

Nos. 2209, 2210 AND 2211.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs. No. 2209.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,
Appellees.

THE UNITED STATES OF AMERICA,
Appellant,
vs. No. 2210.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,
Appellees.

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Transcript of Record.

VOLUME II.

(Pages 401 to 800 Inclusive.)

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District of Idaho, Central Division.

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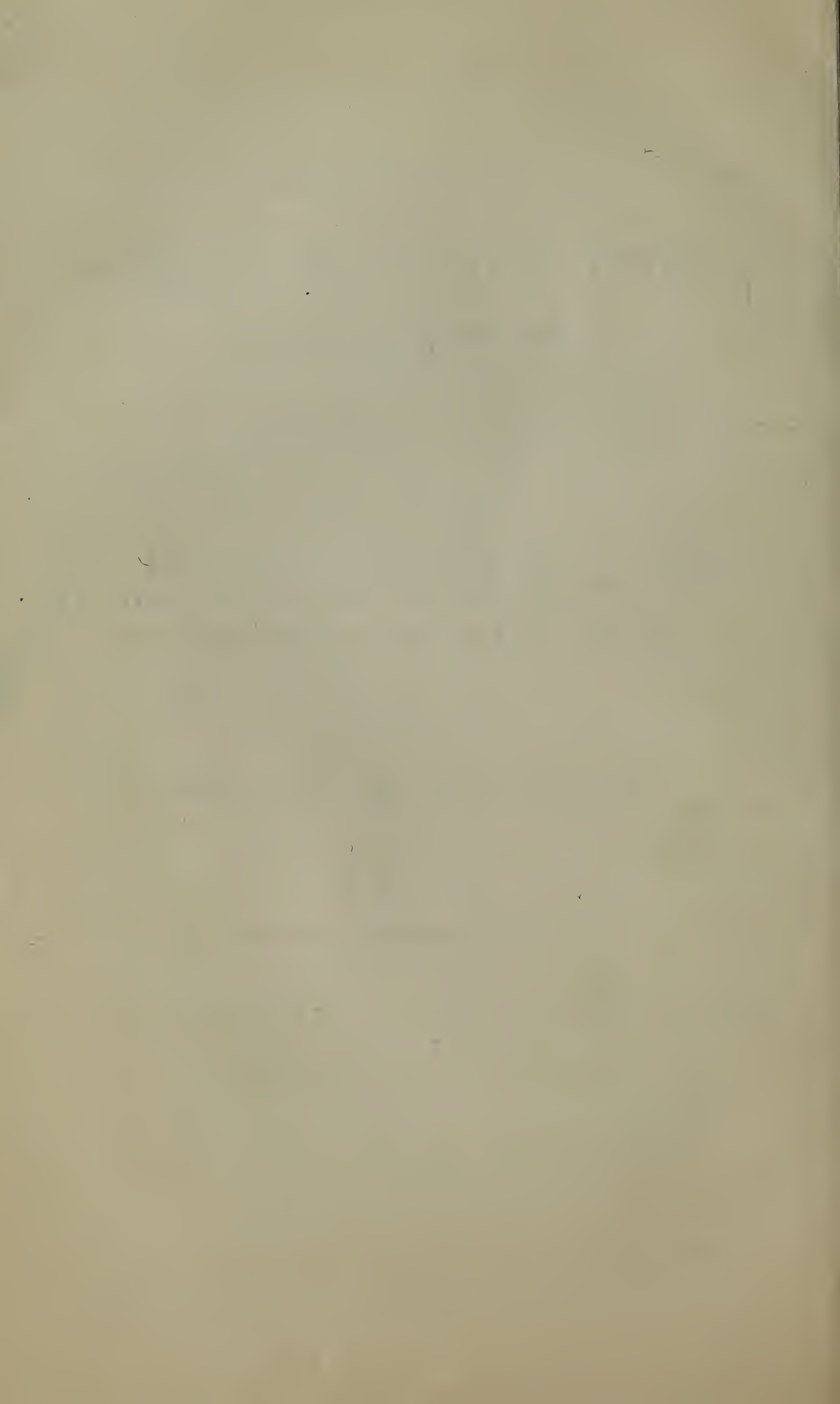
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(Testimony of Guy L. Wilson.)

Q. And how far was that from Otto Kettenbach's office? A. Why, it is about a block.

Q. Didn't you have to go by the Lewiston National Bank from Otto Kettenbach's office to get to your place of employment?

A. No, sir; the bank is across the street from where the office was.

Q. Was the bank directly across the street from your office? A. Yes, sir.

Q. Just on Main Street? A. Yes, sir.

Q. Was it diagonally across, or right directly in front of it?

A. I think it is right straight across.

Q. And was Kettenbach's office on Main Street, too? A. Yes, sir.

Q. And that was just a block away?

A. It was a block west, yes, sir.

Q. Was there any reason for your wife going to get that note, other than that you didn't want to be known in that transaction? [361—31]

A. There was reason—the timber had been sold—I didn't want anyone to hold a note against me.

Q. Why didn't you go to get it?

A. Well, I don't know why. I could have went, but I was busy, and my wife was there, and I just told her to go and get it; that is the only reason I know.

Q. It wouldn't have taken you only a few minutes longer, would it?

A. No, I don't know as it would.

Q. When you signed the deed at Mr. Kettenbach's

(Testimony of Guy L. Wilson.)

office, did you get any more money?

A. I got \$136.00.

Q. And the arrangement was that you were to get \$150.00?

A. Well, the arrangement was—I thought that is what I would get, after all expenses were paid.

Q. And why didn't you get the \$150.00?

A. Well, I had to pay this other fellow \$14.00.

Q. Mr. Dwyer kept that \$14.00 out, did he?

A. Yes, sir.

Q. What did Mr. Dwyer say to you after you made your proof, about going to Kettenbach's office to make a deed? A. I don't remember.

Q. He just told you to go there and make a deed?

A. I can't recall what he told me. Of course, I knew I had to go over there, but I don't remember the words that he told me.

Q. From the very first talk with Mr. Dwyer about taking up the timber claim, Mr. Wilson, Mr. Dwyer directed every movement you made in relation to it, didn't he?

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness and not a statement of fact; and on the further ground that the witness cannot intelligently answer the question. In other words, [362—32] it is not a question, and it is leading and suggestive.

Mr. GORDON.—Answer the question.

WITNESS.—Not altogether; no.

Q. What initiative did you take in it?

A. I didn't have any. Of course, I wanted to get

(Testimony of Guy L. Wilson.)

a timber claim, that's all.

Q. The whole matter turned out just exactly as it was outlined to you by Mr. Dwyer the first time you talked with him, did it? A. Yes, sir.

