land office was one wholly unwarranted by the law, and for the further reason that such examination was strictly in accordance with the evidence of the witness on the stand to-day and does not in any manner dispute it, and for that reason is not material.

Mr. KEIGWIN.—Q. You don't remember at all how much your father owed you in December, 1903?

A. No, sir, I do not.

Q. Was it \$100, \$200, \$400 or \$500?

A. Well, I don't know just exactly how much I had sent home; probably I didn't figure on he owed me anything, that is, in one way, because I made a donation of that.

Q. Did any other members of your family take up timber lands at or about this time?

Mr. GORDON.—He has testified about that.

Mr. KEIGWIN.—Well, never mind then. Do you remember that in the month of March, 1907, you had an interview with Mr. Ruick, then the United States attorney for this district, in regard to this claim of yours?

A. Yes, I was up here.

Q. Do you remember who else than yourself and Mr. Ruick were present at that interview?

A. Why, let's see, they had a Grand Jury, wasn't it?

Q. I don't mean before the Grand Jury; I mean an interview in the office of the district attorney.

A. No, sir, I don't believe I had an interview with

(Testimony of Wheeler H. Martin.)

him, that is, alone.

Q. Well, did you have an interview with him in the presence of anyone else?

A. I had an interview with this man upstairs now, Mr. Wade.

Q. Was Mr. Johnson, the assistant district attorney, present?

A. I don't know the man at all.

Q. Wasn't there anybody else present than you and Mr. Wade?

A. Yes, there was one man there besides the shorthand man; I don't know who he was.

Q. Was he Mr. Garrett, the receiver?

A. He was there some of the time, yes.

Q. Was Mr. Goodwin there?

A. I don't know.

Q. Was there a stenographer present?

A. Just a shorthand man.

Mr. BUNDY.—Counsel for the defendants has just finished reading the affidavit of the witness, dated December 19, 1903, entitled "Affidavit and Supplemental Showing in the matter of the final proof of Wheeler H. Martin," the same having been heretofore offered in evidence, and the defendants now object to the same for the reason and upon the grounds that such affidavit was one made, as appears from the affidavit, as supplemental proof relative to the manner in which the money was procured by witness, and that such proof was not required by any law of the Government, and was an affidavit required without any authority by the land office, a matter in

(Testimony of Wheeler H. Martin.)

which the land office and the land office officials had no authority to require affidavits or take proofs, and for the further reason that such affidavit is in strict and actual accordance with the evidence of the witness on the stand in this action, and therefore is immaterial.

Mr. KEIGWIN.—Do you remember who the stenographer was that was present on that occasion?

A. No, sir; I do not.

Q. I will ask you to listen to what I am going to read and see whether or not it refreshes your memory at all as to any of these transactions. I read from what purports to be a statement of your interview with Mr. Wade, these questions and these answers: “Q. How much money did you say he gave you to make the timber and stone filing? (The pronoun “he” in this question appearing from the context to refer to your father.) A. About \$300, or something like that. Q. How much did you pay into the land office? A. I paid in \$400 or \$412.50, or something like that. Q. Where did you get the other hundred? A. I had some money of my own. Q. Where had you been keeping that? A. Why, a person is liable to keep that much in his pocket. Q. I asked you where you did keep it. A. I had it in my pocket.” Do you remember whether those questions were asked you and those answers given by you on the occasion of your interview with Mr. Wade?

A. I don't remember just exactly, no, sir.

Q. Do you remember whether anything of that

(Testimony of Wheeler H. Martin.)

kind was asked of you?

A. There was something to that effect; they asked a lot of questions; I don't just remember what they were.

Mr. BUNDY.—The question addressed to you now, Mr. Martin, is not, whether that is true or false, it is just whether you remember that question having been asked you.

A. I remember some of them, yes, sir.

Mr. KEIGWIN.—Q. Do you remember making the statement to Mr. Wade on that occasion that you had kept \$100 of this money in your pocket.

A. I had a little over \$100 when I came down, but of course when I made my final proof that was about gone; of course, when I got the money for the final proof I got \$400 out of the bank.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Martin, one question was asked you, what Downs did when he carried you out up there. Downs didn't carry you out, did he, by team or otherwise, from the Star ranch?

A. No, we went out in a wagon.

Q. But it was your own wagon, or somebody's wagon from there.

A. It belonged to the Star ranch; there was rigs they had brought up from Boise here, but I rode out with other parties.

Q. Mr. Martin, did you understand that Mr. Downs was the one that was making this location, or was it you?

(Testimony of Wheeler H. Martin.)

A. He was showing me the land.

Q. The inference was left the way your testimony was here that Mr. Downs simply told you "That is yours," and that you had no option in the matter at all. Now if the claim he showed you hadn't been entirely satisfactory to you I suppose you wouldn't have taken it.

A. That wouldn't make much difference to me.

Q. So long as it was a timber claim.

A. So long as it was a timber claim.

Q. If he had shown you one without any timber you wouldn't have taken it ?

A. No, sir, I don't suppose I would.

Q. You were paying him to show you a timber claim. A. Yes, sir.

Q. And you were relying on his judgment and skill in that business? A. Yes, sir.

Q. And if it hadn't been satisfactory you would have made him produce another one?

A. Yes, sir.

Q. Now, you said that you understood that Kinkaid was buying. Do you mean to be understood that Kinkaid was buying on September 14, 1903, when you made your original filing?

A. I think so.

Q. Had you heard of Mr. Kinkaid buying anything up in that country?

A. Not up in that country, but my father wrote to me, and I don't know whether it was understood or not; I think it was though, that he was buying; that is the way I understood it.

(Testimony of Wheeler H. Martin.)

Q. You had known that the year before he had bought some land up on Crooked River, where your father located.

A. I know he had bought my father's land.

Q. Did you know anything about Kinkaid having bought a single acre up in the 6—4 country, where you located, at that time? A. No.

Q. You hadn't had any talk with Mr. Kinkaid about selling? A. No, sir.

Q. Or he with you about buying?

A. No, sir.

Q. You testified that at the time you filed on this land you expected to sell to Kinkaid.

A. Yes, sir.

Q. What was that based on?

A. For the reason that he bought land in other places.

Q. Not based on any talk you had had with him?

A. Not with him, no, sir.

Q. If anybody else had offered you more they would have gotten it, wouldn't they?

A. Yes, sir.

Q. Then was your expectation of selling to Kinkaid based solely and entirely upon information you had that he had bought other claims, and that you know of no one else that was buying?

A. Yes, sir.

Q. You also testified that you understood that \$800 was what you was to get. Was that based on general information that claims was selling for \$800, that that was the price? A. Yes, sir.

(Testimony of Wheeler H. Martin.)

Q. And claims in this country were not sold at so much per acre or so much per thousand, but so much per claim.

A. Yes, sir.

Q. And the established market price, so far as it had any at that time, was \$800 for a quarter section of timber.

A. Yes, sir.

Q. Now, Mr. Wheeler, at the time you filed your first papers and made this entry on the 14th day of September, 1903, had you made, or was there in existence any agreement, express or implied, verbal or written, between you and any person, firm, or corporation, by which you had agreed to turn over, transfer, or convey to any such person, firm, or corporation, the title which you might acquire from the Government under the Timber and Stone Act, or any interest in that title?

A. No, sir.

Q. Was there any such agreement as that in effect at the time you made your final proof?

A. No, sir.

Q. Was there any such agreement as that made at any time between you and any person, prior to the time you received your final receipt?

A. No, sir.

Q. At the time your father assisted you by his signature or endorsement in procuring money with which to make final proof, did he acquire for himself or for anyone else any interest in or lien upon the land you might acquire from the Government?

A. No, sir.

Q. Was that loan or assistance of credit by either the bank or your father in any manner connected

(Testimony of Wheeler H. Martin.)

with what you should do with this land?

A. No, sir.

Q. It is charged, Mr. Martin, in this complaint, in this lawsuit we are now trying, by the Government, that you entered this land at the request of, and for the benefit of the Barber Lumber Company, and John Kinkaid, Mr. Rand, Pritchard, and the other defendants named in this action. Is that true or is it false, as far as you are concerned?

A. It is false.

Q. And it is charged that prior to the time you filed upon this land you made this agreement with these defendants, and that by that agreement you promised and undertook to make an entry, and then go before the land office and testify falsely, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land, for the purpose of turning it over to the defendants, or to some person they would direct. Is that true or false?

A. It is not true.

Q. Did you ever at any time have any agreement with any person prior to the time you received your final receipt, by which any person had any interest in this land other than yourself?

A. No, sir.

Q. Mr. Martin, we have heard a good deal here about this line up, and I believe you said you was in the line.

A. Yes, sir.

Q. Do you remember the gentleman that headed the line-up?

A. I don't know whether it was Mr. Eagleson or not; there was an Eagleson right close there, but I

(Testimony of Wheeler H. Martin.)

think it was an old man, though.

Q. Do you remember this fact, that the man that got to the window Sunday evening first was a stranger to practically all of you people, and that the report went out that he was there for the purpose of scripping this land?

A. Yes, sir, that was what we was afraid of.

Q. Because the man that was standing there at the window was a stranger and one that no one knew that had been up there to locate, and the general opinion was that he was going to scrip the land and you were all afraid he would scrip the piece you were intending to locate. Was that the way you understood it?

A. That is the way I understood it at that time, yes, sir.

Q. And that was the occasion of the line-up?

A. Yes, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Who told you that this strange man was there? A. Tom Martin.

Q. Where did he tell you?

A. He told me on the street, I think, met me on the street.

Q. On what day?

A. I think it was Sunday.

Q. Do you remember just what he told you?

A. No, sir, I don't; I don't remember, only he said he was afraid these scrip people would get in and get the land, and he wanted us to go up there and

(Testimony of Wheeler H. Martin.)

line up.

Q. Did he tell you that this strange man was down there at the door of the land office?

A. No, sir, he did not.

Q. Did he tell you that it was necessary for you to go down there and stand in line to keep this strange man from getting the land?

A. I don't remember that he said anything about any stranger, but that was the understanding, that we was to get down there before anybody could scrip it.

Q. When you got down there you found this mysterious stranger at the head of the line?

A. There was lots of them I didn't know.

Q. But you found this particular man there at the head of the line, didn't you?

A. I don't remember who that particular man was.

Mr. BUNDY.—Don't you remember that it afterwards turned out that he was standing there for Mrs. Scully, and she afterwards came there and took his place and he dropped out?

A. I don't remember.

Mr. KEIGWIN.—Q. You do remember though that this mysterious stranger at the head of the line dropped out to give place to some old person?

A. No, sir, I don't remember that.

Q. Don't you remember what became of that stranger?

A. No, sir, I do not; probably I did at the time, but I have forgotten, I guess.

(Testimony of Wheeler H. Martin.)

Q. You were number five in the line, and Mr. Thomas Martin was number four?

A. He was right ahead of me.

Q. Who was number three?

A. I think Mr. Eagleson, or some of the Eaglesons.

Q. What Mr. Eagleson.

A. I don't remember whether it was Harry; some of them; it seems like it was the old gentleman though; it seems like the old gentleman was in there somewhere close.

Q. You mean Mr. George Eagleson?

A. Yes, sir, the old man.

Q. Who was in front of him?

A. His wife was in there some place.

Q. Mrs. George Eagleson?

A. I think she was there.

Q. Then the only person in front of you that you didn't know was this stranger.

A. Yes, I didn't know him personally, I am pretty sure, that is, that I can remember.

Q. Who was the Tom Martin that you speak of—Thomas B. Martin?

A. I think that is his name; he is a lawyer here in town.

Q. Thomas L. Martin, an attorney in this city?

A. Yes, sir.

Q. He is a nephew of Frank Martin, the attorney general?

A. Yes, sir.

Q. And a law partner of Frank Martin's at that time?

A. I think so.

(Testimony of Wheeler H. Martin.)

Q. You never found out who this stranger was at the head of the line?

A. No, I don't remember about it now; of course, I expect I did at the time, but I know there was a good many strangers.

(Witness excused.)

At this time court adjourned until two o'clock, P. M., at which time the taking of testimony was resumed, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Willis A. Ross, on Behalf of the Complainant.]

WILLIS A. ROSS, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Willis A. Ross?

A. Yes, sir.

Q. Where do you reside, Mr. Ross?

A. I live about three miles southwest of the city.

Q. Where did you reside in 1903—the same place?

A. No, sir, I lived down here at the headgate of the Settlers Canal, what is known as the Lemp ditch.

Q. How far is that from here?

A. Well, about three-quarters, I think; it is at the railroad bridge, right across the river.

Q. What was your occupation then?

A. I was ditch tender.

(Testimony of Willis A. Ross.)

Q. And who employed you at that time?

A. Mr. W. H. Gibberd.

Q. You took up a claim under the Timber and Stone Act in 1903, did you not?

A. Yes, sir I think so.

Q. I show you timber and stone land sworn statement, dated September 14, 1903, and ask you if that is your signature to that paper.

A. Yes, sir.

Q. I show you the non-mineral affidavit of Willis A. Ross, of the same date; did you sign that paper?

A. Yes, sir.

Q. I show you testimony of Willis A. Ross given on final proof, dated December 23, 1903, and ask you if that is your signature. A. Yes, sir.

Q. I showed you deed, dated December 28, 1903, made by Willis A. Ross and Josie M. Ross, to George S. Long, and ask you if that is your signature to that deed. A. Yes, sir.

Q. Is that the signature of your wife to that deed, Josie M.? A. Yes, sir.

Q. Mr. Ross, did anyone suggest to you that you take up a timber claim?

A. I don't know as they suggested to me; Mr. Gibberd and I was talking about it.

Q. When was that, that you were talking with Mr. Gibberd about it?

A. It was quite awhile prior to my taking up the claim; we was working on the canal and was talking about it.

Q. Did you know of any market for timber claims

(Testimony of Willis A. Ross.)

at that time? A. I did not.

Q. Did you know of any person or corporation that was buying timber claims?

A. No, sir, I did not.

Q. Did you know of any persons that were selling timber claims? A. No, sir.

Q. Now before you located on this claim that you eventually sold, did you go up to see the land?

A. Yes, I was up to see the claim.

Q. Now who notified you of the time to go to see it?

A. I don't remember; I think Mr. Kinkaid notified me over the phone when to go up.

Q. That was John Kinkaid?

A. I guess that was his name; I don't know; Kinkaid.

Q. Did you know Mr. John Kinkaid at that time?

A. No, sir, I never met the gentleman.

Q. And what did Mr. Kinkaid say to you over the phone?

A. He told me there would be a party going up to locate timber, start the next morning; that was in the afternoon that he 'phoned me.

Q. Did he tell you where they were to start from?

A. Yes, start from town here.

Q. Where were you to meet the people who were to start out?

A. Mr. Davidson, we was to meet there at his office.

Q. That is the lawyer?

A. Yes, sir, I think his office was in the Sonna

(Testimony of Willis A. Ross.)

Building, maybe.

Q. And did you go in your own team?

A. Yes, sir, that is, one of Mr. Gibberd's horses, and I hired a horse of my brother in law, Mr. Wheeler.

Q. What Wheeler? A. J. C.

Q. And did you know Mr. Davidson at that time?

A. Yes, sir, I was acquainted with him.

Q. Had you talked to him about going up to take up land? A. No.

Q. And did Mr. Kinkaid tell you that you were to go by for Mr. Davidson? A. Yes, sir.

Q. And who else were you to go by for?

A. Mrs. Scully, I believe, was her name.

Q. Mrs. Margaret Scully, an old lady?

A. Yes, sir.

Q. And who else? A. My wife.

Q. Now, was that all the arrangements you had, that you were to go up and take a timber claim?

A. Yes, sir, that was all that was said at that time.

Q. Did you know where you were to go?

A. To the Star ranch.

Q. Were you to meet somebody at the Star ranch? A. Yes, sir.

Q. Who were you to meet? A. Pat Downs.

Q. Did you know Pat Downs at that time?

A. Never seen him until I got there.

Q. Did you go by Mr. Kinkaid's office to see him before you started?

A. I drove up there in front of his office, but I

(Testimony of Willis A. Ross.)

don't remember whether I see him that morning or not.

Q. Why did you go up to his office; did he tell you to come by his office?

A. I drove by there on the street; his office was in the Pierce Building.

Q. Did you go there with the expectation of seeing him? A. No, sir.

Q. Did he tell you to come by his office?

A. No, sir.

Q. Did you stop in front of his office?

A. I don't know; we was just on the block on the street.

Q. Did you stop there for any purpose?

A. I did not.

Q. Then you went to the Star ranch and asked for Mr. Patrick Downs? A. Yes, sir.

Q. Now do you remember what day of the week this was? A. No, I do not.

Q. Do you remember what day of the month it was?

A. It was in September, but I don't remember the date.

Q. What part of September?

A. I don't remember; near the middle though, I think; I don't remember just what date it was.

Q. Now, did I understand you to say that Mr. Kinkaid telephoned you one day to say that the party was going the next day? A. Yes, sir.

Q. And that you got ready and started up to Boise the next morning, and that same day started

(Testimony of Willis A. Ross.)

on to the Star ranch? A. Yes, sir.