Q. And you got just exactly what you expected to get, with the exception of the \$14.00 you paid to Mr. Case, is that right? A. Yes, sir.

Q. Mr. Wilson, do you remember the cross-examination which you identified here as being the same that was put to you at the land office when you made your proof?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial, and upon the further ground that the cross-examination of the witness is not in evidence.

WITNESS.—I don't remember very much of it.

Mr. GORDON.—Q. Do you remember this question being asked you: Question No. 16, on cross-examination?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. "Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" and you made the answer "Yes"?

A. Yes, sir; I remember that.

Q. Do you remember this question being asked you at the same time: Question No. 17: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual [363—33] possession?" to which you answered, "I saved it from my earnings, two and a half years"?

(Testimony of Guy L. Wilson.)

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Mr. Wilson, didn't you know that those answers were not true at that time?

Mr. TANNAHILL.—The same objection.

WITNESS.—Well, to a certain extent I knew they were not.

Mr. GORDON.—Q. You knew that you had gotten the money—not two years and a half before, but you had gotten it from the defendant Dwyer, within an hour of before you went to the land office and made that statement, didn't you?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Why did you answer those questions that way?

Mr. TANNAHILL.—The same objection.

WITNESS.—Well, I had thought it was all right, I guess, to answer them that way.

Mr. GORDON.—Q. You thought it was all right to make a false statement, did you?

A. Well, I don't think at that time that I really thought much about it. I didn't think at that time I was doing any more than other people were doing.

Q. Did somebody tell you that?

Mr. TANNAHILL.—The same objection.

WITNESS.—No, I don't know as they did; it was common talk.

Mr. GORDON.—Q. I will ask you directly: Did Mr. Dwyer make that excuse to [364—34] you?

A. I don't know as he did.

(Testimony of Guy L. Wilson.)

Mr. GORDON.—We offer in evidence the Timber and Stone Sworn Statement of Guy L. Wilson, dated April 25th, 1904, the Nonmineral Affidavit of Guy L. Wilson, of the same date, the Notice of Publication of Guy L. Wilson, of the same date, the testimony of Guy L. Wilson on final proof, and the cross-examination thereof, the Receiver's Receipt, and the Register's Certificate, dated July 13th, 1904, the testimony of the witnesses given on final proof, the certified copy of the patent, dated December 31st, 1904, for all of lots 3 and 4, and the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section 19, in township 39 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—Objected to upon the ground that they are irrelevant, incompetent and immaterial, and especially immaterial and irrelevant for any purpose, and especially in so far as they relate to case No. 388, and 407, and that they do not tend to prove or disprove any of the issues in either of the cases in which they are offered. The defendant waives any further identification as to the signatures of the officers, and admits that they are files and records of the office of which they purport to be files and records.

Said documents were thereupon marked by the Reporter as Exhibits 1, 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J, 1K, and 1L. [365—35]

Mr. GORDON.—Q. Mr. Wilson, I want to get clear what transpired between you and Mr. Dwyer after you made your proof and before you went to

(Testimony of Guy L. Wilson.)

Otto Kettenbach's office to make the deed. Were you told what you were to go there to do?

A. I presume I was.

Q. Well, now, you presume—

A. That would be my best recollection, that I was.

Q. Do you remember whether you had any discussion as to the sale of the land, or had that been arranged before? A. I don't remember of any.

Q. There wasn't anything said about it?

A. Not that I remember of.

Q. You were proceeding on the understanding you had with Mr. Dwyer when you first talked with him about it? A. Yes, sir.

Q. And the \$136.00 that was paid you in Mr. Kettenbach's office, did you tell me who gave you that?

A. Mr. Dwyer gave it to me.

Q. Was it a check? A. No, sir.

Q. In cash? A. Yes, sir.

Q. You had had no discussion with Mr. Dwyer as to what you were to sell the claim for, between the time you first spoke to him about the claim and the time he gave you the \$136.00, had you?

A. No, sir.

Q. It never had been mentioned, how much you were to get for it? A. I think not.

Q. And there was nothing said at that time about that? He just gave you the \$136.00?

A. Yes, sir.

Q. Mr. Wilson, do you remember now whether you got the sworn statement from Mr. I. N. Smith's office, or whether Mr. Dwyer brought it to you?

(Testimony of Guy L. Wilson.)

A. Is that the final proof papers?

Q. No, that was the first paper you filed in the land office.

A. I am not sure where I got that, whether I got it from Mr. Dwyer or Mr. Smith.

Q. Don't you remember discussing some matters in that paper with Mr. Dwyer before you filed it?

A. No, I don't remember now.

Q. Do you remember testifying at two or three former trials involving these matters, these same matters? A. Yes, sir.

Q. And two of those trials were had in 1907, you remember that? A. Yes, sir.

Q. One against Mr. William F. Kettenbach and the other against Mr. William Dwyer?

A. Yes, sir.

Q. And do you also remember testifying in the same cases against the same defendants in February last, at Boise? A. Yes, sir.

Q. Now, do you remember reading the testimony over, the testimony that was given at the former trial over, just prior to the trial at Boise last February? A. Yes, sir; I read some of it over.

Q. And where did you get that testimony that you read?

A. The first that I got I borrowed from Mr. Kester.

Q. Which Mr. Kester? A. George Kester.

Q. And he was one of the defendants in those cases? A. Yes, sir.

Q. You say the first you got of it. What do you

(Testimony of Guy L. Wilson.)

mean by that?

A. Well, that was the first time I read it.

Q. How long was that before the trial in February?

A. Well, I don't know. It was probably a couple of weeks, something like that,—maybe longer.
[367—37]

Q. And you read over the testimony that you had given on the two former trials? A. Yes, sir.

Q. Where did you get that testimony?

A. I got it from Mr. Kester.

Q. Well, now, tell the circumstances of getting it.

A. Well, I got it, I went with him up to his sister's room. I told him I wanted to look the testimony over, and asked him if he had a copy, and he said he did, and I think my wife and I both went up to his sister's to get it.

Q. Did you stay there and read it over?

A. I didn't read any there at all.

Q. You took it away with you?

A. I took it home with me.

Q. Did your wife read over her testimony?

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

Q. Did that testimony refresh your recollection any? A. Why, I don't know as it did.

Q. Mr. Wilson, I wish to invite your attention to what purports to be some portions of the testimony that you gave at Moscow, in the case of United States vs. William Dwyer, at the May term, 1907, with the view of seeing if this refreshes your recollection as to any of these matters. I read from page 183,

(Testimony of Guy L. Wilson.)

case No. 1606, transcript of the record that is referred to in the stipulation made by counsel yesterday. I think it is all in Volume 1. From the context of what goes before the question I shall read you, the question relates to a conversation you had with Mr. Dwyer before you went to view the land, the first talk you had with him. I will ask you if you remember this question being asked you and the answer which I shall read being made by you: "Well, now, state the conversation you had there with Dwyer in relation to it, what he said. Answer. Well, Mr. Dwyer said all our expenses would be paid and we would get about, when we could turn these over, he could make about a hundred and fifty dollars out [368—38] of this for us. Question. Now, give the exact language, so that these jurors can hear it, what he said to you. Answer. Well, he said that it would not cost us anything to take the trip, and that there would be about a hundred and fifty dollars in it for me." Do you remember those questions being put to you and those answers being made by you? A. Yes, sir.

Mr. TANNAHILL.—We object to it as irrelevant and immaterial and leading and suggestive. It is improper to refresh the witness' memory in that way, and it is immaterial and improper for the reason that the witness has not shown himself to be an unwilling witness, but is simply testifying to the truth as nearly as he can remember it.

Mr. GORDON.—Q. On page 193 of the same record, I will read the following questions and an-

(Testimony of Guy L. Wilson.)

swers that are purported to have been made by you at the same trial, and ask you whether you remember the questions being asked, and whether you remember the answers being made as I shall read them. From the context of what goes before the question it would seem to be the conversation you had with Mr. Dwyer just after you got your sworn statement from Mr. Smith's office. "Question. Now, then, take that paper which you have already recognized as the paper that was made out in I. N. Smith's office for you and read it over and state what conversation you had with Dwyer at that time, and to what particular subject in that paper the conversation was directed. Just read it over now and speak loud enough so that this most distant juror can hear you. Answer. Do you want me to read this? Question. Yes, read it. Do it in your own way. Answer. Well, it said that I did not directly or indirectly make 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, and my postoffice address. He said that this agreement that I had with him was only verbal, and that wouldn't stand in the road at all, that I was taking this land up for myself, that I would derive the benefit from it." [369—39] Do you remember that question being asked you and that answer being made by you? A. Yes, sir.

Q. Was it true?

(Testimony of Guy L. Wilson.)

A. Well, there was only one thing that don't look right to me, and that was the first question he asked me.

Q. Was this question asked you: "Did you know at that time that this statement 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 to the benefit of any person except myself. Did you know that that statement was untrue? Answer. Yes, sir." Was that question asked you and that answer made by you?

Mr. TANNAHILL.—We object to that as repetition, and as irrelevant and immaterial, and not proper direct examination, and seeking to contradict his own witness.

A. I think I remember.

Mr. GORDON.—Q. Was this question asked you: "At the time you made it?" And your answer: "Yes, sir." Do you remember that question being asked you and that answer being made? .

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. Was this question asked you: "Well, what induced you to make, or who induced you to make these false statements? Answer. Well, Mr. Dwyer did it." Was that question asked you and that answer made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

(Testimony of Guy L. Wilson.)

Mr. GORDON.—Q. And that testimony that you gave, then, was true? A. I think so. [370—40]

Q. Was this question asked you: “Now, then, what we want to get at is, what did Mr. Dwyer say to you that induced you to make these false statements? Answer. Well, he said that it was nothing more out of the way than other people was doing, that I was taking this land up for my own benefit, and that as long as no one else but himself and I knew about this contract there would not be anything wrong about it.” Was that question asked you and that answer made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. And were they true?

A. I don't remember that conversation now.

Q. I will ask you whether or not this conversation wouldn't be fresher in your mind three or four years ago than it is now. A. Yes, sir; I think so.

Q. You may have forgotten some of it at the present time? A. Yes, sir.

Q. Was this question asked you: “Did you file, did you make this affidavit then pursuant, as a result of that conversation you had with Mr. Dwyer? Answer. Yes, sir.” Do you remember that question being asked and that reply being made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. And when you so testified in the trial of Mr. Dwyer your testimony was true, was it not? A. Yes, sir; that was.

(Testimony of Guy L. Wilson.)

Q. Do you remember this question being asked you at that trial: "Now, did you have any conversation with Mr. Dwyer in the meantime after you had filed and from that on until about the time that you were to make your final proof? Answer. I had one conversation with him that I remember of. Question. Well, now, relate when and where was that conversation. Answer. Well, it was out at my place at Vineland." Do [371—41] you remember those questions being asked you and those answers being made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. Was this question asked you: "Well, this conversation was shortly before you made your final proof? Answer. Yes, sir." Do you remember that question being asked you and that answer being made by you? A. Yes, sir.

Q. Were these questions and answers which I shall proceed to read asked and the answers made by you in response thereto: "And this conversation was shortly before you made your final proof? Answer. Yes, sir. Question. But you had not made, had any conversation in the meantime about this subject since you filed, up to this time? Answer. None that I remember of. Question. None that you recall. Now, what did that conversation between you and Mr. Dwyer relate to that you had at Vineland? Answer. Well, it related as to how I should answer some of the questions that would be asked at the time I proved up." Do you remember those ques-

(Testimony of Guy L. Wilson.)

tions being asked and those answers I have read being made by you?

Mr. TANNAHILL.—The same objection.

A. I remember some of them; I can't say as to all of them.

Mr. GORDON.—Q. Does that refresh your recollection as to the transaction? A. A little, yes.

Q. Then follows this question and answer: "Now, what did Mr. Dwyer state to you at that time concerning this? Relate the conversation that occurred there. State it distinctly so we can all hear it. Answer. Well, there would be one question asked me, where I got the money, and he told me to tell them that I had saved this money, and another one that I remember was that if the question would be asked me how long I have had this money, and he said, 'You can tell them that [372—42] you have had it or the equivalent for a good many years, being as you owned this place in Vineland two or three years. You can answer it in that way.'" Do you remember those questions being asked and that answer made?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. Do you remember this question being asked you, when the district attorney had handed you the testimony and the cross-examination on final proof, and after reading it over you made this answer: "The question was, 'Have you sold or transferred your claim?' And Mr. Dwyer said, he told me it was only an agreement between him and

(Testimony of Guy L. Wilson.)

I, and that it would be all right for me to say no to that, and about making the entry in good faith, why, it was for the benefit of me. Question. What did he say? Answer. Well, he said, 'You have taken this land up for yourself and will derive the benefit from it after you prove up and get your receipt.' 'Do you remember those questions being asked you and those answers made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr GORDON.—“Question. We will come directly to the point, Mr. Wilson. You recognize these as the questions which were asked you and the answers which were given by you in the land office? Answer. Yes, sir. Question. To the question, 'Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract or in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?' you answered 'No.' Was that statement by you, was that answer true at the time you made it? The answer was, no, sir. Question. Did you know it was not true? Answer. Yes, sir.” Do you remember those questions being asked you and those answers being made by you?