Q. Did you get to the Star ranch the same day?

A. I did.

Q. What time of day?

A. Late in the afternoon.

Q. Did you locate that day? A. No, sir.

Q. You met Mr. Downs that day?

A. No, I didn't meet him that day; I think I met him the next day; I think he was staying at a *man* by the name of Peterson, and I stayed at the Star ranch.

Q. Did you locate that day, or was the weather inclement and you didn't locate for several days?

A. I think it was the third day; I think we laid over there one day on account of snow storm.

Q. And he took the rest of the party of you all together to locate at the same time?

A. Yes, sir.

Q. Do you know how far Mrs. Scully's claim was located from the Star ranch?

A. Three or four miles, I think.

Q. Was it near the road or on the road?

A. It was quite a ways off from the main traveled road.

Q. I understood you to say you didn't have any letter to give to Mr. Patrick Downs.

A. No, sir.

Q. How did you make yourself know to Mr. Downs?

A. I think I asked some of the people who he was, to point him out to me, and I spoke to him and

(Testimony of Willis A. Ross.)

told him we had come up to locate.

Q. And did he have the maps and plats of location there? A. I think he did.

Q. Did you have any talk with him about where he should locate you, before you left the Star ranch?

A. No, sir.

Q. Then he took you out and located you on a claim, and each of the others on a claim?

A. Yes, sir.

Q. Did he point out a claim to each of you and say, "This is the claim I locate you on," or "This is your claim," or what did he say?

A. He took us over the claims, and he says, "This is the claim," or something to that amount; I don't remember just what all was said.

Q. How many claims did he show the four of you over? A. Four claims.

Q. And when he got to the first claim, what did he say about it?

A. I don't remember what was said.

Q. What I want to know is, did he point the claim out to one of the party and say "I locate you on this claim," or did he say, "If you don't like this, I will give you some other claim"?

A. I think he said, if I remember right, that "This is the claim here"; I think it was in a section somewhere, a section of four claims, all in the same section, I think, and we crossed them, and I think he said, "This is yours," and "This is the claim for you," or something to that effect; I don't know just what it was.

(Testimony of Willis A. Ross.)

Q. Was there a river near your claim, that you know of?

A. I think there was a stream running through it, or partly through it some way; I forget the name of the little creek.

Q. Did you pay Mr. Downs anything at that time for locating you? A. I did not.

Q. Did you ever pay him anything for locating you? A. Yes, sir.

Q. When?

A. Two or three weeks after we located; I forget just the date.

Q. Do you remember the day of the week you started back to Boise?

A. I think it was Sunday probably.

Q. You started back Sunday?

A. I think it was.

Q. What time of day was it?

A. When we left the Star ranch?

Q. Yes.

A. Pretty early that morning, eight or nine o'clock, or something like that.

Q. And what time did you reach Boise?

A. About five, I think, in the afternoon.

Q. How far were these claims or the Star ranch from Boise? A. How far is the Star ranch?

Q. Yes.

A. Forty or forty-five miles; I think they said thirty-five or thirty-eight, something.

Q. And did you stop in Boise that afternoon, or did you go on out to your place?

(Testimony of Willis A. Ross.)

A. I went on down to the headgate.

Q. Did you return again that evening to Boise?

A. I did.

Q. Did you see Mr. Kinkaid that evening, Sunday evening?

A. I seen him when I came first to Boise, but not after I came back from the headgate.

Q. You mean you stopped in Boise that evening as you returned from the Star ranch?

A. Yes, sir.

Q. And why did you go there? Were you instructed to go there?

A. Yes, I took the number of the land, I think, to him.

Q. And did he have your papers prepared at that time?

A. Not till later, I think, in the night some time; I got them in the evening.

Q. And then you went out to your home?

A. Yes, sir.

Q. And you came back again?

A. Yes, sir.

Q. Did anyone tell you to return that evening?

A. I think Kinkaid told me we would have to return that evening and hold our places in line at the land office.

Q. And then you came back and got into line?

A. Yes, sir.

Q. You and your wife?

A. No, my wife didn't come back.

Q. Did she file the next day? A. Yes, sir.

(Testimony of Willis A. Ross.)

Q. Who held her place for her?

A. Mr. William Gibberd.

Q. And he came back from the flood gates with you?

A. Yes, sir.

Q. To hold her place for her?

A. Yes, sir.

Q. And did you go back to Mr. Kinkaid's office for your papers, or did he bring them to you at the land office that evening?

A. I think someone brought them; I don't know whether Kinkaid brought them or not, or who it was; I got them that evening though, while I was in line; I disremember who brought them; I don't know as I knew at the time.

Q. You left your numbers, as I understand, with Mr. Kinkaid, and he said he would prepare your papers for you.

A. Yes, sir.

Q. Did you pay him anything for preparing your papers?

A. I did not.

Q. And these papers are the papers you filed, the sworn statement, and the notice of publication, and the non-mineral affidavit, they are the three papers that were brought you in line, as I understand.

A. If I remember right, they were.

Q. Did you see Mr. Kinkaid at the Sonna Building, at the land office, later in the evening?

A. Not that I remember; I don't know whether he was up there during the night or not.

Q. Do you remember that somebody came there and told you all to get out of there?

A. Yes, sir.

Q. Do you remember whether Mr. Kinkaid came

(Testimony of Willis A. Ross.)

down there and told you all not to get out?

A. I don't remember whether he did or not.

Q. What number of place in line did you have, what was your number?

A. I don't remember what number it was.

Q. Well, as near as you can remember; how many people were ahead of you in line, as best you can remember?

A. Why, I think there was ten or twelve, something like that.

Q. Do you remember any of them that were in line at that time? A. No, sir, I do not.

Q. Do you know Mr. Harbaugh?

A. No, sir.

Q. Was Mr. Davidson in line?

A. I don't remember whether he was there or not; I don't think he was; I don't remember.

Q. You say he went with you? A. Yes, sir.

Q. And he returned with you?

A. Yes, sir.

Q. Did he go to Kinkaid's office with you? Was he in the wagon when you went back to Kinkaid's office?

A. I don't remember whether he went there or not; he may have got out before we got into town; it seems as though he did; I don't remember.

Q. Did you take Mrs. Scully to the land office?

A. No, sir.

Q. Did you take her home, or leave her at Kinkaid's office? A. I took her home.

Q. Do you remember who was the person im-

(Testimony of Willis A. Ross.)

mediately in front of you?

A. No, sir, I do not.

Q. Was Mr. Gibberd behind you?

A. I think he was.

Q. You don't know the person that stood in front of you?

A. No, I do not.

Q. And what time did you file your papers the next day?

A. Between nine and ten, I think, eleven, or something along there.

Q. Now at this time you didn't know of anybody that was buying timber claims?

A. I did not.

Q. And between that time and the time you made your final proof did you know of anybody that was buying timber claims?

A. No, sir.

Q. Do you remember who notified you when the time was to make your final proof?

A. I got the notification in the "Idaho City World."

Q. What were your wages a day when you made this entry?

A. Two dollars and overtime.

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

A. Yes, sir.

Q. Did your wife make her proof the same time you did?

A. Yes, sir.

Q. Do you remember where you got the money with which you made your final proof?

A. Yes, sir.

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

A. No, I don't remember exactly what it was; I

(Testimony of Willis A. Ross.)

know I overpaid.

Q. I mean, was it about \$400?

A. Something like that; I forget just what it was.

Q. You say you overpaid; did they give you back some money?

A. Yes, sir.

Q. How much did they give you back?

A. I don't remember just how much it was; Mr. Garrett asked me or wrote me there was an over-charge.

Q. And this money you paid at the land office when you made your proof, was that paid by check or in cash?

A. In cash.

Q. Do you mind telling us where you got the money which you paid in the land office?

A. I got it from Mr. Gibberd.

Q. How much did you get from Mr. Gibberd?

A. I don't remember how much it was.

Q. Did you get all of it?

A. I don't remember whether I got all of it or not; I think most of it I did.

Q. When did you get it from him?

A. That day I proved up.

Q. The day you proved up?

A. Yes, sir.

Q. Had you had any talk with Mr. Gibberd before that as to where you were to get the money to make final proof?

A. I told him I would have to have some money to prove up on, more than what was coming to me, and he said "All right, he would let me have it."

Q. How much was coming to you, do you know?

(Testimony of Willis A. Ross.)

A. I don't remember; it was \$200, or something like that.

Q. Did you get the money from Mr. Gibberd to prove up on your wife's claim? A. Yes, sir.

Q. Did Mr. Gibberd give you a check for it?

A. No, he give me the money.

Q. Do you know where Mr. Gibberd got the money from? A. No, sir.

Q. Did he ever tell you?

A. No, sir; I supposed he had it.

Q. They gave you a receipt for that money at the land office, did they, for that money you paid in?

A. Yes, sir.

Q. Now, how long after that did you negotiate for the sale of this property?

A. I didn't make no arrangements for selling it at all; I left that all to Mr. Gibberd; I was busy on the canal and appointed him to do the business for me.

Q. And how long after you got your final proof did you sell?

A. I don't remember how long; a month, I think, something like that.

Q. To whom did you sell?

A. I don't know.

Q. Who did you go to see to sell this property to?

A. I didn't go to see anyone; Mr. Gibberd was down the day before, and told me to come up next day, that he had sold the timber, to sign the deed, and we came up and signed it, and went right back to the headgate.

(Testimony of Willis A. Ross.)

Q. Where did you go to sign it?

A. Walker's office.

Q. Did you see Mr. Kinkaid the day you signed the deed?

A. No, sir, not that I remember.

Q. Who paid you the money for the property?

A. Mr. Gibberd.

Q. And how much did Mr. Gibberd give you?

A. He gave me \$600, something over \$600, I don't remember.

Q. For both claims? A. Yes, sir.

Q. And your wife went up with you at that time?

A. Yes, sir.

Q. Did Mr. Gibberd have the deed for you to sign when you went up to Mr. Walker's office?

A. Yes, sir.

Q. Where was Mr. Walker's office?

A. Southwest corner of the Falk Building, second floor, I believe.

Q. Then how much did you make out of each claim clear?

A. Something over \$300, I think.

Q. Now, if you only got \$600 for the two claims—you paid all your other expenses, didn't you?

A. Yes, sir.

Q. Did you pay the locating fee yourself?

A. Yes, sir.

Q. Did you give that to Mr. Downs personally or did you give it to somebody to give to Mr. Downs?

A. I gave it to Mr. Gibberd, yes, sir; I got the receipt for it.

(Testimony of Willis A. Ross.)

Q. Did Mr. Gibberd pay the fees at the land office when you went there the first time?

A. No, I paid that for the advertising and such like, I paid that.

Q. Did you know Mr. George S. Long?

A. No, sir.

Q. Did you read the deed over that you signed?

A. No, sir, I did not.

Q. Now do you remember whether Mr. Gibberd held the money out to pay all the expenses of this entry, and so forth?

A. No, I don't remember.

Mr. BUNDY.—What do you mean by that?

Mr. GORDON.—I mean he said that Mr. Gibberd paid \$25, for him to pay to Pat Downs. Didn't I understand you to say that Mr. Gibberd charged you for that?

A. I didn't say anything about that that I know of, but Mr. Gibberd paid Downs.

Q. And charged it to you, as I understood; is that right?

A. I don't remember whether it was in the settlement or not, whether he charged me or not.

Q. I am not trying to change your testimony; I understood you to say, though, that Mr. Gibberd paid Downs the \$25 for you. Is that right?

A. I paid Mr. Gibberd the \$25, and he paid Mr. Downs.

Q. You gave him \$25? A. Yes, sir.

Q. Did you borrow that from Mr. Gibberd?

A. I did until the 15th of the month, pay day.

(Testimony of Willis A. Ross.)

Q. Now this deed is dated five days later than the date of your final proof, and did I understand you to say that up till the time you sold this property that you didn't know of any person that was purchasing property? A. I did not.

Q. You didn't know that John Kinkaid was buying property? A. No, sir, I did not.

Q. Had Mr. Gibberd sold his claim at that time?

A. I don't know.

Q. He had never told you anything about it?

A. No, sir.

Q. And did you know who prepared this deed or drew this deed for you?

A. No, sir; I supposed Walker did; it was in his office; I don't know.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Willis A. Ross, dated September 14, 1903; the non-mineral affidavit of Willis A. Ross, of the same date; the testimony of Willis A. Ross, given on final proof, dated December 23, 1903; and the cross-examination of William A. Ross, attached, all of which papers have been identified by Willis A. Ross as having been signed by him; the notice of publication, dated September 14, 1903; the testimony of the other witnesses, given on final proof, and the cross-examination thereof; the receiver's receipt, and the register's certificate, dated December 23, 1903; the deed, dated December 28, 1903, made by Willis A. Ross and Josie M. Ross, husband and wife, to George S. Long, consideration \$1600, which deed has been identified by Willis A.

(Testimony of Willis A. Ross.)

Ross as having been signed and acknowledged by himself and Josie M. Ross, his wife; certified copy of the patent, dated December 1, 1904; all to the southeast quarter of section 20, township 6 north of range 4 east, Boise Meridian. The deed also contains the southwest quarter of section 20, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 125A to 125M, inclusive.)

Mr. KEIGWIN.—Q. Mr. Ross, you paid your share of the expense of the trip to go up to this land, didn't you? A. Yes, sir.

Q. Do you remember how much it was?

A. No, I don't remember.

Q. Well, approximately, \$5 or \$10?

A. I don't remember what it was; I should judge it was between \$5 and \$12, something along there.

Q. You had a two-horse team? A. Yes, sir.

Q. And how many in the party?

A. There was four.

Q. Was it your team? A. No, sir.

Q. You had to hire the team? A. Yes, sir.

Q. And wagon? A. Yes, sir.

Q. And one of the party drove, I suppose?

A. I drove; I done the driving myself.

Q. And you were out four or five days?

A. Four days, I think, something like that.

Q. Can't you give us an idea of what the title expense of a team such as that would be? What would I have to pay for that sort of a team if I went to a livery stable in Boise?

(Testimony of Willis A. Ross.)

A. You would have to pay more than what we did.

Q. Because I am a stranger?

A. Because I was working my brother in law's horse, and he only charged me a small amount for it, and Mr. Gibberd's horse was a saddle horse we had on the canal. The feed was the greatest expense; I think probably, if I remember right, it was about \$2.25 or \$2.50 apiece, something like that; I think Mr. Davidson, if I remember right, paid me \$2.50, after we got back to town.

Q. That is, the total expense of the expedition would be about \$10?

A. Something like that, I think.

Q. That would be because you didn't pay anything for the horses and wagon?

A. Yes, I paid for the horses and wagon.

Q. It cost you something to live up there, I suppose?

A. Yes, sir.

Q. Do you remember how much you paid up there?

A. I forget what the board was.

Q. About \$2 a day?

A. Something like that, I think; I don't remember; I have forgotten.

Q. Do you remember that when you came back to the land office that you paid what is called a filing fee, when you made your original application, do you remember how much that was?

A. No, I do not.

Q. Do you remember that there was a charge, included in that filing fee, for advertising?

(Testimony of Willis A. Ross.)

A. Yes, I remember what the advertising was.

Q. How much was that?

A. It was \$15, I think, for the two claims; I know I sent a money order to Idaho City for that.

Q. That was for the two claims?

A. Yes, sir.

Q. How much did Mr. Gibberd owe you at the time you made your final proof, or just before?

A. I don't remember how much it was; we had an account with each other, about \$200, or something like that; he owed my wife for cooking, quite a bit, I don't remember how much that was now.

Q. Don't you remember how much money you got from Mr. Gibberd?

A. I got practically all of it, that is, I borrowed what wasn't coming to me; I told him I wanted what they charged over what was coming to me.

Q. You mean that he advanced to you over and above what he owed you?

A. Yes, sir, I borrowed that much from him.

Q. Do you remember how much you owed him then?

A. No, I don't remember, I don't know what it was; that was five or six years ago.

Q. Couldn't you tell us whether it was \$200 or \$500?

A. It was \$200, or something like that, I think, or a little over; I don't remember how much it was.

Q. You came to this country in 1889, did you not?

A. Yes, sir.

Q. And then after that you went back to Missouri

(Testimony of Willis A. Ross.)

and lived for three years? A. Yes, sir.

Q. And you returned in 1899, did you not?

A. Yes, sir.

Q. And have been living here continuously since 1899? A. Yes, sir.

Q. How long had you been working for Mr. Gibberd at the time you made this entry?

A. Two years, I think; two or three years, something like that.

Q. For whom had you worked before you worked for Mr. Gibberd?

A. I was on a ranch down below here.

Q. And were you making \$2 a day working on the ranch?

A. No, sir, not clear, I didn't; I had a ranch rented.

Q. You were renting a ranch? A. Yes, sir.

Q. How many children did you have in 1903?

A. Two.

Q. How old were they?

A. Four, I believe, and two.

Q. One was four and the other was two?

A. I think so.

Q. Did you have any capital when you came back from Missouri in 1899?

A. No, nothing to speak of.

Q. You had about \$300?

A. Something like that.

Q. And that went for illness, did it not?

A. Yes, sir.

Q. So that you had no capital.

(Testimony of Willis A. Ross.)

A. No, nothing to speak of, nothing only my wages.

Q. Do you remember how much cash you had on hand in 1903 when you made this entry?

A. No, I don't remember.

Q. As much as \$100?

A. When I made the entry?

Q. Yes.

A. I don't remember how much it was, something like that, I think, \$200.

Q. Do you think it was \$100?

A. I think so.

Q. Was it more than \$100?

A. I don't know whether it was or not; I think it was.

Q. Do you think it was \$200?

A. I don't remember.

Q. Would you say it was not \$200?

A. No, I wouldn't say; I don't remember what it was.

Q. Did you go to Mr. Gibberd and tell him you wanted to collect what was due you and borrow some more money, in order to make this entry?

A. I did.

Q. How long was that before you made your application?

Mr. BUNDY.—Application or final proof?

Mr. KEIGWIN.—Well, whichever he says. I will put it this way: Was it before you made your application or after you made your application? By application I mean the original sworn statement,

(Testimony of Willis A. Ross.)

your filing.

A. Well, filing—it wasn't before I filed, I know, because I didn't speak to him for awhile; before I proved up was when I got the money.

Q. Then, as I understand, you didn't sound Mr. Gibberd on the subject until shortly before you proved up.

A. No, sir.

Q. Do you remember when it was before the day of your final proof that you approached Mr. Gibberd on that subject?

A. No, I don't remember; it was a week or two though, a couple of weeks, I think, something like that; I know we was working on the canal, and I spoke to him about it while we was down on the canal.

Q. Was he working with you?

A. Yes, sir.

Q. Or, did he simply come down there superintending the work?

A. He was superintending the work.

Q. He rode around from one place to another?

A. Yes, sir.

Q. And when he came down you laid this proposition before him?

A. Yes, we was taking out a flume, filling it in with dirt, we worked there six weeks or so, and he was down there nearly every day.

Q. And on one of those days you asked him if he would let you have this money?

A. Yes, sir.

Q. Where did he give you the money?

A. Yes, sir.

Q. Whereabouts?

(Testimony of Willis A. Ross.)

A. I think at his house; we was taking dinner with him.

Q. You went to his house and took dinner with him and got the money? A. Yes, sir.

Q. Now, Mr. Ross, if you will think for a moment, isn't it a fact that Mr. Gibberd brought the money to you while you were at work on the canal?

A. Brought the money to me?

Q. Yes. A. No, sir, he did not.

Q. You are sure you got it at his house?

A. I am.

Q. Did he have it in cash? A. Yes, sir.

Q. How much was it?

A. Enough to prove up on; I don't know just how much it was now; I don't remember.

Q. Did he give you enough for yourself and Mrs. Ross? A. Yes, sir.

Q. All at the same time? A. Yes, sir.

Q. Don't you remember how much it was?

A. It was about \$800, I don't remember, something like that.

Q. And you took that money directly to the land office? A. Yes, sir.

Q. The same day?

A. Yes, sir, the same day.

Q. And paid it in there? A. Yes, sir.

Q. Do you remember that in your examination at the land office you were asked this question, which is numbered seventeen: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession," and

(Testimony of Willis A. Ross.)

that you answered, "I worked for it. I have had \$200 four or five days. The balance I am to get from Mr. W. H. Gibberd, of the Settlers Canal Company." Do you remember making that answer to that question?

A. Something like that; I don't remember just the words.

Q. Now, having refreshed your memory by that, can you tell us now whether or not it was true that you had had \$200 for four or five days?

A. Yes, I had \$200, or more than that; I don't remember; I know I got \$600 from him, drew a check on him for \$600 a week or ten days before that, in another deal.

Q. Wasn't that check on the 26th of January, after you had made your final proof?

A. I don't remember; I think it was; it was when—

Q. That was a later check?

A. I know I drew a lot of money from him; I don't know just when it was; I don't remember.

Q. Now, what was that \$600 for?

A. It was for buying horses, I think.

Q. Wasn't it for buying ten acres of land in Boise?

A. No, sir, that is a different proposition altogether.

Q. Don't you remember that you did pay Mr. Gibberd \$600 on account of the purchase of ten acres of land in Scott's Third Subdivision, in block nine, in this city, I suppose?

A. Yes, sir.

(Testimony of Willis A. Ross.)

Q. On the 26th of January, 1904? A. Yes.

Q. Now, is that \$600 payment the same one you had in mind? A. No, sir.

Q. Then you paid him \$600 on two different accounts about that time?

A. I said I drew a check of \$600 before I proved up; that is the check I had reference to.

Q. You mean you got \$600?

A. Yes, sir; I drew a check on him; I was in Burns, Oregon, at the time.

Q. You mean you drew a draft?

A. Yes, sir.

Q. On what account was that \$600 drawn?

A. That was for buying horses.

Q. For Mr. Gibberd? A. Yes, sir.

Q. That had nothing to do with the purchase of this timber land, I suppose? A. No, sir.

Q. Then the \$200 that you had had for several days didn't come out of that \$600 draft, did it?

A. Yes; I forget how much I spent up there for horses, and brought back, I don't know how much it was.

Q. That was \$200 of money for which you were accountable to Mr. Gibberd, wasn't it?

A. Yes, sir.

Q. But you had that in your possession?

A. Yes, sir.

Q. And then he gave you something like \$800 in addition the day you made your proof?

A. I think it was something like that.

Q. Well, now, did you pay Mr. Downs the loca-

(Testimony of Willis A. Ross.)

tion fee of \$50 at the time you were up there at the land? A. I did not.

Q. When did you pay it?

A. I think it was two or three weeks afterwards, a week or two.

Q. Did you pay that yourself, or did Mr. Gibberd pay it for you?

A. Mr. Gibberd did afterwards; I give it to him.

Q. That is, he paid the money and charged it to your account? A. Yes, sir.

Q. You had no bank account at this time?

A. I don't remember whether I did in 1903 or not; I did in 1904, I remember.

Q. Well, now, Mr. Ross, as I understand, the land cost you for location fee \$50, that is, your land and Mrs. Ross'. A. Yes, sir.

Q. Your trip to the land cost you \$2.50 about.

A. Something; I don't know just what it was.

Q. And the fee for advertising in the land office on the two claims was \$15? A. Yes, sir.

Q. And the purchase price was \$825 for the two claims? A. Yes, sir.

Q. And it appears from the final receipt there that you had paid a small amount, \$2.25 to the receiver for reducing your testimony to writing. Do you remember that item?

A. I don't remember.

Q. Well, the receipt shows it. The two tracts of land, therefore, cost you a little less than \$900. Now do you remember how much of your own money you had that went into this transaction?

(Testimony of Willis A. Ross.)

A. No, I don't remember.

Q. You can't tell us how much of that \$900 was funds of your own that you advanced?

A. No, sir; I don't remember.

Q. And you can't tell us how much of it was money which Mr. Gibberd paid you in the settlement of his debt to you?

A. No, I don't remember how the settlement was now, what the amount was; I know we settled, but I don't remember what it was.

Q. And you don't know how much of it was an advance made by Mr. Gibberd to you in addition to what he already owed you?

A. It seems like it was \$200; I don't know how much, \$200 or better.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Ross, Mr. Gibberd, of whom you have spoken, is an old friend of yours, is he not?

A. Yes, sir.

Q. You have known him for a good many years?

A. Yes, sir.

Q. And in fact you, as a boy, went to school to him, when he was a school teacher?

A. Yes, sir.

Q. Did your wife go to school to him, too?

A. Yes, sir.

Q. That used to be his business, teaching school?

A. Yes, sir.

Q. And Mr. Gibberd is a man of means, is he not?

A. Yes, sir.

(Testimony of Willis A. Ross.)

Q. And in 1903, and since that time, has been a money-lender and speculator, and the owner of substantial properties here, and has carried on a considerable business, has he not? A. Yes, sir.

Q. A man as you understand it that lends money on chattel mortgages sometimes and buys and sells securities? A. Yes, sir.

Q. Now, you said the first intimation you had about going up to look at the land on that particular day you went was a telephone communication I think you said from Mr. Kinkaid.

A. Yes, he notified me, because I talked to Mr. Gibberd before that about the land, but he notified me when to come up.

Q. How did Mr. Kinkaid know that you wanted to locate on land?

A. Mr. Gibberd, I suppose, told him that he wanted us to take up some timber.

Q. So you had been talking with Mr. Gibberd?

A. Yes, we had talked about it.

Q. And had told Mr. Gibberd that you wanted to take up a claim? A. Yes, sir.

Q. So your understanding was that Mr. Gibberd had communicated that fact to Mr. Kinkaid.

A. That is the way I understood it.

Q. Did you have any communication except that there was a crowd going up?

A. No, sir, just stated to me that me and my wife was included in a party that was going to start up next morning.

Q. And that was pursuant, as you understood it,

(Testimony of Willis A. Ross.)

to some arrangement that Mr. Gibberd had made?

A. Yes, sir.

Q. You were expecting to go up?

A. I didn't—I didn't know; Mr. Gibberd told me if there was a chance I should drop everything and let him take my place.

Q. At that time you were working for Mr. Gibberd?

A. I was.

Q. As foreman?

A. Yes, sir.

Q. And your wife was also working?

A. Yes, sir.

Q. What was she doing?

A. She was cooking for the men.

Q. When you got up to the Star ranch you went out with Mr. Downs. You understood before you went, I suppose, that Mr. Downs was a locator?

A. Yes, sir.

Q. And that you would have to pay for being located. Mr. Downs didn't tell you that was the only piece you could have, did he?

A. No, sir.

Q. Just pointed out that as a claim?

A. Yes, sir.

Q. Tell you approximately what there was on it, on a good timber claim, or something of that kind?

A. I don't remember just what he said about it, something to that effect.

Q. The point I am trying to get at, you didn't understand that you had to take any claim that Mr. Downs told you to?

A. No, sir.

Q. Now, Mr. Downs gave you the description?

A. Yes, sir.

(Testimony of Willis A. Ross.)

Q. And told you to go to Mr. Kinkaid's office on your return? A. Yes, sir.

Q. You understood at that time, did you, that Mr. Downs and Mr. Kinkaid were locators, people working together?

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

Q. Did Mr. Downs tell you to do the paying at Kinkaid's?

A. No, never said anything about it.

Q. Tell you there would be no charge?

A. Never said anything about it.

Q. Just told you to go to Kinkaid?

A. Yes, sir.

Q. You say the night you returned from the Star ranch you met Mr. Kinkaid at his office, where you gave him the description? A. Yes, sir.

Q. And you went on to your home leaving him making out the papers? A. Yes, sir.

Q. Then you returned?

A. Yes, to the land office.

Q. And at that time did Mr. Kinkaid tell you to come back and get in line at the land office?

A. Yes, sir.

Q. Did he tell you the reason for that?

A. He said there was a man there with scrip that was going to get in ahead of all of us fellers and take the land away from us, or something to that effect.

Q. Did he tell you who it was that was going to scrip the land? A. No, sir, he did not.

Q. Didn't tell you who he represented?

A. No, sir.

(Testimony of Willis A. Ross.)

Q. At the time you made this first application, you had made no arrangements then for the necessary money to prove up? A. No, sir.

Q. You hadn't any doubt of your ability to raise that amount of money here in town?

A. I knew I could get it from Mr. Gibberd any time I asked for it, always did and always could.

Q. At the time you made this entry and filed these first papers in the land office, was there in existence any agreement between you and any person, firm, or corporation, by which you had agreed to turn over to such person, firm, or corporation, or anybody they should direct, the title which you might acquire from the Government of the United States?

A. There was not a word said about it.

Q. Was there any such agreement, in writing, or verbal, express or implied, at the time you made your final proof? A. No, sir.

Q. Was there ever, at any time, any agreement on your part, express or implied, in writing or verbal, by which anybody acquired any lien upon or interest in the land you acquired from the Government? A. No, sir; there was not.

Q. At the time you made the loan from Mr. Gibberd to prove up on this land, did Mr. Gibberd, by reason of that loan, acquire any interest in or lien upon the lands you were entering from the Government? A. He did not.

Q. Did he have any mortgage upon it?

A. No, sir.

Q. Did Mr. Gibberd ask you at the time he loaned

(Testimony of Willis A. Ross.)

you the money to sell the land to him, or to any other person? A. No, sir; he did not.

Q. Was there anything said whatever with reference to transferring or selling this property at that time? A. No, sir.

Q. You say your best recollection is that Mr. Gibberd at that time owed you and your wife, on account, probably in the neighborhood of \$200?

A. There was about that much coming to me; I don't know how much was coming to her; there was quite a bit on the cooking.

Q. And he loaned you the difference between whatever was coming to you and the sum of \$800, which was required to prove up? A. Yes, sir.

Q. So, that if it had been \$200, his loan amounted to about \$600? A. Yes, sir.

Q. After you had proved up were you advised by anyone that there was then a chance to sell this property? A. No, sir; I was not.

Q. After you had proved up did you have any talk with Mr. Gibberd with reference to finding a purchaser for you?

A. I think we said something about selling it, some way; I told him I couldn't use it very well, and when he got a chance to sell it, why sell it for me, and I left it to him.

Q. So the next you heard was that Mr. Gibberd had found a purchaser?

A. Yes, he 'phoned to me and told me he had found a purchaser for the land.

Q. Where did you go?

(Testimony of Willis A. Ross.)

A. Walker's office; he told us to meet him on the street.

Q. Then you did meet Mr. Gibberd and he took you to Walker's office? A. Yes, sir.

Q. And there you executed the deeds?

A. Yes, sir.

Q. And Mr. Gibberd paid you, I think you said, something like \$600?

A. Not right at that time; it was awhile afterwards, when we made a settlement; I told him to go ahead, and the men was busy working on the canal, and he told me to go right back and tend to them, and I told him to sell and we would settle afterwards.

Q. And he sold the land and collected for you, and afterwards you and he settled up your affairs?

A. Yes, sir, I don't know how long it was.

Q. Are you able to tell now just how much profit you made on the venture?

A. No, sir.

Q. You don't know how much money Mr. Gibberd was paid for the land?

A. No, sir, I do not; I never asked him.

Q. Mr. Ross, the Government of the United States, in this lawsuit we are trying here, has made a charge in this complaint that you entered this land at the request of and for the benefit of the Barber Lumber Company, Kinkaid, Rand, Palmer, Pritchard, and the other defendants. Is that true or false?

A. That complaint is false.

Q. And it is further charged in this complaint that you entered into an agreement with these de-

(Testimony of Willis A. Ross.)

defendants by which you undertook and promised that you would enter this land for them, and that you would then go before the land office and testify to what you knew to be false, for the purpose of defrauding the United States out of this quarter section of land, and that you would then turn it over to the defendants, or to such person as they should direct. Is that true or false?

A. It is absolutely false; I never knew there was a company or anything of the kind.

Q. Or the other defendants either?

A. No, sir, never knew them.

Q. These gentlemen here have also charged in this complaint that at the time you and your wife went to the land office and made final proof, you testified to what you knew to be absolutely false, at the request of and at the solicitation of the Barber Lumber Company and the other defendants in this action. Is that true or false, as far as you are concerned?

A. It is false; I never knew there was a company.

Q. There are other defendants here besides the Barber Lumber Company: Pritchard, Rand, Kin-kaid, Barber, Moon; did you do it at the request of any of them?

A. I did not.

Q. Counsel for the complainant has been questioning you, Mr. Ross, and has been reading from a long typewritten document, of which we have seen a great many here, and you have been asked about an examination by Mr. Ruick in March, 1907.

Mr. KEIGWIN.—I didn't ask him about it.

Mr. BUNDY.—Well, while counsel was examin-

(Testimony of Willis A. Ross.)

ing you he had before him a typewritten statement, of which we have seen a great many in this trial, and which I assume to be a purported statement of this conference—did you have a conference with Mr. Ruick at about that time?

A. I did with Johnson.

Q. Mr. Ruick's assistant? A. Yes, sir.

Q. Will you state, Mr. Ross, the manner in which you were treated, and the manner in which they—

Mr. KEIGWIN.—That is objected to as incompetent, irrelevant, and immaterial, there having been in the examination of this witness no suggestion of such an interview with Mr. Johnson or anybody else, no reference to such interview, and no examination of this witness with reference to any such interview.

Mr. BUNDY.—Let me see the paper which you had before you.

Mr. KEIGWIN.—I have no objection to your seeing the paper; the paper has not been put in evidence, and the witness has not been questioned about it; and I may add that there is no intention to use this paper for any purpose whatever in this case. (Hands the paper to Mr. Bundy.)

Mr. BUNDY.—I want to ask you if, in that examination, Mr. Ross, if you were threatened and accused by the officers who were conducting the examination.

A. Yes, sir, I was.

Q. Were you sworn at any time on that examination?

A. I was in the latter part of the examination.

Q. At the close of that examination do you re-

(Testimony of Willis A. Ross.)

member that the typewritten questions and answers which they purported to be taking down was destroyed, torn up?