Mr. TANNAHILL.—The same objection. [373—43]

A. Yes, sir.

(Testimony of Guy L. Wilson.)

Mr. GORDON.—Q. Were you telling the truth when you testified in that trial of Mr. Dwyer?

A. I aimed to tell the truth, with the exception of there was just one thing there that I didn't think was just right.

Q. What was that?

A. That was the first conversation I had.

Q. What makes you think that wasn't true?

A. Well, I have thought over it a good many times, and I don't believe it was; that is the only thing I can say.

Q. Do I understand now that you went on the stand in behalf of the Government in two of these cases and made an assertion, and swore to it, and when asked if you were telling the truth said, yes?

A. I aimed to tell it.

Mr. TANNAHILL.—The same objection.

A. I aimed to tell the truth, of course, the same as I am now, but afterwards, after I thought over that, there was one thing I was in doubt about.

Mr. GORDON.—Q. Now, let's see, Mr. Wilson. In the first case I am reading from the trial was had some time in May, 1907, and the second case in which you gave similar testimony was in the following—

A. Yes, sir.

Q. And you testified to these agreements in 1907. Is that correct? A. Yes, sir.

Q. And that was then three or four years after you had made your application and had made whatever arrangements you had with Mr. Dwyer?

A. I don't know just how long it was. It was

(Testimony of Guy L. Wilson.)

some time, of course, afterwards, but I don't know just how long.

Q. I say that was in 1907, and you made your entry in 1904. That is correct, isn't it?

A. I think so.

Q. What has at this moment brought to your mind the fact that you [374—44] may have made a mistake in your testimony three years ago?

A. As I say, that first conversation I testified to at those trials, I think there was a chance there that I did make some mistake about going to his house. The testimony I gave you this morning was the way I intended to testify.

Q. The only part of your testimony, as I understand, that is at variance here to-day with what you gave before is with reference to your going to his house? A. Yes, sir.

Q. Is that all? A. That is all.

Q. Well, do I understand that you testified before that he came to your house the first time?

A. I don't know. I think I testified that I met him on the street.

Q. Is that the only particular that you wish to change?

A. And that at that time I testified that he offered me a hundred and fifty dollars. Now, as near as I can remember now, he told me that I could clear that much when the land was sold.

Q. Now, Mr. Wilson, you had all of this discussion with Mr. Dwyer about whether or not, in making the sworn statement or the first filing paper, that

(Testimony of Guy L. Wilson.)

you would have to swear that you hadn't any agreement, directly or indirectly; you had that conversation with him before you filed that paper, as I understand? A. Yes, sir.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. And if you didn't have any agreement or conversation or arrangement about selling the land to him, what was the necessity of your discussing whether or not you had any agreement?

Mr. TANNAHILL.—We object to that as cross-examination of his own witness, and leading and suggestive, and irrelevant and immaterial.

A. I don't know as there would have been any.

[375—45]

Mr. GORDON.—Q. If you haven't any agreement with a man you don't have to stretch your conscience to say that you haven't one, do you? A. No, sir.

Q. Wasn't the conversation that you first had with Mr. Dwyer such as to raise the question in your mind as to whether or not you could conscientiously swear that you didn't have an agreement with him, and that was the reason you discussed this question with him before you filed your sworn statement?

Mr. TANNAHILL.—The same objection.

A. I don't remember now, Mr. Gordon, just exactly why I talked it over.

Mr. GORDON.—Q. You remember having those conversations with him and the discussion as to what you should swear to when you filed your sworn statement?

(Testimony of Guy L. Wilson.)

A. In a way I do; I remember something about it.

Q. Mr. Wilson, after you made your final proof, or at the time you made your final proof, you got a receipt for that money, and a certificate from the register of the land office, to the effect that patent would be delivered to you upon the receipt of that paper?

A. Yes, sir.

Q. And they are the two papers that I showed you this morning. What did you do with those papers the day you made your proof and made the deed referred to?

A. The final proof papers, I gave them to Mr. Dwyer.

Q. You don't mean the final proof papers. You mean the receipts they gave you at the land office. Is that correct?

A. Well, all the papers; after I made the deed I turned over all the papers to him that I had.

The SPECIAL EXAMINER.—Mr. Gordon wants you to answer as to the papers you got from the officers of the land office.

WITNESS.—I understand, but I don't remember anything but the final proof papers when I paid for the land. There was a receipt for it, [376—46] and I gave that to Mr. Dwyer.

Mr. GORDON.—Q. Did you ever see that paper again until it was shown to you on this trial?

A. Yes, sir.

Q. Where did you see it?

A. Mr. Dwyer came to my house one time and gave it to me.

(Testimony of Guy L. Wilson.)

Q. What did he say when he gave you that paper?

Mr. TANNAHILL.—We object to the question as irrelevant and immaterial.

A. Well, he gave me the receipt and told me I had better keep it, that there were inspectors around and I might need it.

Q. Was that all that he said?

A. I am not sure; I think that is all he said.

Q. Can you remember anything else he said? If you can, what? Was anything said about you saying that you owned the land?

A. Yes, sir, I think so.

Q. Well, what was that?

A. He told me if they wanted to know, to tell them I owned the land, had it yet.

Q. What else were you to tell them?

Mr. TANNAHILL.—We desire our same objection to go to all of this line of testimony.

A. He said if they wanted to know to tell them I had my claim yet and ask them if they wanted to buy it.

Mr. GORDON.—Q. Mr. Wilson, I think you said awhile ago that you didn't remember who told you to go to Mr. Smith's office to have your filing papers prepared. A. No, sir, I can't recall.

Q. Do you remember whether you took the description there to him?

A. No, sir, I didn't take it there.

Q. And whether or not you gave him the name of the witnesses for final proof? [377—47]

A. No, sir.

(Testimony of Guy L. Wilson.)

Q. Did you ever get a description of that land? Did anybody ever give you a description of that land?

A. I think I had a description of the land when I was in line.

Q. That was the paper though that you got from Mr.—

A. No, I think I had a description of the land some time or other; I think when I was in line I knew what the numbers of the land were.

Q. But you had your filing paper when you were in line, didn't you?

A. No, I hadn't it yet when I was in line. That was before it was open for filing.

Q. Do you know where you got that description?

A. I think I got it from Mr. Dwyer.

Q. But you didn't give that to Mr. Smith?

A. No, sir.

Q. Or didn't send it to him? A. No, sir.

Q. Did you know of any market for timber claims at the time that you filed on this land?

A. I don't know as I did.

Q. Did you know of anybody who was buying timber claims?

A. No, sir, I never thought anything about it.

Mr. GORDON.—That is all.