A. I didn't understand that question.

Q. Do you remember of their tearing up the report that they had taken down of your statement?

A. Yes, sir.

Q. And destroyed it? A. Yes, sir.

Q. And after that was there any further examination? A. There was not.

Q. I show you a statement which counsel has handed to me, and which purports to be a statement of Willis A. Ross, dated March 27, 1907, which consists of twenty-nine typewritten pages, and which doesn't appear to have been destroyed or mutilated in any manner. Was the one you saw destroyed left in the condition of the one I show you?

A. No, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Ross, are you positive that the stenographer who took the notes of your examination destroyed his notes?

A. He destroyed some paper he was writing when he took my examination; I thought it was at the time.

Q. Was it a typewritten document that he destroyed, something like this (showing witness paper)?

A. It looked something like that.

Q. Was it in typewriting?

(Testimony of Willis A. Ross.)

A. I think it was.

Q. Had you seen the paper which was destroyed?

A. I seen him tear up some paper.

Q. I mean had you read the paper?

A. No, sir.

Q. Did you know what was on it? A. No.

Q. Was the paper in this shape?

A. Something of that kind, yes.

Q. About that size? A. Yes.

Q. And it bore a good deal of typewriting?

A. Yes, sir.

Q. And you supposed it was what you had been saying?

A. I supposed it was; I didn't know.

Q. Now when you left this examination whom did you tell that they had destroyed the notes of your examination?

A. I don't remember who it was.

Q. Did you tell anybody?

A. I think I was talking about it to someone; I don't know who it was.

Q. Now, who was it?

A. I don't remember who it was.

Q. Well, whom did you go to see after you left Mr. Johnson's office?

A. I was in the room there with the rest of the fellows; I didn't see no particular one that I know of.

Q. You mean that after you left Mr. Johnson's office you went into another room?

A. I was in the hall.

(Testimony of Willis A. Ross.)

Q. And you stated the fact then that they had torn up your examination?

A. I supposed they had torn it up after I gave it then.

Q. That was what you supposed at the time?

A. Yes, sir.

Q. And supposing that you made that statement?

A. Yes, sir.

Q. To whom did you make that statement?

A. I don't know who it was; there was several there.

Q. Have you made that statement since that time?

A. Not that I know of.

Q. Have you told anybody else that they tore up your papers?

A. Not that I know of.

Q. And on that day you didn't make that statement to anybody only the people there in the hall?

A. Only in the hall, I spoke to some of them about it.

Q. Who was present at the time your examination was taken besides Mr. Johnson?

A. Mr. Sharp I think was in there part of the time, and the gentleman that is up-stairs now—I don't know what his name is.

Q. Was it Mr. Wade?

A. Wade, I think the name was, and I think Mr. Ed Garrett was in there part of the time, and maybe two or three others.

Q. Was there a young man named Oppenheim in there?

A. I don't know him.

(Testimony of Willis A. Ross.)

Q. Who was acting as typewriter, who was using the typewriter in there?

A. I don't remember.

Q. There was a typewriter there?

A. Yes, sir.

Q. And your statements were taken down in typewriting?

A. It was at work all the time; I don't know who it was.

Q. Who was operating the typewriter?

A. I don't know.

Q. Do you remember that there was a typewriting machine in the room?

A. I think there was.

Q. Are you positive?

A. I ain't positive, but if I remember right, there was.

Q. You didn't notice what Mr. Oppenheim was doing?

A. No, sir, I don't know him.

Q. And you didn't notice who was taking down your statements?

A. No, sir, some stenographer, but I didn't know who he was.

Q. Who tore the paper up?

A. I don't remember; it was Johnson, I believe, or some one, tore up some paper.

Q. Who gave the paper to Johnson?

A. He had them there, I think, or picked them up after we got through; I know they all went out and Johnson and I stayed in the room there half an hour

(Testimony of Willis A. Ross.)

by ourselves, after the rest all left.

Q. And it was then that Mr. Johnson tore up the paper? A. Yes, sir.

Q. Did he tell you why he tore it up?

A. No, sir.

Q. He gave you no reason for it?

A. No, sir.

Q. Did he mention the fact that he was tearing up your paper?

A. No, he did not, but I thought it was the same paper.

Q. Did he say or do anything to draw your attention to the fact?

A. He said, "I will tear the damn things up." Excuse me for using that language. He said "Tear them up; they are no good anyway."

Q. That the paper was no good?

A. The evidence, or whatever it was, he said, "It is no good anyway."

Q. How long were you in that interview of yours with Mr. Johnson?

A. I think three or four hours.

Q. Do you remember how much paper there was?

A. No, there was several sheets of it.

Q. Five or ten pages?

A. I don't remember.

Q. A dozen or twenty?

A. I don't think there was that many; six or eight, something like that, five or six or seven or eight, something like that.

(Testimony of Willis A. Ross.)

Q. Was it something like this paper I hold in my hand?

A. It might have been; I don't remember.

Q. Were there twenty-nine pages of it?

A. I don't remember.

Q. You inferred then from what Mr. Johnson said, and from what Mr. Johnson did, that he didn't expect to make any use out of anything you said to him?

A. Well, he talked like it, but afterwards when it was all over with, when we talked it over by ourselves, we was talking about it, and of course him and I had quite a bit of trouble in there and he said, "I will tear the damn things up; it's no good; it's all lies."

Q. What you said to Mr. Johnson wasn't lies?

A. No, sir, wasn't intended to be.

Q. What you said to Mr. Johnson was the truth as far as you knew at the time, wasn't it?

A. Partly, yes, what I told him; part of it was true and part of it wasn't; I wasn't sworn at the time I gave in the evidence.

Q. What motive did you have for trying to deceive the district attorney?

A. The way he come at me; I didn't think it was any of his business to question me the way he did.

Q. You could have refused to answer, couldn't you?

A. I could, probably, but I thought possibly I would have to answer; I didn't know.

Q. So that what you told him wasn't all true?

A. Part of it wasn't; some of the statements I

(Testimony of Willis A. Ross.)

made I know wasn't true, one particularly; I told him Ed Garrett notified me when to prove up.

Q. Didn't he?

A. No, sir, he did not; I got it mixed with the—I got a notification through the paper when to prove up. I had reference then to when he had phoned to me about overcharging me.

Q. That was an unintentional mistake on your part? A. Yes, sir.

Q. You didn't intentionally tell Mr. Johnson anything that wasn't true, did you?

A. No, sir, not intentionally.

Q. And you told him practically what you have told us here to-day? A. Yes, sir.

Q. Is there anything that you have told us to-day that you didn't tell Mr. Johnson?

A. I don't remember whether there was or not.

Q. Is there anything that you have told us to-day that varies from anything you told Mr. Johnson?

A. I don't know as there is.

Q. You haven't told us anything to-day that wasn't true? A. No, sir.

Q. Have you any objection to telling us what your age is, Mr. Ross?

A. Well sir, I was born in '71; I am thirty-seven; February 28th I will be thirty-eight.

Q. You are thirty-eight years old?

A. This coming 28th.

Q. And where did you go to school to Mr. Gibberd?

A. Down here at the Belfry school-house.

(Testimony of Willis A. Ross.)

Q. In this State? A. Yes, sir.

Q. How old were you when you quit school?

A. Twenty, I think, twenty-one or twenty-two; I wasn't a regular scholar when I went to him; my wife was; I wasn't.

Q. Who told you that there was danger that this land was going to be scripped?

A. Mr. Kinkaid told me that we would have to get in line to hold our places, or it would all be scripped.

Q. Did he tell you who was going to scrip it?

A. He did not.

Q. Did you understand who? A. No, sir.

Q. Did you ever hear Governor Steunenbergh's name mentioned in connection with the scripping of this land? A. No, sir.

(Witness excused.)

[Testimony of Josie M. Ross, on Behalf of the Complainant.]

JOSIE M. ROSS, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Josie M. Ross?

A. Yes, sir.

Q. And you are the wife of Mr. Willis Ross, who has just left the room? A. Yes, sir.

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

(Testimony of Josie M. Ross.)

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 14, 1904, of Josie M. Ross and ask you if that is your signature to that paper?

A. Yes, sir; it is.

Q. I show you non-mineral affidavit of Josie M. Ross, dated September 14, 1903, and ask you if you signed that paper?

A. Yes, sir.

Q. I show you the testimony of Josie M. Ross, given on final proof, December 23, 1903, and ask you if you signed that?

A. Yes, sir.

Q. I show you the cross-examination of Josie M. Ross attached. Is that your signature to that paper?

A. Yes, sir.

Q. I show you deed, made by Willis A. Ross and Josie M. Ross to George S. Long, and ask you if that is your signature to that?

A. Yes, sir.

Q. The deed is dated December 28, 1903. Mrs. Ross, who first spoke to you about taking up a timber claim?

A. Mr. Ross.

Q. And how long before you took up a claim did he speak to you about it?

A. Well, I don't remember how long it was.

Q. Well, did he come in one evening and tell you that you were going to take up a timber claim and would have to start next morning?

A. No, it was sometime before we went that he spoke to me about it.

Q. Was it a week?

A. It was longer than a week.

Q. When was the time arranged for you to go,

(Testimony of Josie M. Ross.)

how long before you started?

A. The day before we went.

Q. And you and Mr. Ross left your home and went to the Star ranch? A. Yes, sir.

Q. Do you remember what day of the week it was that you started? A. I think it was Friday.

Q. And did you get to the Star ranch Friday?

A. Yes, sir.

Q. Were you located that day, or was the weather bad and you couldn't be located for three or four days? A. We were located the next day.

Q. You didn't stay around the Star ranch for two or three days before you located? A. No, sir.

Q. And did you meet Mr. Downs there?

A. Yes, sir.

Q. And he located you? A. Yes, sir.

Q. Did you pay him anything for locating you?

A. Yes, sir.

Q. Pay him personally yourself?

A. Mr. Ross paid him.

Q. Did you see him pay him? A. No, sir.

Q. And how far was your claim, or the claim you located on, from the Star ranch?

A. I don't remember just how far it was; it was about three or four miles, I believe.

Q. And did you have any money of your own at that time with which to buy a timber claim?

A. Yes, sir.

Q. How much money did you have?

A. I don't remember how much I had.

Q. \$50? A. Yes, sir.

(Testimony of Josie M. Ross.)

Q. Was it more than that?

A. Yes, I had more than that.

Q. Would you mind saying how much more?

A. I don't remember how much more.

Q. Was it \$100?

A. Yes, I had as much as that.

Q. Did you have \$500?

A. I don't think I had that much.

Q. And do you remember who were of the party that went with you to the Star ranch?

A. W. B. Davidson and Margaret Scully.

Q. And you were all located at the same time?

A. Yes, sir.

Q. And do you remember what time on Saturday you were located?

A. It was during the afternoon.

Q. Did you start out in the morning or afternoon? A. Right after noon.

Q. Right after noon? A. Yes, sir.

Q. And were you taken to a claim and had it pointed out to you as yours, and located on it?

A. Yes, sir.

Q. And did Mr. Downs give you a description of that property? A. Yes, sir.

Q. Where did he tell you to take it?

A. He didn't tell me where to take it; he gave the description to Mr. Ross.

Q. Did you hear where he told Mr. Ross to take it? A. No, sir; I did not.

Q. And the party all came back together?

A. Yes, sir.

(Testimony of Josie M. Ross.)

Q. And what day of the week did you reach Boise? A. Sunday.

Q. What time?

A. I think it was about five o'clock.

Q. Did you go to Mr. Kinkaid's office that evening? A. No, sir.

Q. Did your husband stop his wagon in front of Kinkaid's office that afternoon before he went out to the lock?

A. Not that I know of; I didn't know where Kinkaid's office was.

Q. And he took you out home, did he?

A. Yes, sir.

Q. And then told you he was coming back to get into line? A. Yes, sir.

Q. You say the numbers of this property was given to Mr. Ross by Mr. Downs?

A. Yes, sir.

Q. And he brought Mr. Gibberd back with him, did he? A. Yes, sir.

Q. Mr. William Gibberd? A. Yes, sir.

Q. And do you know what Mr. Gibberd came back with him for?

A. He came to take my place in line; that was what I understood.

Q. And then you went down the next morning, did you? A. Yes, sir.

Q. And took Mr. Gibberd's place and filed?

A. Yes, sir.

Q. Did you pay any money in the land office when you filed? A. I don't remember.

(Testimony of Josie M. Ross.)

Q. Do you remember the occasion of your making your final proof? A. Yes, sir.

Q. And do you remember going to the land office to make it? A. Yes, sir.

Q. Do you remember who went with you?

A. I think Mr. Ross went with me.

Q. And did he have the money to make the final proof? A. Yes.

Q. Do you know how much he had with him?

A. No, I don't know just how much he had.

Q. Do you know how much he paid in the land office?

A. I don't remember just how much it was.

Q. Well, did he pay for your claim and his claim, too, that day? A. Yes, sir.

Q. And did you go with him when he got the money to pay in the land office? A. Yes, sir.

Q. Where did he get it from?

A. Mr. Gibberd handed it to him.

Q. Do you know where Mr. Gibberd handed the money to him?

A. In Mr. Gibberd's home on Eighth street.

Q. And it was something about \$800?

A. Yes, sir.

Q. And then was that after noon?

A. Yes, sir, it was after noon.

Q. Was it after dinner? A. Yes, sir.

Q. Do you remember where you got your dinner that day? A. At Mr. Gibberd's home.

Q. And was it at that time that you received the money to make these final proofs?

(Testimony of Josie M. Ross.)

A. Yes, sir.

Q. Do you know whether he gave Mr. Gibberd a note for the money? A. No, he didn't.

Q. And did you have any of your money with you at that time? A. Yes, sir.

Q. And how much of your money did you have with you?

A. I don't know how much I had.

Q. \$25? A. I couldn't say.

Q. You didn't pay any of your money in the land office. It was all money that Mr. Gibberd had given you that was paid in the land office, wasn't it?

A. It was what he handed us that day; of course he owed us some.

Q. How much did he owe you?

A. I don't know how much.

Q. Did he owe you anything? A. Yes.

Q. How much? A. I don't remember.

Q. Did he owe you \$25? A. Yes, sir.

Q. How much more?

A. I don't remember.

Q. Did he owe you \$50?

A. Yes, I think he owed me—I don't remember how much he owed us.

Q. And you went directly from Mr. Gibberd's house to the land office, and made your final proof?

A. We made our proof in the forenoon and paid for the land right after noon.

Q. You mean you went to the land office and made some statements and then went back after dinner and paid for the land? A. Yes, sir.

(Testimony of Josie M. Ross.)

Q. You didn't pay anything before you had been to Mr. Gibberd's? A. I don't think so.

Q. I will ask you, did you have a bank account at that time? A. Yes, sir.

Q. Your own individual bank account?

A. Yes, sir.

Q. Where was it?

A. In the Capital State Bank.

Q. How long had you had a bank account there?

A. I don't remember.

Q. It wasn't your husband's bank account, was it?

A. Mine and his bank account was the same.

Q. Was it in his name? A. Yes, sir.

Q. When you went to the land office do you remember this question being asked you and this answer being made by you: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession? A. I earned it cooking for a ditching camp on Settlers Canal. Have had the money almost four years."

A. I think I remember that question.

Q. And that answer?

A. I don't remember the answer I gave.

Q. Didn't you read these questions over before you signed it?

A. What is it—the deed?

Q. No, it is questions that were asked you at the land office, question seventeen (hands witness paper).

A. No, I don't think I read them all.

Q. Do you know whether you made that answer or not? A. No, I don't.

(Testimony of Josie M. Ross.)

Q. Did you have the money you paid in the land office in your actual possession for four years?

A. Well, I think we had.

Q. Didn't I understand you to say you got the money you paid in the land office from Mr. Gibberd that noon?

A. Well, we had earned that money; of course it wasn't in our possession, but we had earned it; it was coming to us; it was owed to us.

Q. All of it?

A. Well, I don't remember how much there was of it.

Q. How much was Mr. Gibberd to give you for cooking a month?

A. Part of the time \$2 a day, and other times I don't remember just how much it was each day; I couldn't keep track of that; there were some days it was different; some other days I was paid so much for each meal.

Q. Were you running a boarding-house?

A. Yes, sir.

Q. Or was it Mr. Gibberd's boarding-house and you were running it for him?

A. Well, he hired me to do the cooking on the canal.

Q. How much did he pay you to do the cooking?

A. Part of the time it was \$2 and the other part I cooked for so much a meal.

Q. How much did that amount to?

A. I couldn't tell you, some days more than others.

(Testimony of Josie M. Ross.)

Q. How often did he pay you?

A. I couldn't tell you that.

Q. Did he pay you by the week? A. No.

Q. By the month?

A. Well, generally by the month.

Q. Did he pay you in full or all he owed you every month? A. No, sir.

Q. Did he just give you part on account?

A. Generally just what amount I wanted to get.

Q. How much did you usually draw a month?

A. I can't tell that.

Q. How long had you been working for Mr. Gibberd, in 1903?

A. About four years, I think.

Q. You went there in '99?

A. I don't remember what year it was.

Q. Then after you made your final proof did anyone offer to buy your property?

A. No, sir, they never offered to buy it from me.

Q. Did you ever sell your property?

A. Yes, sir.

Q. To whom did you sell it?

A. I don't know who.

Q. Who had the deed when you signed it?

A. I don't know who it was.

Q. And did you get any money that day?

A. No, sir.

Q. You sold it through Mr. Gibberd?

A. Yes, sir.

Q. And he kept the money on account, didn't he?

A. Yes, sir.

(Testimony of Josie M. Ross.)

Q. Didn't give you any money?

A. Yes, he gave us a credit.

Q. How much credit did he give you?

A. \$600 on one piece of land.

Q. Do you mean on one or both pieces?

A. What is the question, please?

Q. Did he give you the credit of \$600 on one of the claims or on both of the claims?

A. On both.

Q. And then he credited you with that amount of money? A. Yes, sir.

Q. Well, that means that you owed him more money than that and he was giving you credit for that amount?

A. Well, we had bought in the meantime some more land, some land from him, and he had furnished money for us to build a house, and—

Q. Was that between the time you made your final proof and the time that you made the deed for the land that he had bought more land for you and had started to build a house?

A. I think it was, but I don't remember.

Q. Now think again. You didn't buy this land from him for over a month after you made the deed, did you? A. I don't remember.

Q. Now, don't you remember that you bought that piece of land on January 26, 1904?

A. I don't remember.

Q. And that your deed is dated December 28, 1903?

Mr. BUNDY.—The deed shows for itself, don't

(Testimony of Josie M. Ross.)

it?

Mr. GORDON.—Yes.

A. Well, I don't remember what day it was that we bought the land.

Q. Do I understand you to say that you got \$800 from Mr. Gibberd the day you made your final proof, which was the 23d of December, a day or two before Christmas, and that five days later you bought some property from him?

A. I can't say what day it was.

Q. Mr. Gibberd, as I understand, didn't give you any cash; he just gave you credit for it in his accounts.

A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, dated September 14, 1903, of Josie M. Ross; the non-mineral affidavit of Josie M. Ross, of the same date; the testimony of Josie M. Ross, given on final proof, dated December 23, 1903; and the cross-examination of Josie M. Ross attached, all of which papers have been identified by Josie M. Ross as having been signed by her; the testimony and cross-examination of the other witnesses, given on final proof; the notice of publication dated September 14, 1903; the receiver's receipt, and the register's certificate, dated December 23, 1903; the deed, which has been identified by Josie M. Ross, but is already in evidence with the papers and testimony of her husband, Willis A. Ross; certified copy of the patent, dated December 1, 1904; all to the southwest quarter of section 20, township 6 north of range 4 east, Boise Meridian.

(Testimony of Josie M. Ross.)

(Papers marked Plaintiff's Exhibit No. 126A to 126L, inclusive.)

Q. Mrs. Ross, I will ask you, if you know, from whom you received the papers you filed in the land office when you made your entry?

A. I can't remember for certain who it was.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Ross, did you come home the same day you located, do you remember, from the Star ranch?

A. No, we came the next day.

Q. So that you only stayed around the Star ranch half a day instead of a day before you located?

A. Yes, sir.

Q. Then you stayed there that night and came down next day? A. Yes, sir.

Q. Do you remember having some bad weather up there that time? A. Yes, sir.

Q. When was it storming—the day you came down or the day you located?

A. The day we located.

Q. That is the reason you didn't go out in the morning? A. Yes, sir.

Q. Mrs. Ross, at the time you filed your first papers in this matter, or entered this land, did you have or know of any agreement, in writing or verbal, express or implied, with any person, firm, or corporation, by which you had obligated yourself to turn this title over to them as soon as you got title from the Government? A. I did not.

Q. Was there any such agreement? A. . . .

(Testimony of Josie M. Ross.)

A. No, sir.

Q. Was there any such agreement at the time you made your final proof? A. No, sir.

Q. Did you ever, at any time, have any agreement with the Barber Lumber Company, John Kinkaid, A. E. Palmer, L. M. Pritchard, Horace S. Rand, George S. Long, or any other person, by which you were to turn over to them the title you might acquire as soon as you got title to the land?

A. I did not.

Q. It is charged in the complaint in this action, Mrs. Ross, that you made such an agreement as this with the defendants in this action, or some of them, and that, pursuant to that agreement, you made this entry, at the request of and for the benefit of the Barber Lumber Company, and that you then went to the land office and testified under oath to what you knew to be false, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land. Is that charge of the United States true or false? A. It is false.

(Witness excused.)

[**Testimony of George G. Eagleson, on Behalf of the Complainant.**]

GEORGE G. EAGLESON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is George G. Eagleson?

A. E-a-g-l-e is the way you pronounce it.

(Testimony of George G. Eagleson.)

Q. What is your occupation, Mr. Eagleson?

A. Well, sir, I haven't got any in particular; I have been a stockman all my life until I came to Boise.

Q. Have you been in business since you have been in Boise?

A. No, sir.

Q. How long have you resided in Boise?

A. It will be two years next month.

Q. Where was your home in September, 1903?

A. Jefferson, Iowa.

Q. Do you remember when you came to Boise the first time?

A. About 1890, I think, along in the '90's somewhere.

Q. How long did you remain in Boise then?

A. I was here a couple of weeks perhaps.

Q. And then you went back to Iowa?

A. Yes, sir.

Q. Did you return to Boise in September, 1903?

A. Yes, sir.

Q. Do you remember the day of the month?

A. No, I do not; about the middle of the month.

Q. About the middle of the month?

A. It was about the first of September; I think I came here first and then I went on to Portland, and I think I came back about the middle of the month.

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

A. Yes, sir.

Q. I show you timber and stone land sworn statement of George G. Eagleson, dated September 14,

(Testimony of George G. Eagleson.)

1903, and ask you if you signed that paper?

A. That is my signature, yes, sir.

Q. I show you non-mineral affidavit of the same date, of George G. Eagleson, and ask you if that is your signature.

A. Yes, sir.

Q. I show you the testimony of George G. Eagleson, given on final proof, December 11, 1903, and ask you if that is your signature.

A. Yes, sir.

Q. I show you the cross-examination of George G. Eagleson, attached, and ask you if that is your signature.

A. Yes, sir.

Q. I show you deed, dated December 16, 1903, made by George G. Eagleson and wife, Mary J., to George S. Long, and ask you if that is your signature to that deed.

A. Yes, sir.

Q. And that is your wife's signature also?

A. It looks like it, yes, sir.

Q. Mr. Eagleson, how long had you been in Boise before you started to view this land?

A. I was here about a week, and then went to Portland; I came back at four o'clock one evening, and started up there about daylight the next morning.

Q. Well, before you went to Portland did you have an arrangement by which you were going to locate on the land?

A. No, sir.

Q. And who made up the party that you went with to view this land?

A. I don't know as I can tell you all of them; there was a man by the name of Martin, and his sister.

(Testimony of George G. Eagleson.)

Q. What Martin?

A. I can't tell you that; he was a witness when I proved up.

Q. Was it Thomas L. Martin?

A. I think so.

Q. And who arranged for that party?

A. I think it was my son, or H. K. Eagleson; my son is Clyde Eagleson; H. K. is my nephew.

Q. And the only persons that had spoken to you about taking up timber claims?

A. I think they was, unless I may have talked to my brother about it.

Q. Did you know Mr. John Kinkaid at that time?

A. No, sir.

Q. Where did you go—to the Star ranch?

A. Yes, sir.

Q. And your wife went with you?

A. Yes, sir.

Q. And you met Mr. Patrick Downs there?

A. I think Patrick was up there.

Q. Who located you? A. Downs.

Q. And how long were you there before you were located?

A. We was located in the evening we got up there.

Q. And were you taken out and shown a piece of land and told that that was the piece you were to locate on? A. Yes, sir.

Q. And your wife was shown another piece, and that was pointed out as the piece she was to locate on?

A. Yes, sir.

Q. Did you know at that time that the land that

(Testimony of George G. Eagleson.)

was pointed out for you to locate on wasn't open to entry at that time? A. No, sir.

Q. Did you know that the State hadn't made its selection in 6-4 at that time?

A. No, I didn't know very much about it.

Q. You remember being before the Grand Jury last summer, don't you? A. Yes, sir.

Q. See if you can't refresh your recollection. Do you or do you not remember stating before the Grand Jury last summer that the State had not made its selection at the time you were up there?

A. I don't remember.

Q. Now, what day did you arrive, what day of the week did you arrive at the Star ranch, or where this land is located? A. I think it was Friday.

Q. And you were located that evening?

A. Yes, sir.

Q. And did you return the next day?

A. No, sir, we started to return the next morning, but one of our horses wouldn't pull and we had to go out the other way and come out by Idaho City.

Q. He would go one way but not the other, is that it? A. Yes, sir.

Q. When did you arrive at Boise?

A. About dark Sunday evening, perhaps quite dark.

Q. And did you go to the land office that evening?

A. No, sir.

Q. Did you have your papers prepared that evening? A. I don't think so.

(Testimony of George G. Eagleson.)

Q. Do you know who prepared your papers for you?

A. No, I don't remember now, if I ever did know.

Q. Where did you receive the papers you filed in the land office?

A. (After a pause.) I don't mind getting any papers up that time only what I got from Pat Downs, with the numbers on them; I might have got them, but I don't remember.

Q. Did Pat Downs tell you to go to see anybody to have your papers made out?

A. I don't think so.

Q. And when did you go to the land office?

A. Well, my remembrance is that it was about ten o'clock on Monday morning, nine or ten o'clock, somewhere along there.

Q. Was someone holding a place in line for you?

A. My son and nephew were there and they showed me where to sit when I went in. We were in our place and we would get our filing when they came to us.

Q. Did somebody get up out of that place?

A. No, there was nobody there at all.

Q. Do you remember whether, when you testified before the Grand Jury, you made this statement, that "The place was held in line for me. I don't know who held the place in line for me," and that, "I did not pay the man anything that did hold the place for me." A. Yes, sir.

Q. You made that statement, didn't you?

A. Yes, sir.

(Testimony of George G. Eagleson.)

Q. Then somebody did hold a place in that line for you?

A. I don't know now whether they did or not, but the place was vacant when I went there.

Q. How many people were ahead of you in line?

A. I think about three or four.

Q. And there were twenty-five or thirty behind you?

A. There was a number; I don't know how many.

Q. And your wife stood in front of you in the line, did she?

A. No, sir, we sat on chairs.

Q. Was the chair in the line?

A. The chairs were right along the wall, in the hall.

Q. And there were three ahead of you?

A. I think there were three or four ahead of me.

Q. Mrs. Scully was at the head of the line, was she?

A. I think she was ahead of me, but I don't remember the place.

Q. Now, were the papers brought to you that you filed in the land office, after you got to the land office?

A. Well, sir, I couldn't answer that question.

Q. You know you filed some papers in the land office.

A. I filed some papers there, but I couldn't tell when I got them or who from, unless it was from my son.

Q. And you have no recollection of where you re-

(Testimony of George G. Eagleson.)

ceived the papers you filed? A. No, sir.

Q. Nor who made them out for you?

A. No, sir.

Q. As I understood you to say, you had never met Mr. Kinkaid at that time? A. No, sir.

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

A. I don't think I did; I knew that there had been parties here buying them, but at that time they had all quit buying them so they told me.

Q. Did you know what parties had been buying them? A. No, sir.

Q. Never heard of them?

A. I might have heard, but I don't remember now.

Q. When you located, your understanding was that there had been some people buying them and that there wasn't any market for them then, and there wasn't anybody buying them; is that right?

A. Yes, sir.

Q. Do you remember how much money you paid in the land office when you made your entry, the first time you went to the land office?

A. I don't remember whether that was the time I paid my printing bill or not.

Q. Yes, that was the time.

A. Well, that was about \$15, that I paid for the two claims.

Q. You paid for your wife's and your own?

A. Yes, sir.

Q. Do you know whether Mr. Thomas Martin

(Testimony of George G. Eagleson.)

brought those papers to you at the land office?

A. Indeed I couldn't answer that question.

Q. Do you remember the time you made your final proof, the occasion? A. What?

Q. Do you remember the occasion of making your final proof and paying \$400 in the land office?

A. Yes, sir.

Q. Do you remember whether you paid that money in cash or— A. Paid it in gold.

Q. And did you pay a locating fee?

A. After that I did.

Q. Who did you pay it to?

A. Pat Downs.

Q. Did you meet him here in Boise?

A. Yes, sir.

Q. Paid him personally?

A. Paid him personally for both claims.

Q. And do you remember where you got the money with which you made your final proof?

A. I had some of it here and the balance I brought from Iowa.

Q. Did you borrow any of it here?

A. No, sir.

Q. It was all your own money?

A. Yes, sir.

Q. Did you draw it out of the bank the day you made your final proof? A. Yes, sir.

Q. And do you know how long you had had it in the bank?

A. Some of it had been there three or four months.

(Testimony of George G. Eagleson.)

Q. And the rest of it how long?

A. Well, I put it in when I came from Iowa, I don't remember; I brought it with me; I don't remember what date.

Q. Now, you made your final proof and got your certificate on the 11th of December, 1903; now, at that time did you know of anybody that would purchase this land, or had you had an offer of purchase for it?

A. No, never had had; I knew Kinkaid had been buying, but they told me he wasn't at that time.

Q. Did you go to see Kinkaid about buying, yourself?

A. I went within three or four days after I proved up.

Q. You went to see Kinkaid?

A. Yes, sir.

Q. Did he buy it the day you went to see him?

A. No, sir, he said they wasn't sure whether they would buy any right now or not, but if I would come back to-morrow afternoon he would tell me.

Q. And you went back the next afternoon?

A. Yes, sir.

Q. Did he buy it that day? A. Yes, sir.

Q. You sold your wife's claim at the same time?

A. Yes, sir.

Q. Was she with you? A. No, sir.

Q. Did you sign the deed the second day you went there?

A. I don't think so; I think it was the next day.

Q. And did your wife go with you that day?

(Testimony of George G. Eagleson.)

A. Yes, sir.

Q. And you both signed it, at Kinkaid's office, the same day?

A. I think we went downstairs from Kinkaid's office to some place below.

Q. That was to acknowledge the deed, wasn't it?

A. Yes, to acknowledge the deed.

Q. Was the deed prepared when you went to Kinkaid's office?

A. I think it was the second time I went.

Q. Do you know how much money you received from Mr. Kinkaid?

A. I received a check for \$1500.

Q. Did you know Mr. George S. Long, the grantee in this deed? A. No, sir.

Q. And did you notice that the consideration was \$1600? A. No, sir.

Q. He offered you \$750 a claim and you took it?

A. Yes, sir.

Q. Was it Kinkaid's personal check?

A. I couldn't answer that question.

Q. Did you deposit it?

A. Yes, sir, deposited it in the bank here.

Q. The Capital State Bank? A. Yes, sir.

Q. Did you go to see Mr. Kinkaid the first time, or did Kinkaid send for you?

A. My son and I went to see him.

Q. Did he send for you through your son?

A. I don't know; not that I know of.

Q. When you went up to see Downs did he have a list of the land that he was to locate you on?

(Testimony of George G. Eagleson.)

A. I think so.

Q. And did Downs instruct you how to get your filing papers through, and so forth?

A. I don't remember that he did. I have got a new set of store teeth and I can't talk very plain.

Q. What?

A. I don't remember that he did. I have got a new set of store teeth and I can't talk very plain, I say.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of George G. Eagleson, dated September 14, 1903; the non-mineral affidavit of George G. Eagleson, of the same date; the testimony of George G. Eagleson, given on final proof, December 11, 1903; the cross-examination attached, all of which have been identified by the witness Eagleson as having been signed by him; the notice of publication, dated September 14, 1903; the testimony of the other witnesses on final proof, and the cross-examination thereto; the register's certificate, and the receiver's receipt, dated December 11, 1903; and the deed, made by George G. Eagleson and Mary J. Eagleson, husband and wife, to George S. Long, consideration \$1600; also certified copy of the patent, dated December 1, 1904; all to the east half of the northeast quarter, and the east half of the southeast quarter of section 27, township 6 north of range 4 east, Boise Meridian. The deed also contains the claim of Mrs. Mary J. Eagleson.

(Papers marked Plaintiff's Exhibit No. 127A to 127O, inclusive.)

(Testimony of George G. Eagleson.)

Mr. KEIGWIN.—Q. Mr. Eagleson, do you know how far it is from Boise to the Star ranch?

A. No, I don't; it is a good day's drive.

Q. Forty miles?

A. Well, now, I don't know anything about it, but I would guess thirty or forty miles.

Q. Isn't it nearer forty than thirty?

A. I don't know.

Q. Do you remember what the cost of your team was? A. It was to be \$4 a day, I believe.

Q. You had two horses?

A. Yes, sir, but on account of one of them being false they split it in two, and when we come back it was just half.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Eagleson, Pat Downs located you as a cruiser and locator, for which you paid him \$25 per claim, didn't he? A. Yes, sir.

Q. Did you pay him before or after you filed?

A. I didn't pay him until after I proved up, I believe.

Q. Then did you pay him personally?

A. Yes, sir.

Q. Now, did Mr. Downs tell you that any particular claim was the one you had come up there to be located on, or did he simply point out one to you that you could have if you wanted it?

A. I think he pointed out one that I could have.

Q. You didn't understand that you had to locate on any particular claim?

(Testimony of George G. Eagleson.)