A recess was thereupon taken until two o'clock P. M., at which time the hearing was resumed, with Mr. GUY L. WILSON on the witness-stand.

Mr. GORDON.—Q. Mr. Wilson, you spoke of your father-in-law this morning. I forget whether I asked you what his name was.

(Testimony of Guy L. Wilson.)

A. David Justice.

Q. And he is deceased, is he? A. Yes, sir.

Q. Do you remember when he died, about, what year?

A. It was five years ago last February. [378—48]

Q. Did he take up a timber claim at the same time?

A. No, sir.

Q. Had he taken one up before that time?

A. Not that I know of.

Q. Do you know whether he ever took up a timber claim? A. No, I don't think so.

Q. Was Fred Justice a son of David Justice?

A. Yes, sir.

Q. And he is also deceased? A. Yes, sir.

Q. When did he die?

A. Five years ago last April.

Q. You said that when you went into the timber you saw a man there by the name of Bliss?

A. Yes, sir.

Q. He had nothing to do with locating you, did he?

A. Not that I know of.

Q. And the only locating you got was from Mr. Dwyer? A. Yes, sir.

Q. The land office and Mr. I. N. Smith's office were in the same building at that time as the Lewiston National Bank, were they not? A. Yes, sir.

Q. And the Lewiston National Bank was on the first floor of the building and these other officers were on the second floor, above it? A. Yes, sir.

Q. I don't remember whether you said it was four or five months after you viewed the timber that you

(Testimony of Guy L. Wilson.)

made your filing. Do you remember what time of the year it was that you went into the timber?

A. It was in the fall; I don't know just what month.

Q. You don't remember the month? A. No, sir.

Q. You said that Mr. Dwyer gave you the \$14.00 to pay Mr. Case. Do you remember whether that was a check? [379—49]

A. Yes, sir, that was a check.

Q. Do you remember whose check it was?

A. I am not positive, but I think it was Mr. Dwyer's check.

Q. Where did you have it cashed?

A. At the Lewiston National Bank.

Q. You are not positive that it was Mr. Dwyer's check, are you? A. No, sir.

Q. The day that you made proof did your wife come from over in Clarkston with you that morning?

A. Yes, sir.

Q. And remained with you all that day?

A. Until after I went to work that day.

Q. And she went with you when the deed was executed? A. Yes, sir.

Q. And she executed it at the same time?

A. Yes, sir.

Q. Was the deed prepared when you arrived at Mr. Kettenbach's office? A. I don't think so.

Q. You waited there until it was prepared?

A. I think I did.

Q. Did Mr. Dwyer go with you to Mr. Kettenbach's office?

(Testimony of Guy L. Wilson.)

A. I am not sure whether he went with me or whether he was there when I got there.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Wilson, Mr. David Justice, your father-in-law, went with you up to the timber, did he not?

A. Yes, sir.

Q. Now, was he living at the time you made your final proof? A. Yes, sir.

Q. How long after that was it that he died?

A. I think it was the following winter? [380—50]

Q. Was he over at Lewiston about the time you made your final proof? A. Yes, sir.

Q. He was over that day, was he not?

A. Yes, sir.

Q. Do you remember, Mr. Wilson, that you told him you thought you would rather sell your claim and pay off that note than to carry it, about the time you made your final proof?

A. I don't recollect saying that; no.

Q. You had some talk with him regarding it, did you not?

A. I expect we talked it over, but I don't—

Q. Do you remember him going to Mr. Dwyer on that day and telling Mr. Dwyer that you thought you would rather let your claim go than let the note run and pay interest on it, or words to that effect?

A. I don't remember.

Q. You wasn't present at the time they were talking? A. No, sir.

Mr. GORDON.—What was that?

(Testimony of Guy L. Wilson.)

Mr. TANNAHILL.—I was asking him if he was present at such a conversation. I didn't know whether he was present or not.

Mr. GORDON.—I would have objected to it if I had thought you were referring to Mr. David Justice.

Mr. TANNAHILL.—I was asking him if he was present at that time.

Q. Mr. Gordon asked you concerning your testimony at former trials, one, United States against Dwyer, at Moscow, and one, United States against Kester, Kettenbach and Dwyer, held at Moscow. Now you also testified in the case of United States against Kester, Kettenbach and Dwyer, at Boise, did you not? A. Yes, sir.

Q. The consolidated cases? A. Yes, sir.

Q. And you testified there in substance the same as you testified here on examination by Mr. Gordon, with the exception of his reference [381—51] to those records and your evidence in those former trials, as you remember, did you not? A. Yes, sir.

Q. And your evidence that you gave at Boise was true, was it not? A. Yes, sir.

Q. Do you remember testifying at Boise in substance as follows (page 203): “And where did you get the money with which to pay for this land? Answer. I borrowed it from Mr. Dwyer. Question. Did he come to you, or did you go to him? Answer. I went to him. Question. Where did you go to see him? Answer. In Mr. Smith's office. Question. That was just opposite the land office? Answer.

(Testimony of Guy L. Wilson.)

Yes, sir. Question. And how much did you get from him? Answer. I can't say exactly;—I don't remember about the sum. Question. Now, did you give him any note or other security for that money at that time? Answer. Yes, sir. Question. At the time you got the money? Answer. To prove up on? Question. Yes. Answer. Yes, sir, I gave a note." You remember of so testifying at Boise, do you, Mr. Wilson? A. Yes, sir.

Q. And that evidence was true, was it?

A. To the best of my recollection.

Q. To the best of your recollection?

A. Yes, sir.

Q. And you also testified at Boise, page 204: "Now, on that occasion was there anything said between you and Mr. Dwyer with reference to a location fee? Answer. Why, I paid him for locating me, I believe. Question. Now, where did you get the money with which to pay him? Answer. At the same time I got the other money. Question. In other words, he gave you the money and you paid him part back for the location fee? Answer. Yes, sir. Question. And how much did you pay him for the location fee? Answer. \$100.00." You also testified at Boise to that effect, did you? A. Yes, sir.

Q. And that was true?

A. To the best of my knowledge. [382—52]

Q. You understood that Mr. Dwyer was borrowing the money for you from someone else, did you not?

A. Well, I knew he was going to get the money; I didn't know how he was going to get it, or where.

(Testimony of Guy L. Wilson.)