A. No, sir, I didn't understand that I had to locate at all, as far as that was concerned.

Q. And you didn't understand that if the claim he pointed out to you wasn't satisfactory you would have to take it?

A. I couldn't see any difference in the claims at all.

Q. What is your age, Mr. Eagleson?

A. I will be seventy years old next month.

Q. You are retired from active business?

A. Yes, sir, without I have to go to work again.

Q. You are not actively engaged in business?

A. No, sir, not now.

Q. Your business in Iowa was that of a stockman. Do you remember the circumstance of paying Downs, where you paid it, or did he come after it?

A. I met him on the street and paid him.

Q. Did you hear a good deal of talk in this so-called line-up on the land office steps of the purpose of the line-up?

A. I didn't hear anything of it Sunday; since that time I didn't know anything about it. I wasn't there till Monday morning about nine o'clock.

Q. Did you hear any talk then about their staying there all night?

A. I didn't know they stayed there all night until the next day.

Q. Did you at any time learn why they were solicitous to be there promptly Monday morning?

A. I heard them talking about wanting to hold their place.

(Testimony of George G. Eagleson.)

Q. You didn't understand just what the motive was? A. No, sir.

Q. Mr. Eagleson, at the time you filed on this claim, had you any agreement, express or implied, written or oral, with any person, firm, or corporation, by which you were to turn over to such person, firm, or corporation, or anyone they should direct, the title which you might acquire from the United States? A. No, sir.

Q. Did you have any such agreement at the time you made your final proof? A. No, sir.

Q. Did you make this entry for the benefit of any other person other than yourself?

A. No, sir.

Q. Did any person, firm, or corporation have any interest whatever in the entry you made, or the lands you acquired under that entry? A. No, sir.

Q. The Government has seen fit to charge you, and your wife, and a good many other people, in this action we are trying, Mr. Eagleson, with having entered into such an agreement with these defendants, and with having made the entry at their request and for their benefit, and at their solicitation.

The EXAMINER.—Mr. Bundy, I think it would be better to say that they are charging in the complaint, instead of saying that these gentlemen have seen fit to charge you. It is liable to get up a little prejudice against these gentlemen that is not justified perhaps. I submit that to you.

Mr. BUNDY.—I have thought of that, and I don't think that is a good suggestion. Mr. Gordon signed

(Testimony of George G. Eagleson.)

this complaint, and Mr. Gordon is an attorney and has had every opportunity to examine these people, through the Grand Jury, and Mr. Gordon knows that the charges in that complaint are absolute falsehoods, and it is his duty, as it is the duty of any attorney, when he finds that a complaint on file is not true, to see that it is stopped. He has no business coming before this Court, nor has any attorney coming before this Court any right to prosecute an action after he knows what Mr. Gordon knows in this case, and what he must have known after the extensive investigation he has made in the sweat-box and in the Grand Jury investigations. For this reason I think it is proper to use the language I have used.

Q. (Continued.) —and that, pursuant to that agreement you went to the land office, and at the solicitation and request of the defendants, testified falsely, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land. Is that allegation true or false? (Now, Mr. Stenographer, read the whole question.) (Question read by stenographer.)

A. It is false, as far as I am concerned.

Mr. BUNDY.—My question, your Honor, didn't refer to these gentlemen at all. It said "the Government charges."

The EXAMINER.—I didn't understand that you said that. If you did, I withdraw my objection to it. I thought you said, "These gentlemen have seen fit to charge you so and so." That is what I spoke of.

(Testimony of George G. Eagleson.)

Mr. KEIGWIN.—Mr. Bundy, if not in that particular question, in other questions has used that form of words, and his statement includes not only Mr. Gordon, but myself, and I have no desire to disclaim any responsibility, although, as a matter of fact I think within Mr. Bundy's knowledge, that until I came here on the train with Mr. Bundy I had never seen this bill.

Mr. BUNDY.—No, I don't charge Mr. Keigwin with any information on the subject except what he has acquired during this trial.

The EXAMINER.—I have no desire to say anything further in reference to it.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Eagleson, how long after you filed these papers in the land office did you return to Iowa?

A. I don't remember; I was back there I think about Christmas.

Q. Didn't you, as soon as you filed these papers, return to Iowa and didn't return here until time to make your final proof?

A. Oh, yes, the first time, yes, sir; I don't remember what time I left here; it was in September, though, and we came back again in December.

Q. In other words, within two weeks after you filed, you went back to Iowa, and then didn't return until just in time to make your final proof?

A. Yes, sir.

(Witness excused.)

[**Testimony of Mary J. Eagleson, on Behalf of the Complainant.**]

MARY J. EAGLESON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Mary J. Eagleson?

A. Yes, sir.

Q. And the wife of George G. Eagleson, the gentleman who has just left the witness-stand?

A. Yes, sir.

Q. Mrs. Eagleson, you were in Boise, Idaho, in September, 1903, were you? A. Yes, sir.

Q. And do you remember when you came to Idaho? A. You mean at that time?

Q. Yes.

A. Why, we came in August, I think.

Q. What part of August?

A. You mean what time in August?

Q. Yes.

A. Well, I don't remember the date. We came to Boise at that time, and we had a round trip ticket to Portland and the coast, and we came to Boise and stopped at our son's a few days, and then went to Portland and the coast, and then came back to Boise.

Q. That time you were in Boise before you went to Portland did you make any arrangements to take up a claim, timber claim?

A. No, sir, didn't know there was timber claims being taken, didn't know anything at all of it.

(Testimony of Mary J. Eagleson.)

Q. And then you returned to Boise, and how long after you returned did you go to take up a timber claim?

A. Well, it wasn't long; I don't believe it was more than a week or ten days.

Q. Wasn't it the next day after you got here that you went up to take up a timber claim? Didn't you arrive in Boise one evening at four o'clock and leave the next morning for the Star ranch?

A. Mr. Gordon, I can't say as to that; I do know though that it wasn't long; it doesn't seem to me that it was quite so soon as that.

Q. The reason I ask the question that way, I understood your husband to make that statement, but, of course, that isn't to influence your testimony at all.

A. Certainly; he perhaps remembers and I do not; I know that it was soon after.

Q. And had you talked with anyone about taking up a timber claim?

A. Never had until after we came back from this trip.

Q. And you and your husband and who else went on that trip to view this land?

A. Well, our son and his wife went with us, that is, we went in the carriage to the Star ranch.

Q. Did you know who was going to locate you, before you went?

A. We expected to meet Mr. Downs at the ranch, that is, we were told that he was there.

Q. And that he would locate you on a claim?

A. Yes, that that was his business there, and

(Testimony of Mary J. Eagleson.)

would, in all probability, locate us.

Q. Do you remember what day of the week you arrived at the Star ranch?

A. Yes, I think I do; let me see; I believe it was Friday.

Q. And you were located the same afternoon you arrived?

A. Yes, sir, the same afternoon.

Q. Friday evening, the 11th of September?

A. I don't remember the date, but it was the afternoon of the day we went up there.

Q. Was anything said on the way up to the Star ranch, or before you left for the ranch, or after you arrived there, about the state making its selections?

A. No, there was not; we were not out of the carriage at the Star ranch at all. My husband and I were the only two in the carriage who took claims, and at this ranch we met Mr. Downs, and while we were in the carriage Mr. Martin and his sister drove up.

Q. Mr. Thomas B. Martin?

A. Mr. Thomas Martin, yes, and his sister, Mrs. Fisher, drove up, and they were to take claims, and Mr. Downs said to us that there were four claims that were not very far distant from that ranch, and that he could locate each of us that evening and be back by night; it was after night quite a good deal when we got back.

Q. And then he took you out and showed each of you a claim?

A. Yes.

Q. Did he show you a claim and say "This is the one I locate you on, Mrs. Eagleson"?

(Testimony of Mary J. Eagleson.)

A. I don't think he said that; I think he located Mrs. Fisher first, and then he said, "Now, Mrs. Eagleson, you can have this claim"; then he took them farther on and located them.

Q. He told you that he had four claims up there?

A. He told us he had four claims.

Q. I show you timber and stone land sworn statement, dated September 14, 1903, and ask you if you signed that paper? A. Yes, sir.

Q. I show you the non-mineral affidavit of Mary J. Eagleson of the same date, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the testimony of Mary J. Eagleson, given on final proof, dated December 14, 1903, and ask you if that is your signature.

A. Yes, sir, it certainly is.

Q. And the cross-examination of Mary J. Eagleson; is that your signature to that paper?

A. It is.

Q. I show you deed, dated December 16, 1903, made by George G. Eagleson and Mary J. Eagleson to George S. Long, and ask you if you signed and acknowledged that deed?

A. That is my signature.

Q. Mrs. Eagleson, did you pay Mr. Downs anything for locating you? A. Yes, \$25.

Q. Did you pay that, or did your husband pay it?

A. My husband tended to all the money.

Q. And then you returned to Boise. Did Mr. Downs tell you where to go to have your papers made out? A. Not me, he didn't.

(Testimony of Mary J. Eagleson.)

Q. Do you know where your filing papers were made out?

A. No, I don't believe I do; I was a stranger here and, of course, didn't know where any of the offices were.

Q. Did Mr. Thomas Martin make them out for you?

A. I could not say as to that, for I don't know.

Q. Did you know of any person at that time who was purchasing timber claims?

A. I didn't know of anyone.

Q. And do you remember what day you returned to Boise?

A. Yes, sir, Sabbath evening; we went up Thursday; I came down on the stage; I suppose the stage came in about four o'clock.

Q. Sunday evening?

A. Sunday evening, yes.

Q. And do you remember when you went to the land office?

A. You mean where we made our filing?

Q. Yes?

A. Yes, Monday morning, I believe.

Q. And did you take a place in line?

A. Do you mean hold your place, is that what you mean?

Q. Yes. A. No.

Q. Was someone holding a place in line for you?

A. Someone held the place in line until we appeared Monday morning.

Q. Do you remember what number place you held

(Testimony of Mary J. Eagleson.)

in line, how many people were ahead of you?

A. I do not.

Q. Four or five? A. Yes, I guess so.

Q. How many were behind you in line?

A. There were more than as many more.

Q. Was there a great crowd?

A. I would judge there was twenty, perhaps.

Q. Do you know who held your place for you?

A. I do not.

Q. Was it a white man or a black man?

A. No, I do not.

Q. White man or black man?

A. White man, of course.

Q. Do you know who employed that person to hold your place? A. Harry Eagleson, I think.

Q. And you didn't pay anything for the service of the gentleman?

A. I did not, but I think my husband did.

Q. And did you know before you went to the land office that your place was being held in line?

A. Yes.

Q. And did you know that they were lining up Saturday night?

A. No, I did not, because I didn't reach the city, you know, until Sabbath evening.

Q. Now that Monday that you went to the land office you filed some papers there? A. Yes.

Q. Now do you remember where you received the papers that you filed there, the sworn statement, notice of publication?

A. I do not, Mr. Gordon; my husband attended to

(Testimony of Mary J. Eagleson.)

the business, and I don't know.

Q. You know you received them at the land office?

A. Yes.

Q. Then how long after you filed these papers did you return to Iowa?

A. Well, what did my husband say, a week or two weeks?

Q. He wasn't very definite about it.

A. Neither am I now, for I don't know; we were here on a visit, and I really don't know, but it seems to me it was more than a week; I couldn't answer that question.

Q. Then you returned to Iowa and stayed there several months, and then came back to make your final proof?

A. Yes, came back in December.

Q. Did you remain here then, or did you go back there?

A. We went home again, we went back to Iowa.

Q. And how long were you here? You made your final proof the 11th of December, and do you remember how long you remained?

A. I remember we were home before Christmas; now that is as near as I can tell you.

Q. And you sold your property in the meantime?

A. Before we left, yes.

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

A. Yes.

Q. Do you remember how much money you paid at the land office?

A. \$400, I believe.

Q. Now was that your money, that you paid at the land office, or did you borrow it from somebody?

(Testimony of Mary J. Eagleson.)

A. Well, it was my—what is my husband's is mine too, isn't it?

Q. I assume so; if it isn't all yours, it is part his.

A. I had money of my own; I had \$2,000, and my husband had the use of that.

Q. How long had he had the use of that?

A. Oh, for all of ten years before that.

Q. And you got the money from him?

A. I got the money from him, yes; he had money invested here, and had money in the Capital State Bank at that time.

Q. Well, how long after that was it that you started negotiations for the sale of your timber claim—the same day? A. I don't think so.

Q. You sold and made the deed on the 16th of December, and you made your final proof five days before that?

A. Five days before that, yes, sir.

Q. And the negotiations were had between that time? A. During that time, of course.

Q. You hadn't had any negotiations before that?

A. No, sir.

Q. Did you know Mr. John Kinkaid?

A. I did not; never saw the man.

Q. Did you sell this property through Mr. Kinkaid? A. Well, I think it was.

Q. Did you go to Mr. Kinkaid's office to make this deed?

A. I asked my son a few days ago whose office we went to and he said it was; I didn't know at that time whose office it was.

(Testimony of Mary J. Eagleson.)

Q. Do you know how much Mr. Kinkaid paid you for that land? A. I think about \$750.

Q. And he paid your husband, did he?

A. He paid my husband, yes, sir.

Q. And you and your husband executed the deed at that time? A. Yes, sir.

Q. Do you remember whether or not you went before a notary public and acknowledged this deed?

A. I do not; if the papers there show it, why I did, but I don't remember it now.

Q. You didn't go to but the one office?

A. I don't remember of going to but the one office.

Q. You didn't know Mr. George S. Long, the grantee in this deed? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mary J. Eagleson, dated September 14, 1903; the non-mineral affidavit of Mary J. Eagleson, the same date; the testimony of Mary J. Eagleson, given on final proof, dated December 11th, 1903; and her cross-examination, attached, all of which papers have been identified by Mary J. Eagleson as having been signed by her; the notice of publication, dated September 14, 1903; the receiver's receipt, and the register's certificate, dated December 11, 1903; certified copy of the patent, dated December 1, 1904; and the deed, dated December 16, 1903, made by George G. Eagleson and wife, Mary J. Eagleson, to George S. Long, consideration \$1600, which has been identified as having been signed by Mary J. Eagleson and George G., her husband, and now in evidence with the testimony of George G.

(Testimony of Mary J. Eagleson.)

Eagleson; all to lot 2, southwest quarter of the northeast quarter, and the west half of the southeast quarter of section 1, township 6 north of range 4 east, Boise Meridian; and the testimony of the other witnesses on final proof, and the cross-examination thereof.

(Papers marked Plaintiff's Exhibit No. 128A to 128N, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Eagleson, your husband is a veteran of the army, is he? A. Yes, sir.

Q. A member of the G. A. R.?

A. He is not a member of the G. A. R. here; he has never been transferred; he still holds his membership in Iowa.

Q. Mrs. Eagleson, at the time you filed on this timber and stone claim had you entered into any kind of agreement, in writing or verbal, express or implied, with any person, firm, or corporation, by which the title you might acquire from the United States would inure to the benefit of any person other than yourself? A. I had not.

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

A. I had not.

Q. Did you enter this land for the benefit of any person other than yourself? A. I did not.

(Witness excused.)

[**Testimony of William R. Coleman, on Behalf of the Complainant.**]

WILLIAM R. COLEMAN, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William R. Coleman?

A. Yes, sir.

Q. Where do you reside, Mr. Coleman?

A. I live in Canyon County.

Q. That is in Idaho? A. Yes, sir.

Q. How long have you resided there, sir?

A. Five years.

Q. Where did you reside in 1903?

A. I am living in Canyon County.

Q. Where did you reside in 1903?

A. Boise.

Q. How long had you resided in Boise?

A. I had been living here about thirteen years at that time, twelve or thirteen.

Q. What was your occupation in 1903?

A. Blacksmith.

Q. For whom did you work?

A. I was working for Mr. Ellis.

Q. Mr. Alexander T. Ellis?

A. Alexander T. Ellis.

Q. Have you a family? A. Yes, sir.

Q. Had you a family then? A. Yes, sir.

Q. What did your family consist of?

(Testimony of William R. Coleman.)

A. In 1903, a wife and six children.

Q. A wife and six children? A. Yes, sir.

Q. How old was the oldest?

A. The oldest at that time I think was eighteen.

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

A. Yes, sir.

A. I show you timber and stone land sworn statement, dated September 14, 1903, of William R. Coleman, and ask you if you signed that paper?

A. Yes, sir.

Q. I show you the testimony of William R. Coleman, given on final proof, dated December 17, 1903, and ask you if you signed that paper?

A. Yes, sir, that is my handwriting.

Q. I show you deed, dated December 29, 1903, made by William R. Coleman and Estelle M., to George S. Long, and ask you if you signed that paper?

A. Yes, sir.

Q. Is that the signature of your wife?

A. Yes, sir.

Q. Is your wife here now?

A. She is out at the place, out home.

Q. Mr. Coleman, at the time you took up a timber claim did you know of any person that was buying timber claims?

A. No, sir, I did not.

Q. Did you know of any person that had sold a timber claim?

A. That had sold?

Q. Yes?

A. I know of one man that told me he had sold a timber claim.

(Testimony of William R. Coleman.)

Q. Who was he? A. Samuel Dye.

Q. Did he tell you to whom he had sold it?

A. No, sir, he did not.

Q. Tell you what he had gotten for it?

A. No, sir.

Q. What induced you to take up a timber claim?

A. Well, it was general talk on the street here in town that a man could take up a claim and he could sell it and make a few dollars on it, and that is why I took it, because I thought I could benefit myself by it.

Q. Do you know any gentleman that told you to take up a claim and sell it at a few dollars in advance, who told you that?

A. Well, I couldn't state any particular person outside of Samuel Dye.

Q. Did you know Mr. Dean West at that time?

A. I knew Dean West, yes.

Q. Did you talk with him about this?

A. No, sir.

Q. Did you know Mr. Harbaugh?

A. Yes, sir.

Q. Did you talk with him about taking up a timber claim?

A. I asked him if he wanted to take one up.

Q. And did you talk with Mr. Ellis about it?

A. Yes, I also asked him if he wanted to take up a timber claim.

Q. Did you go up the same time Mr. Ellis did?

A. Yes, sir, that is, up to the timber.

Q. How, at the time you located on a claim did

(Testimony of William R. Coleman.)

you have sufficient money to pay for a timber claim?

A. No, sir.

Q. Did you know at that time where you could get the money to pay for a timber claim?

A. I thought I could get a loan on my place here in town.

Q. You owned a place then in town, did you?

A. Yes, sir.

Q. How large a place was it?

A. It was two lots, fifty foot wide by a hundred and forty feet deep, I think, down in the Riverside addition.

Q. And you owned that at that time?

A. Yes, sir.

Q. Did you have a mortgage on it?

A. No, sir.

Q. And did you ever try to get a loan on it?

A. Yes, sir.

Q. From whom?

A. I tried three or four different parties, this man Wright that used to be in town here, and Mr. Neal.

Q. What was his first name?

A. I can't tell you his first name; his office used to be on Tenth street, between the depot and Main street.

Q. After you had taken up your timber claim and it came time to locate, from whom did you get the money to make your final proof?

A. I got it from Dean West.

Q. And from whom did Dean West get it?

(Testimony of William R. Coleman.)

A. I don't know, I am sure; I don't know who Dean West got the money from; I always supposed it was his own money.

Q. How much did you get from Dean West?

A. I got \$400.

Q. And did you give him a note for it?

A. Yes, sir.

Q. And when did you pay him back?

A. I think it was about a month after I made final proof; I wouldn't be positive, but I think it was about a month.

Q. Did you ever pay him back, or was the money taken out from the sale of the property?

A. No, I paid him back.

Q. Was Dean West with you when you sold the property? A. No, sir.

Q. Who did you sell it to?

A. I don't know.

Q. Was it John Kinkaid?

A. No; John Kinkaid was the man that done the business.

Q. You sold to a man named Long?

A. I think that was the name.

Q. Now did you know before the time you sold that Mr. Kinkaid was buying timber claims?

A. No, sir.

Q. Did you know that he was loaning money on timber claims?

A. Well, I knew at the time that Mr. Ellis made final proof that he loaned Mr. Ellis money.

Q. And you got it from Mr. Kinkaid for Mr.

(Testimony of William R. Coleman.)

Ellis, didn't you? A. Yes, sir.

Q. Now was that the same time you got yours?

A. No, I got mine from another man altogether.

Q. Was it the same day?

A. No, I think, if I remember right, that it was two or three days—I think there was two or three days' difference in the time Mr. Ellis made final proof and the time I did.

Q. Do you remember which made proof first?

A. No, sir, I wouldn't be positive which it was.

Q. Do you remember the occasion of Mr. Ellis trying to get the money to make his proof and couldn't do it?

A. It was the day he was to make the proof, and I was working for Mr. Ellis, and he came in the shop—he had been out—and he says, "I have failed to get the money to make final proof; I thought I could get it at the bank, and I can't get it, and if Kinkaid can't help me out I can't make final proof, and I wish you would go up and see him"; and I says, "There is no use for me to go up and see him, as far as that is concerned; he won't put up no money"; and he says, "You go up and see him anyway," and he says to go up and see him anyway, and I went up.

Q. Did he come back to the shop with you?

A. No, sir; I told him what Mr. Ellis wanted me to, that if he couldn't help him with the money to make final proof he couldn't make it, and he said he supposed Ellis had money, and he wanted to know how much he wanted, and I said "\$400," and he said, "You wait here a few minutes, and I will see about

(Testimony of William R. Coleman.)

it," and he went out of the office, and I walked down to the foot of the stairs in the hall, and he was gone fifteen or twenty minues, and came back and handed me a roll of bills, and a note, made out, and told me to give the money to Sandy and for him to sign that note, to have him sign it.

Q. "Sandy" is Mr. Alexander T. Ellis?

A. Yes, sir; and return him the note.

Q. And you took it back to Mr. Ellis, did you?

A. Yes, sir.

Q. And it was four hundred and some odd dollars?
A. \$400.

Q. You didn't give him any receipt for it, did you?
A. No, sir, he didn't ask me for any.

Q. Had you made your final proof then?

A. I wouldn't be positive whether Mr. Ellis made final proof before I did or not, but I think he made his proof first.

Q. How did you happen to go to Dean West to get your money?

A. I tried to get a loan on the place, but couldn't get it, and Mr. Henry Rice, a neighbor there, I went in there and says to Henry—Henry Rice; I always called him "Henry"—and I says, "I can't make final proof on that place; I can't get the money," and he says, "Maybe I can help you out; I think Dean West has got some money, and I think I can get it for you, but," he says, "he will charge you \$10 for the use of it for three months, and he will charge you ten per cent interest on the note until it is paid," and I told him I would be willing to pay that for it.

(Testimony of William R. Coleman.)

Q. And you didn't give him anything but a note, then, did you? A. That is all I give him.

Q. And you didn't offer to give him a mortgage on the property you had been trying to raise the money on, did you?

A. I didn't ask Mr. West for the money at all; it was Mr. Rice; I never talked to Mr. West in regard to that money until I paid it back to him.

Q. Mr. West then just brought it to you?

A. Mr. Rice brought it to me.

Q. And you made the note out to Dean West, did you?

A. The note was made out to Dean West, yes, sir.

Q. And how long after you talked to Mr. Rice about it did he get the money—the same day?

A. This was the day before I made final proof, and I had given up making final proof; the evening before he wanted to know whether I was going to make final proof, and I told him the next day was my time, and he went and got the money and brought it to me the next forenoon.

Q. You knew Mr. Dean West?

A. Yes, sir, knew him by sight.

Q. And you had never talked to him about timber claims at all; is that right?

A. I don't have any recollection of ever talking to him; I might have.

Q. Did you ever locate any persons on timber claims? A. No, sir.

Q. You aren't a locator at all?

A. No, sir.

(Testimony of William R. Coleman.)

Q. Who were of the party that went with you to go over this land?

A. Who was the man that located us?

Q. I understood you to say Pat Downs.

A. Yes, he is the man that went to show us the land.

Q. Well, who went to the land with you from here?

A. Mr. Ellis, A. T. Ellis, Rice Harbaugh, Mr. Faraday, and myself went in one rig.

Q. What day did you leave Boise to go up to view that land?

A. I believe it was on Monday.

Q. Monday?

A. I wouldn't be sure, but I believe it was on Monday.

Q. How long did it take you to go up to the Star ranch?

A. I think we got up there in the evening, just before dark, or about dark.

Q. How long did you remain there before you were located?

A. We went out the next morning.

Q. And you were located? A. Yes, sir.

Q. And that would be Wednesday—Tuesday or Wednesday?

A. I think that would be Tuesday; if I remember right, we went up on Monday.

Q. Got there Monday evening? A. Yes, sir.

Q. And were located the next day?

A. Yes, sir, if I remember right.

(Testimony of William R. Coleman.)

Q. I am just asking for your best recollection. And then you returned to Boise? A. Yes, sir.

Q. And got back here Tuesday or Wednesday?

A. I think we came back that same night.

Q. And got back Wednesday?

A. No, I think we came back Wednesday night; we left there quite late in the evening, and came home that night, if my mind serves me right.

Q. Did Downs tell you where to go to have your papers made out?

A. I asked Downs if Kinkaid would make out the papers, and he said he would.

Q. Had you ever had any business with Mr. Kinkaid before that?

A. No, sir. Before he made out these papers?

Q. Yes.

A. Before I located this land I went and saw Mr. Kinkaid.

Q. What did you go to see him about?

A. The time I had the talk with Samuel Dye he told me that Kinkaid was locating people, and I went to see him.

Q. Did he give you a note to Downs?

A. Yes, I believe he did; he said Downs would meet us at the Star ranch.

Q. Did he give you a description of the land that Downs was to locate you on? A. No, sir.

Q. Then you went back to Mr. Kinkaid's office after you returned, to have your papers made out?

A. Yes, sir.

Q. And did the other gentlemen go with you, did

(Testimony of William R. Coleman.)

Mr. Harbaugh go there too at the same time?

A. No, I don't remember seeing Harbaugh up there when I had mine made out.

Q. Did Ellis go with you? A. No, sir.

Q. And when did you go—the day you returned, or the day after you returned?

A. I think we had those papers made out on Saturday; I believe they were made out on Saturday.

Q. How many days were you back here before that?

A. I think we was here three or four days, if I remember right.

Q. And did you get into line that night?

A. It seems to me it was Sunday night we got into line, Sunday evening.

Q. But you got your papers the day before?

A. Yes.

Q. And do you remember who was in line when you got in line at the land office?

A. There was a great many people I didn't know.

Q. How many were ahead of you?

A. I think there must have been ten or twelve ahead of me.

Q. Do you remember seeing Mr. Sonna there that evening, the man that owned the building?

A. Yes.

Q. Did he come and tell you all to get out of there? A. Yes, sir.

Q. Do you remember whether anybody came and told you not to get out?

A. No, I don't remember anyone telling us not

(Testimony of William R. Coleman.)

to get out.

Q. Do you remember seeing Mr. Kinkaid in the building that evening?

A. Yes, I think he was in there that evening.

Q. What was he doing there?

A. He came in and walked by, and then went out again; he walked up past the line, up to the corridor, and then he came back behind, but I had no talk with him, and I don't know whether he talked with others or not; I know when he went by going up he made some remarks as he was going by about what a looking gang there was there, but I couldn't give the words he said.

Q. Did you pay Mr. Kinkaid anything for preparing those papers he made out for you?

A. No, sir, I don't recollect paying him anything for making those papers.

Q. Then I understood you to say that when you went to make your final proof you paid four hundred and some odd dollars in the land office and you had gotten that from Dean West?

A. I got \$400 from Dean West to make final proof.

Q. And you paid that in the land office?

A. Yes, sir.

Q. And now after you made your final proof did you have an offer for this property?

A. No, it was—I don't recollect how long it was—several days after that Kinkaid asked me if I was going to sell that timber claim, and I told him I was if I got what I thought I ought to have, and he

(Testimony of William R. Coleman.)

wanted to know what I wanted, and I think I told him I wanted \$1,000.

Q. How much did he give you for it?

A. \$750.

Q. (Mr. GORDON.) We will suspend here. You will be back in the morning, Mr. Coleman?

At this time court adjourned until ten o'clock, A. M., Friday, February 26th, 1909, at which time the taking of testimony was resumed, the Examiner and counsel for the respective parties being present, and Mr. William R. Coleman resuming the witness-stand for further direct examination.

The WITNESS.—You asked me a question last night, whether I had ever had any talk with Mr. West, and I thought of it last night after I got studying about the matter, and I thought of having a talk about a year before I filed on this land.

Mr. GORDON.—Q. Mr. Coleman, did I understand you to say yesterday that before you took this claim you went up to see John Kinkaid

A. Yes, sir.

Q. Do you remember asking at that time, asking Mr. John Kinkaid if you took up a claim whether or not you could sell it? A. No, sir, I do not.

Q. Do you remember asking him if you took up a claim whether you could dispose of it within thirty days after you got your proof?

A. No, sir, I don't recollect making any such inquiry at that time; after I made the location I think I asked him once if he knew of any parties that would buy timber land.

(Testimony of William R. Coleman.)

Q. When was that?

A. That was after I made the location.

Q. And did you ask him whether he thought you could dispose of it in thirty days after you proved up?

A. No, sir.

Q. Mr. Coleman, do you remember who made final proof first, you or Mr. Alexander Ellis?

A. No, sir, I do not, but I think Mr. Ellis made proof before I did, but I won't be positive.

Q. Did I understand you to say that at the solicitation of Mr. Ellis you went to Mr. Kinkaid and got the money for him to make his final proof?

A. Yes, sir.

Q. Well, now, was that the day that Mr. Ellis made his proof?

A. I think it was in the forenoon of the day that Mr. Ellis made his proof.

Q. And do you know whether or not, as a fact, you proved up or made your final proof several days later than that?

A. Well, I couldn't say, but I believe it was two or three days after Mr. Ellis made his proof that I made mine, but I won't be positive whether it was before or after.

Q. Do you know, if it was before, why it was, when you went to get the money for Mr. Ellis, that it didn't occur to you to ask Mr. Kinkaid if you could get the money to make proof on your claim?

A. No, I didn't want to ask him; I didn't expect to ever get any money from him; I never thought of getting any money from Mr. Kinkaid; I didn't ex-

(Testimony of William R. Coleman.)

pect to get any money for Mr. Ellis when I went after it; I told Mr. Ellis before I started that I didn't think it would be any use to go up there after it.

Q. And you went there though, and Mr. Kinkaid went out and got the money? A. Yes.

Q. And it was about that time that you wanted the money to make your proof with, wasn't it?

A. Yes, sir.

Q. And you had made an effort to procure it, to borrow it on some property that you had?

A. Yes, sir.

Q. And after you got the money for Mr. Ellis it didn't occur to you to get the money for your final proof?

A. No, sir; if I had known that Mr. Kinkaid would put up the money to make final proof, I wouldn't have borrowed it from Mr. Kinkaid at all.

Q. Were you in the shop when Mr. Kinkaid brought the money to Mr. Ellis for Mr. Harbaugh?

A. No, sir.

Q. Did you know of that occurrence?

A. No, sir, I did not; I always supposed that Mr. Harbaugh used his own money, until it came out in Mr. Borah's trial.

Q. Did you know when you went up to locate whether or not the State had made its selection up there in 6-4? A. No, I did not.

Q. Was there anything said about it while you were up there? A. No, sir.

Q. Did you know that the State was going to make a selection in 6-4?

(Testimony of William R. Coleman.)

A. No, I did not; but when I first went to see Mr. Kinkaid about taking up some timber land he told me that he wasn't locating anyone then, the State was expected to make some selections and he wouldn't locate anyone until after the selections were made.

Q. Mr. Kinkaid told you that?

A. Mr. Kinkaid told me that.

Q. And had you had a conversation with Mr. Kinkaid prior to that, or was that the first time?

A. That was the first time I ever talked to him.

Q. And you told him you would like to take up a claim, and that you were working in the blacksmith shop close by, and when the time came, or when he had some claims, to notify you?

A. Yes, sir, he wanted to know if I lived in town, and I told him I was working right there in Mr. Ellis' shop, and he said that when he found out where there was some timber land he would let me know.

Q. Did he let you know? A. Yes, sir.

Q. How long before you went up to locate was it that Mr. Kinkaid let you know that there were claims to be located on?

A. Well, the way he let me know, he told Mr. Ellis, and Mr. Ellis telephoned to me; that's the way Mr. Kinkaid let me know, and I think we went up the next day, yes.

Q. Mr. Coleman, do you remember, in March, 1907, of having an interview with the then United States Attorney, Mr. Ruick? A. Yes, sir.

(Testimony of William R. Coleman.)

Q. Do you know who was present at that time besides Mr. Ruick and yourself?

A. I don't believe there was anyone; I think Mr. Ruick, I think, called me into a room by myself, the first talk I had with him.

Q. Was that in his office down here, next to the courtroom?

A. Yes, sir, I think it was in the office.

Q. Did you have a second talk with him?

A. I was on the stand after that, and he talked with me before the Grand Jury, I think, after that.

Q. And was there a stenographer present?

A. Not when he first talked with me, there wasn't anyone present except himself and me.

Q. Was a stenographer brought in afterwards and took your statement?

A. Well, I think the only time there was a stenographer there was while I was before the Grand Jury.

Q. I understood you to say that after you went up to view this land that you went back to Mr. Kinkaid's office and he prepared the papers for you to file in the land office.

A. Yes, sir.

Q. And after he prepared those papers you went to the land office at some future time and got in line, and the papers that Mr. Kinkaid gave you, you filed in the land office the following morning. Is that right?

A. Yes, sir.

Q. Did I ask you how long you remained in line—stay in line all Sunday night?

A. I don't remember that you asked me that

(Testimony of William R. Coleman.)

question, but I think I went in line Sunday evening, along about maybe six o'clock, just about dark, if I recollect right.

Q. Do you remember whether you went to the land office alone or with some one?

A. I went up there alone.

Q. Did you see Mr. Ellis there? A. Yes, sir.

Q. Do you know whether Mr. Harbaugh and Mr. Ellis went with you to Mr. Kinkaid's office when you went there to have your papers made out?