Q. You didn't know who he was going to get it from? A. No, sir.

Q. You also understood that he would borrow enough money for you, get enough money to pay for the land and the expenses and the location fee, did you not?

A. Well, I am not sure; I knew he was borrowing the money, but I don't know whether the location fee was in that or not.

Q. Well, he did bring the money to you did he not, Mr. Wilson? A. Yes, sir.

Q. And you gave him back \$100.00 for the location fee? A. Yes, sir.

Q. And you gave him a note for the money?

A. Yes, sir.

Q. And I believe you said, Mr. Wilson, that you first went to Mr. Dwyer and asked him concerning his locating you on a timber claim? A. Yes, sir.

Q. Now, you knew that Mr. Dwyer was in the location business, did you not? A. Yes, sir.

Q. And had been engaged in locating people on land for some time? A. Yes, sir.

Q. And you knew something about the customs of locators from what you had heard and what you had seen, did you not? A. I knew a little about it, yes.

Q. And you knew that it was customary for locators to charge a location fee? A. Yes, sir.

Q. Did you not? A. Yes, sir. [383—53]

Q. And when you went to see Mr. Dwyer on that occasion you asked him if he could locate you on a piece of land, or words in substance and to that effect,

(Testimony of Guy L. Wilson.)

did you not? A. Something like that, yes.

Q. And he told you he thought he could?

A. I don't remember the exact conversation.

Q. It is in substance to that effect? A. Yes, sir.

Q. And then you asked him if he could get the money for you to make proof, or words to that effect, did you not?

A. Well, I understood from my father-in-law that he could locate me on a claim and get the money.

Q. And get the money? A. Yes, sir.

Q. And that was the substance of the conversation that you had with him at that time?

A. Well, that is all I can remember of it.

Q. Now, at Boise you testified in substance as follows (page 197): "Question. Now, if you can remember anything more that was said at this first meeting with Mr. Dwyer, other than you have related here— Answer. I don't believe that I can remember anything else." That isn't the first of it. I am simply asking you this to refresh your recollection, Mr. Wilson, is all. It is on page 195: "Now, what was said at this meeting with you and Mr. Dwyer? Answer. I went up to see Mr. Dwyer, to see if I could,—if he would locate me on a claim. Question. Well, now, state all that transpired. Answer. And to see if I could borrow the money. That is as near as I can remember what I went there for." Do you remember of so testifying at Boise?

A. Yes, sir.

Q. And that is true, to the best of your recollection? A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. "Well, what did Mr. Dwyer say? Answer. He told me he thought that he could get the money for me, and told me that I would have to pay [384—54] him for locating me. Question. Was that all that was said at that conversation, at that meeting? Answer. Well, I don't remember of anything more right now." You remember of so testifying, do you?

A. Yes, sir.

Q. And that statement was true?

A. Yes, sir.

Q. On page 197: "Now, please state what the arrangements were." I will ask you if you remember testifying at the trial at Boise in substance as follows: "Now, please state what the arrangements were. Answer. Well, at the time that I went to Mr. Dwyer's house I talked the matter over with him, as near as I can remember, what this claim was worth, and what probably it would be worth when I sold it. Question. And how did he express himself in reply to that query? Answer. Well, he told me at that time that that claim at the present price, or something to that effect, and that when I sold that it probably would be worth about \$150.00 more to me than what the expenses and cost of it would be." Do you remember of so testifying at Boise?

A. Yes, sir.

Q. And that evidence is true? A. Yes, sir.

Q. "How long after that conversation did you go to view the timber? Answer. Possibly two or three weeks. Mr. Gordon: Excuse me,—I did make a

(Testimony of Guy L. Wilson.)

mistake when I said the next day.”

Mr. GORDON.—I object to this line of testimony on the ground that it isn't proper cross-examination.

Mr. TANNAHILL.—Q. “And who arranged the party for you to go with? Answer. Well, I understood that my father-in-law and mother-in-law were going with Mr. Dwyer, and, of course, I knew if I wanted a claim I could go up at that time.”

Mr. GORDON.—May I ask counsel what the purpose of this is? Is it to lay the foundation for impeaching him?

Mr. TANNAHILL.—Oh, no. It will appear in the next question in [385—55] relation to paying the expenses up there. I was going to leave this now and ask him with regard to his trip up to the timber.

Q. You remember that evidence, do you, Mr. Wilson? A. Yes, sir.

Q. And that statement is substantially correct?

A. Yes, sir.

Q. Mr. Justice went with you up to the timber, did he? A. Yes, sir.

Q. Do you know whether Mr. Justice paid any of these expenses up there or not? A. I don't know.

Q. He might have paid your car fare?

A. He might have, coming back, but I don't know whether he did or not.

Q. And the arrangement was that Mr. Dwyer was to have horses there at Orofino for you to go out to the timber with? A. Yes, sir.

Q. And he had the horses there? A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. But Mr. Dwyer wasn't with you coming back?

A. No, sir.

Q. And you didn't see him pay any hotel bills or pay any fare coming back, did you? A. No, sir.

Q. And you don't know who paid the expenses?

A. No, sir, I don't know.

Q. Now, you had no agreement with Mr. Dwyer or anyone else to sell him this land before you made your filing, did you?

A. Not only that I understood that if I sold it, or when I went up to his house that if I went up there and taken a claim that after it was sold I could clear about \$150.00.

Q. But you had no specific agreement to sell it to Mr. Dwyer, or anyone else, did you?

A. I didn't have to sell it to him, no. [386—56]

Q. And you had no agreement with Kester or Kettenbach regarding it, did you? A. No, sir.

Q. Now, concerning your evidence, which Mr. Gordon introduced awhile ago and asked you about, which was given in the former trials, I will ask you, Mr. Wilson, if you had talked with Mr. Gordon regarding that evidence and told him that some parts of that evidence was not correct, before you went on the stand? A. Just that one statement was all.

Q. And your evidence as you have given it here is substantially correct, as you remember it?

A. The best I can remember.

Q. As you have given it on cross-examination?

A. Yes, sir.

Q. And, regardless of what might have inadver-

(Testimony of Guy L. Wilson.)

tently crept in or fallen in in those other trials or that other evidence, regardless of what might have been said during that time or those conversations, the evidence that you have given here on cross-examination is substantially correct, to the best of your recollection, is it? A. I think it is.

Q. Now, Fred Justice was your brother-in-law, was he? A. Yes, sir.

Q. I will ask you if Fred Justice was not standing in line up there at the time—that is, if he was not interested in getting the filing papers for people, and arranging the line and keeping people in line, so that they could get a filing?

A. It seems as though he had charge of the line, but I don't know anything further than that.

Q. He seemed to have charge of the line?

A. Yes, sir, that is all I know.

Q. As a matter of fact, Mr. Wilson, you know that it is customary for a locator to see that people that he locates get a filing on the particular land that he locates them upon, do you not? [387—57]

A. Yes, sir.

Q. And it is customary for a locator to see that the papers are properly made out and to see that there is no conflict in the people, the particular people that he locates, do you not? A. Yes, sir.

Q. And that is what Mr. Dwyer did in this particular case, in so far as you know?

A. Well, I don't know.

Q. Well, he did see that all of you got your papers properly made out and that all of you got your filings?

(Testimony of Guy L. Wilson.)

A. My papers were made out; I don't know who had them made out.

Q. You don't know whether Mr. Dwyer or Mr. Fred Justice had them made out, do you?

A. I don't know who had them made out.

Q. Now, I believe you said in your direct examination that according to your best recollection you and Mr. Dwyer figured up about what the value of the claim was and about what it would be worth, or what you would get out of it after it was sold, over and above expenses. That is substantially correct, is it?

A. Well, I don't remember figuring any. All I remember of that conversation was that that would be about what it would be worth to me when I took it up.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Just one question, with reference to the response to the question of Mr. Tannahill as to whether or not you told me that some parts of your former testimony were incorrect. That was the part you explained on the stand this morning, was it not?

A. Yes, sir.

Mr. GORDON.—That is all. [388—58]

[Testimony of Mrs. Ella Wilson, for Complainant.]

Mrs. ELLA WILSON, a witness called in behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Ella Wilson, are you?

A. Yes, sir.

Q. And you are the wife of Mr. Guy D. Wilson, who has just left the witness-stand, are you not?

A. Yes, sir.

Q. You are also a daughter of Mrs. Frances Justice? A. Yes, sir.

Q. Mrs. Wilson, do you remember, some time after your husband filed on a timber claim, of Mr. Dwyer and his wife coming to your house at Clarkston?

A. Yes, sir.

Q. And do you remember what they said when they came there, and what their mission was?

A. I don't remember very distinctly now. It was something about questions that would be asked at the land office.

Q. That were to be asked who at the land office?

A. Mr. Wilson.

Mr. TANNAHILL.—We object and move to strike out the question and answer of the witness, on the ground that it is incompetent, irrelevant and immaterial, it being a circumstance that happened after the filing of the sworn statement and immediately prior to the making of the final proof, and it is immaterial in so far as it relates to any of these cases

(Testimony of Mrs. Ella Wilson.)

or any of the defendants named in any of these actions.

Mr. GORDON.—Q. Was your husband home at the time that Mr. and Mrs. Dwyer arrived?

A. No, sir.

Mr. TANNAHILL.—It will be understood that this same objection goes to all of this same line of testimony. [389—59]

The SPECIAL EXAMINER.—Yes, let it be so understood, that the same objection applies to the line of questions objected to.

Mr. GORDON.—Q. You say that the question was discussed as to certain questions that Mr. Wilson was to answer at the land office, is that correct?

A. I believe so.

Q. Do you remember what those questions were?

A. I can't remember now what they were.

Q. Do you remember whether or not it was with reference to what Mr. Wilson should say at the land office as to where he got the money with which to purchase the land?

A. I couldn't say as to that. I don't believe that question was discussed. I can't tell.

Q. Do you remember of anything that was said about what answer he should make when he was asked whether or not he had an agreement?

A. No, sir.

Q. Mrs. Wilson, do you remember testifying at the trial of United States vs. William Dwyer, one of the defendants in this case, at Moscow? A. Yes, sir.

Q. And do you remember also testifying at the

(Testimony of Mrs. Ella Wilson.)

case of United States vs. William F. Kettenbach, George H. Kester and William Dwyer, later, at Moscow, in the fall of 1907?

A. I only testified up there once.

Q. That was the case against Mr. Dwyer?

A. I don't know which one it was; I don't remember.

Q. Do you remember whether those questions were asked you at that time or not?

A. They might have been; I expect they were.

Q. Haven't you any recollection of it now?

A. I expect the questions were asked me then; I don't remember what I answered though.

Q. And, of course, you told the truth at that time?

A. Certainly. [390—60]

Q. Now, for the purpose of refreshing your memory, Mrs. Wilson, I will read from page 266 of the trial of United States vs. Kester, Kettenbach and Dwyer, No. 1605, Volume 1.

Mr. TANNAHILL.—We desire to interpose an objection to counsel attempting to refresh the witness' recollection in this manner, on the ground that it is improper and irrelevant and immaterial.

Mr. GORDON.—Q. Do you remember this question being asked you: "Question. Do you recall an instance of Mr. Dwyer and Mrs. Dwyer, or either or both of them, coming to the house where you then lived, to see Mr. Wilson, your husband?" And you made this answer: "Yes, sir." "Question. About what time of day was this? Answer. About six o'clock in the evening. Question. Was your hus-

(Testimony of Mrs. Ella Wilson.)

band there at the time that they arrived? Answer. No, sir. Question. How long after they came did your husband come? Answer. About fifteen minutes." Do you remember those questions being asked and those answers made by you on the occasion of your being at Moscow testifying at the trial of Mr. Dwyer? A. Yes, sir.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. Was this further question asked you: "What inquiry, if any, did Mr. Dwyer make when he came to the house? Answer. He wanted to know if Mr. Wilson was at home; he wanted to see him." Do you remember that question being asked and that answer made by you?

Mr. TANNAHILL.—The same objection, if the Court please.

A. Yes.

Mr. GORDON.—Q. Do you remember this question being asked you on that occasion: "Did you hear any conversation between your husband and Mr. Dwyer after your husband came?" And you made this reply: "Yes, sir"?

A. Yes, sir.

Q. "Did you hear the entire conversation? Answer. Yes, sir."

Mr. TANNAHILL.—It is understood that we have the same objection to all this line of testimony.
[391—61]

The SPECIAL EXAMINER.—It will be so understood.

Mr. GORDON.—Q. What did that conversation relate to?

(Testimony of Mrs. Ella Wilson.)

A. About the questions Mr. Wilson had to answer at the land office.

Q. "State what Mr. Dwyer and your husband said, either one or both of them, in the conversation. In other words, relate the conversation as you heard it, Mrs. Wilson. Answer. Mr. Dwyer said that he wanted to give Mr. Wilson some pointers on the questions he had to answer, and he said to tell them that he had the money, or its equivalent, to pay for his claim, and Mr. Wilson asked if he had to perjure himself when he answered the question, and Mr. Dwyer said not to worry about that, it was a thing which was done every day." Do you remember those questions being asked you and those answers being made by you on that occasion?