A. No, sir, I do not.

Q. What is your best recollection?

A. My recollection is that Mr. Harbaugh went up there with me, or was up there when I got there, but I don't remember seeing Mr. Ellis up there at all.

Q. How long after you made your final proof did you negotiate for the sale of this property?

A. Well, I know it was less than a month, and it might have been not more than ten days.

Q. Well, and he came to see you about it?

A. Yes, he came down there to the shop.

Q. And what did he say?

A. He wanted to know if I was going to sell that timber land I got, and I told him I was if I could get what I thought I ought to have for it.

Q. Did you tell him what you thought you ought to have?

A. He wanted to know what I wanted, and I think I told him \$1,000.

Q. Wasn't it \$800 you told him you would like

(Testimony of William R. Coleman.)

to have for it?

Q. \$800 or \$1,000, I don't remember; I recollect what I got all right.

Q. What did he say?

A. He told me, when I told him that, that he couldn't get me any such price, that he thought he could get me \$750.

Q. And then did he go away? A. Yes, sir.

Q. And how long after that was it that you saw him again?

A. I went up there to the office after that, if I remember right, and told him that I would take \$750.

Q. Then on that day you signed the deed, did you, and received the money?

A. No, I think it was the next day.

Q. It was that day or the next day?

A. Yes, sir.

Q. And did Mr. Kinkaid have the deed prepared when you arrived at his office?

A. No, I don't think he did; I think he made it out after my wife and I went up to the office.

Q. Did you sign it at his office? A. No, sir.

Q. Where did you go?

A. I signed it at Mr. Haines' office, if I remember right.

Q. Was Mr. Haines in the office with Mr. Pritchard?

A. I don't know who he was in the office with; it was Mr. Haines of the Pierce Real Estate Company.

(Testimony of William R. Coleman.)

Q. Did you ever see Dean West with reference to the money you received from him to make your final proof? A. No, sir, I never did.

Q. You transacted that deal with Mr. Henry Rice? A. Mr. Rice, yes, sir.

Q. And do you know whether Mr. Rice returned the note when you repaid the money to him?

A. Yes, sir, he returned me the note.

Q. And the note was made out to Dean West?

A. Yes, sir.

Q. Now, before you came back from the claim did you have any advice to the effect that you had better file on Saturday or Sunday, that you were in danger of losing your claim?

A. No, sir, I did not.

Q. Do you remember, in the interview you had with Mr. Ruick, this question being asked you and the answer which I shall read being made by you. I am asking you this simply to refresh your recollection, and you will say whether you remember the question being asked and the answer being made.

“Q. Before you made proof you had an understanding with Kinkaid that you wouldn’t have to wait more than thirty days to get your money? A. Why, you see I asked him if it would be over thirty days before I could dispose of it, and he told be it wouldn’t be; yes, sir, I had an understanding to that effect.”

A. No, sir, I don’t remember of ever being asked any such question or answering such a question.

Q. Didn’t I understand you to say this morning that after you filed and before you made your

(Testimony of William R. Coleman.)

proof, you asked Mr. Kinkaid if he could dispose of this within thirty days?

A. No; I asked him if he knew of any parties that were buying timber land.

Q. And what did he tell you?

A. That is my understanding.

Q. And what did he tell you?

A. The answer that he made me was that there was no doubt but what somebody would want it.

Q. Was this question asked you and the answer which I shall read given by you: "Q. Then you had an understanding with him that you were going to sell that land in thirty days? A. Well, that is as near an understanding as it was." Was that question asked you and that answer made by you?

A. I don't remember; it might have been though. He asked me a good many questions and told me things that he knew was so, and he knew that they was so, and he tried to make me say they was so, and they weren't.

Q. I am not trying to do that; all I want to know is whether those questions were asked you and whether you made those answers, and if you didn't, just say so. Was this question asked you and the answer which I shall read made by you in reply: "Q. He knew you was going to sell it and you knew you were going to sell it to him? A. It wasn't a direct agreement; still I understood it as an agreement."

A. No, sir.

Q. You say you don't remember it, or that those questions weren't asked you?

(Testimony of William R. Coleman.)

A. I don't remember any such question as that being asked me; I remember of being asked if I had ever made any contract, directly or indirectly, to sell that land; I remember that.

Q. And what did you say?

A. I said I had not.

Q. You don't remember whether or not you made this answer: "It wasn't a direct agreement; still I understood it as an agreement"? A. No, sir.

Q. Was this question asked you, and did you make this answer to it: "You understood then and you understand now that you were not at liberty to go and sell that land to anybody else? A. Oh, yes, I didn't understand that I used any money, that I was under any obligation to them at all, I didn't understand that." Is that right?

A. I don't recollect that question being asked me.

Q. Was this question asked you and the answer which I shall read made by you: "You was expecting to sell to Kinkaid? A. As I told you, I expected Mr. Kinkaid to handle that when I took it up." Do you remember that question being asked you and that answer made by you?

A. No, sir, I do not.

Q. What is the fact? When you took it up, did you expect to sell through Mr. Kinkaid or to Mr. Kinkaid?

A. No, sir, I did not, when I took it up, though I expected to sell it.

Q. Did you expect Mr. Kinkaid to sell it for you?

A. No, sir.

(Testimony of William R. Coleman.)

Q. Did I show you these papers and ask you if you had signed them? A. Yes, I think so.

Q. Mr. Coleman, did your wife take up a timber claim? A. She located a timber claim.

Q. And then abandoned it?

A. Yes, she never made final proof.

Q. Did she locate the same time you did, or prior to that?

A. No, she located quite a while after that.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, dated September 14, 1903, of William R. Coleman; the non-mineral affidavit of William R. Coleman, of the same date; the testimony of William R. Coleman, given on final proof, dated December 17, 1903; the cross-examination attached thereto, all of which papers have been identified by William R. Coleman as having been signed by him; the notice of publication, dated September 14, 1903; the testimony of the other witnesses, given on final proof, and the cross-examination of them; the receiver's receipt, and the register's certificate, dated December 17, 1903; the deed, dated December 29, 1903, made by William R. Coleman and Estella M. Coleman, his wife, to George S. Long, consideration \$800, which deed has been identified by William R. Coleman as having been signed by himself and wife, Estella M.; the certified copy of the patent, dated December 1, 1904, and the certificate of recordation attached; all to the west half of the northeast quarter, and the west half of the southeast quarter of section 28, township 6 north

(Testimony of William R. Coleman.)

of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 129A to 129M, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Coleman, in 1903, when you filed on this timber land, you were a man of family?

A. Yes, sir.

Q. And had lived here then, I believe you stated, thirteen years?

A. About thirteen years, yes.

Q. You and Mr. Ellis and Mr. Harbaugh were at that time rather close intimate friends, were you not?

A. Well, I was working for Mr. Ellis in the shop, and Mr. Harbaugh married a cousin of mine, though I had never seen him until about a year before this; he came from Michigan here.

Q. But after he came here you were more or less intimate, were you not? A. Yes, sir.

Q. Mr. Downs at that time was generally known to be a cruiser or locator, was he not?

A. I didn't know him as such, for I never met Mr. Downs until I met him at the Star ranch.

Q. Mr. Kinkaid at that time was generally known to be—or did you know at that time—associated with Mr. Downs in the locating business?

A. I had heard he was.

Q. That was the way you came to go to him?

A. That was the way I came to go to Mr. Kinkaid.

(Testimony of William R. Coleman.)

Q. Had you had a talk with Kinkaid at all about timber before you filed?

A. Oh, yes, some little time before, I went and saw Mr. Kinkaid.

Q. That was the time he told you that at that time there was no locations being made, but that when the State made their selections in 6-4 there would be some?

A. He didn't tell me anything about the locality it was in.

Q. But when the State made its selections there might be some land open to entry?

A. Yes, that there might be some land that I could locate.

Q. And you had no further talk with him, as I understand it, until Mr. Ellis told you that there were some parties going up to make locations?

A. Yes, sir.

Q. And you and Mr. Ellis and Mr. Harbaugh and Mr. Faraday made up a party and went up?

A. Yes, sir.

Q. Hired a team? A. Yes, sir.

Q. Who ordered that?

A. Mr. Ellis, I believe.

Q. Did you each pay your share toward the expenses? A. Yes, sir.

Q. And each paid your own expense for hotel bill up there? A. Yes, sir.

Q. Mr. Downs located you? A. Yes, sir.

Q. You went on the tract of timber that you afterwards located, did you not?

(Testimony of William R. Coleman.)

A. I suppose I did.

Q. You have no reason to suppose you didn't have you?

A. No, I didn't, not at that time anyway.

Q. Have you had any since?

A. From where the distance that it looked on the map afterwards from the Star ranch, I kind of had my doubts as to whether I saw the land.

Q. Did Mr. Downs show you the corners?

A. He showed me two corners, what he called corners.

Q. You had no reason to doubt but that they were the proper corners, did you? A. No, sir.

Q. And the piece he showed you was satisfactory to you, and you told him you would take that?

A. Yes, sir.

Q. And he gave you a certain description of land?

A. Yes, sir.

Q. And told you to go to Kinkaid's office, where the papers would be made out?

A. I asked him, and he told me he would.

Q. Why did you ask him about Kinkaid?

A. My understanding was that I paid the locator \$25 for making the location, and I asked Mr. Downs if Mr. Kinkaid would make out the papers when I got back and come under this \$25.

Q. You understood that these two were working together? A. Yes, sir.

Q. Did you pay Mr. Downs a \$25 locating fee?

A. Yes, sir.

Q. Before or after you filed? A. After.

(Testimony of William R. Coleman.)

Q. Before final proof? A. Yes, sir.

Q. Where did you pay him that?

A. In Mr. Ellis' shop.

Q. Did he come after it?

A. Yes, he came down there to the shop.

Q. And you paid him the \$25?

A. He came there twice; I paid him \$10 one time and \$15 the other.

Q. And that, as you understood it, included the making out of the papers as well as the location?

A. Yes, sir.

Q. Now after you returned from the Star ranch, which I think you said was Saturday night—no, earlier in the week you came back.

A. It seems to me we went out on Monday and came back—it seems to me we went out Sunday evening and came back Monday evening; we stayed there all night; we might have went out Monday and come back Tuesday.

Q. In any event, it was the following Sunday that you got in line? A. I think it was.

Q. Do you recall now who suggested that you get in line?

A. No, I don't recollect; it was on Sunday, and someone telephoned down and told me that they were lining up in the land office, and whoever it was said that they thought there was scrip out for that land, and if we didn't get in line and the scrip got ahead of us we wouldn't get it.

Q. So that was what prompted you to get in line?

A. Yes, sir.

(Testimony of William R. Coleman.)

Q. And you stayed in line until the office opened the next morning? A. Yes, sir.

Q. At the time you made you filing there were certain land office fees to be paid.

A. Yes, sir.

Q. Did you pay them? A. Yes, sir.

Q. Including the fee for publishing the notice, I think. A. Yes, sir.

Q. Now, Mr. Coleman, up to that time—and by that I mean up to the time you filed your first papers—had any person, firm, or corporation advanced or promised to advance you any of the expenses, or money, which you had used up to that time?

A. No, sir.

Q. At that time had you entered into any kind of agreement, written or oral, express or implied, with any person, firm, or corporation, by which any such person, firm, or corporation had acquired any right, title, or interest in, or lien upon, the land which you had entered? A. No, sir, I had not.

Q. Was any such agreement made with any such person, firm, or corporation, or any similar agreement, up to the time you made your final proof?

A. No, sir.

Q. Was there, at any time, outstanding any agreement between you and any other person, prior to the time you actually sold, by which any such person, firm, or corporation, had any right, title, or interest in, or lien upon, the land you acquired from the United States? A. No, sir.

Q. Now, at the time you made this filing how did

(Testimony of William R. Coleman.)

you expect to make final proof and pay for it to the Government?

A. I expected to get the money on a mortgage on my town property.

Q. Did you borrow any money from Dean West, as you have testified to, before you had made an effort to get it by mortgaging your other property?

A. No, sir, I did not.

Q. After you had failed to raise the money on your property you negotiated the loan from Dean West, as I understand it, through Henry Rice?

A. Yes, sir.

Q. Henry Rice was a person you had acquaintance with? A. Yes, sir.

Q. What was his business?

A. He was a miner, had been, and didn't do anything any more.

Q. It was through him that you made this loan?

A. Yes, sir.

Q. As I understand it, he got the money from Dean West for you? A. Yes, sir.

Q. And gave it to you? A. Yes, sir

Q. And with it gave you a note running to Dean West? A. Yes, sir.

Q. And a certain charge was made in the way of a bonus, in addition to ten per cent interest?

A. Yes, sir.

Q. At the time you made this loan did you in any manner encumber your right or title to the land you were acquiring from the United States?

A. No, sir.

(Testimony of William R. Coleman.)

Q. At the time you made this loan was there any understanding, express or implied, as to who you should sell it to, or any agreement in regard to this property whatever? A. No, sir.

Q. After you had proved up, as I understand, Mr. Kinkaid came to your shop and asked you with reference to selling it? A. Yes, sir.

Q. You didn't agree on a price at that time?

A. No, sir.

Q. Was that the first time Mr. Kinkaid or any other person had made any advances to you with reference to selling or transferring that property?

A. Yes, sir.

Q. Some few days after that you went to Mr. Kinkaid's office, I believe, and told him you would accept the offer he had made of \$750?

A. Yes, sir.

Q. And the day following, you and your wife executed a deed and delivered it to Mr. Kinkaid?

A. I think it was the day following, yes, sir.

Q. And at that time he paid you for the land?

A. Yes, sir.

Q. And paid you how much? A. \$750.

Q. After you got the \$750, state what, if anything, you did about repaying Mr. West.

A. I took the money to Mr. Rice, \$400, and paid it to him—I didn't pay it to him just then; he says, "I haven't got the note, but I will get it," and he got the note and I paid it that evening, and he returned the note.

Q. And did you pay the bonus and interest in

(Testimony of William R. Coleman.)

addition to the note?

A. It was made out for \$400, and I was to pay him \$10 for the use of the money for sixty days, and ten per cent for all it run over that time, if it wasn't paid at the end of sixty days.

Q. But you just paid the \$410?

A. Yes, sir, \$410.

Q. And the balance of the money you retained for your own use and benefit? A. Yes, sir.

Q. Mr. Coleman, it is charged in the complaint in this action in this lawsuit we are trying now, that you entered this land, made this entry, for the benefit of and at the request of the Barber Lumber Company, John Kinkaid, A. E. Palmer, Horace S. Rand, L. M. Pritchard, and the other defendants. Is that true or false? A. It is not true.

Q. And it is charged in the complaint that you entered this land at their request, pursuant to and under an agreement that you would make the entry for them, and that you would then go before the land office and testify to what you knew to be false, at their request and for their benefit, and for the purpose of defrauding the United States out of the title to this hundred and sixty acres of land. Is that true or false? A. No, sir, it isn't so.

Q. Now, it seems that you made proof, I think, six days later than Mr. Ellis, you having made your proof on the 26th of December and Mr. Ellis having made his on the 11th of December—no, it is fifteen days; he made—no, I am wrong; you made it on December 17th, 1903, and Mr. Ellis made *on* on

(Testimony of William R. Coleman.)

December 11th, 1903, or six days before you did, and you, at Mr. Ellis's request, went to Mr. Kinkaid and got some money for him on the day he proved up, which was six days before you proved up.

A. Yes, sir.

Q. Was it before or after that that you had your talk with Henry Rice?

A. It was after that.

Q. You say you didn't ask Mr. Kinkaid to loan you the money, and wouldn't have taken it from him. Why?

A. Well, I thought if he put up the money himself it wouldn't be the right thing at all.

Q. So, if Mr. Kinkaid had loaned you, or offered you the money, you wouldn't have taken it at that time?

A. I shouldn't have went to him after it; if he had offered it to me I might have taken it; I couldn't say what I would have done.

Q. But it was your intention not to do anything which could be in any way construed to be a violation of the law? A. Yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Coleman, how far did you go from Star Ranch to view the land that you located on?

A. I think we must have went about six miles.

Q. And how far is your claim from the Star ranch?

A. As near as I could figure it out, from the Star ranch it would be about ten miles, nine or ten.

(Testimony of William R. Coleman.)

Q. And your impression is then that you never went to that land?

A. My impression now is that I didn't see that land that I got.

Q. But you went to the claim that Mr. Downs showed you?

A. I took Mr. Downs' word for it, of course; I had nothing else to take.

Q. Now, the piece of land that you did see, did you go to one corner, or did you go to all the corners?

A. No, I didn't go to all the corners.

Q. Just went to one corner?

A. We went down through the timber, and he said "that was a corner," a tree that had a mark on it, and he motioned and said, "That is your place, right off there."

Q. Your idea is that you went to one corner, and it was pointed that the land you were to locate on was off from that, that that was one of the corners of the piece you were to locate on, and the rest of the land laid beyond that. Is that it?

A. I understood that was a corner of the piece of land I would get.

Q. You only went to one corner, did you?

A. No, he showed me another one that he said was a corner. *3 24*