A. Yes, sir.

Q. Now, do you remember on the occasion of Mr. Dwyer and his wife being there that we have been speaking of, whether there was anything said about an agreement between Mr. Dwyer and Mr. Wilson?

A. No, sir, there was nothing said about any agreement.

Q. Was there anything said about there not being an agreement? A. No, sir.

Q. You are sure of that?

A. I am almost positive of it; I don't remember of any such thing being said.

Q. Going back to your testimony at the trial at Moscow which we have referred to, I will ask you if this question was asked you: "Do you recall anything else that he (relating to Dwyer) said relative

(Testimony of Mrs. Ella Wilson.)

to the matters between him and Mr. Wilson, your husband? Answer. He said that the agreement between them was only verbal, but that he would get the money just the same." Do you remember that?

A. I do, now that you have read it.

Q. Was this question asked you: "That who would get the money? Answer. Mr. Wilson. Question. Do you know what money he referred [392—62] to? Answer. Why, the money for the claim. Question. Did you know what money he referred to? Answer. Yes, sir. Question. What money did he refer to? Answer. The money he was to get for his timber claim, for the right. Question. For his right? Answer. Yes, sir." Do you remember those questions being asked you and those answers being made by you on the occasion I refer to? A. I do, now that you refresh my memory.

Q. And you remember those matters now, do you, as having transpired at the time Mr. Dwyer called at your house, before Mr. Wilson made his final proof? A. Yes, sir.

Q. I say, you recall that now, do you?

A. Yes, sir.

Q. Mrs. Wilson, I think you are mistaken about having only testified at one of those trials. Don't you remember being up there for two trials?

A. I don't know; maybe I was. I have been at most of them; I expect I was there.

Q. Page 279. Now, I shall read from the testimony of Ella Wilson, the present witness in this case, given in the case of United States vs. Dwyer,

(Testimony of Mrs. Ella Wilson.)

at Moscow, at the May term, 1907, and being numbered in the stipulation made yesterday between the parties as No. 1606.

Mr. TANNAHLL.—We object to counsel reading from the evidence of the witness given in the case referred to, on the ground that it is not a matter of refreshing the witness' recollection, but it is an effort to get in evidence something that transpired or happened or took place at another trial, and he is attempting to contradict his own witness.

Mr. GORDON.—I desire to state on the record that the purpose is to refresh, if possible, the witness' recollection as to certain matters which she has said that her memory is faulty in.

Q. On the occasion that I have just referred to, Mrs. Wilson, do you remember this question being asked you? “Well, now, state the conversation as near as you remember it that was had there between your [393—63] husband and Mr. Dwyer. You can talk to the jury over there if you will please, Mrs. Wilson. Answer. Well, Mr. Dwyer told Mr. Wilson that he wanted to give him a few pointers on questions that he would have to answer. Question. State what questions you remember in particular, if any. Answer. Well, he said that to answer the questions where he got the money that he had saved it, he had the money or its equivalent, he had our place, and that he had saved the money for two years or more, and Mr. Wilson asked him if he would have to perjure himself in answering any of these questions, and he said no, there was nothing in them,

(Testimony of Mrs. Ella Wilson.)

it was something that was being done every day, and that this agreement between himself and Mr. Wilson was just verbal and did not amount to anything, but he would get the money just the same.”

Mr. TANNAHILL.—We object to it as incompetent, irrelevant and immaterial, and repetition.

Mr. GORDON.—Q. You remember those questions being asked and the answers made by you?

A. Yes, sir.

Q. Now, do you remember the day on which your husband made final proof, Mrs. Wilson, at the land office?

A. No, I don't remember.

Q. I don't mean do you remember the day of the week, but do you remember the occasion?

A. Oh, yes, I remember the occasion.

Q. State whether or not you came from over in Clarkston with him in the morning of that day.

A. Yes, sir.

Q. And did you remain with him pretty much all day until he went back to work in the afternoon?

A. Yes, sir.

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

A. Yes, sir.

Q. And you stayed with him all the time until he went back to his work, after you had your dinner and had been to make the deed? [394—64]

A. Most of the time.

Q. You say most of the time. Was there any of the time you wasn't?

A. I was near, I guess; I don't know as I was always in the same room.

(Testimony of Mrs. Ella Wilson.)

Q. You came over with him to see the transaction through, did you? A. Yes, sir.

Q. Were you with him when he gave the note to Mr. Dwyer for the final proof money? A. No, sir.

Q. Did you say no, or you don't know?

A. I said no, sir.

Q. Where were you then?

A. I must have been around some place; I don't know just where I was, but I didn't see that.

Q. Well, you were with Mr. Wilson when he made his proof and paid his money into the land office?

A. I don't remember whether I was in the room or not.

Q. Do you remember of going anywhere else but with Mr. Wilson that day?

A. I think I went to the office where he made out a paper of some kind.

Q. That was with Mr. Wilson though, wasn't it?

A. Yes, sir.

Q. If you don't remember these things, Mrs. Wilson, just say so. I am not trying to catch you at all. I just want to learn these transactions as they actually happened. Did you go to this office where they made the papers before lunch or after lunch?

A. I don't remember that.

Q. Do you know whose office it was you went to to make the papers? A. No, I don't.

Q. Was it Mr. Otto Kettenbach's office?

A. Yes, I think it was. [395—65]

Q. Was that the occasion of your signing the deed?

A. Yes, sir.

(Testimony of Mrs. Ella Wilson.)

Q. Now, do you remember going to the Lewiston National Bank after you signed that deed?

A. Yes, sir.

Q. What did you go there for?

A. Mr. Wilson's note.

Q. Mr. Wilson's note? A. Yes, sir.

Q. And that was the note that he had given in the morning, was it?

A. I don't know when he gave the note.

Q. Did you ever know of him having any other note? A. I don't know.

Q. Well, now, what note did you go there to get?

A. It was just the note he had at the bank; I don't know who it was made out to, or anything.

Q. And did you take any money there to pay that note? A. No, sir.

Q. Did you have a note of instruction to present to the bank, or did you just go there and ask for the note? A. I just asked for the note.

Q. Who did you know at that bank at that time?

A. I don't know as I was personally acquainted with any of them.

Q. Did you have a speaking acquaintance with any of them? A. Yes, I knew Mr. Kester.

Q. Mr. George Kester? A. Yes, sir.

Q. And did you see him when you went there to get that note?

A. I don't remember whether he was there or not.

Q. Do you know who you saw about the note at the bank? A. No, sir.

Q. And do you remember what you said when you

(Testimony of Mrs. Ella Wilson.)

went in there?

A. I asked for Mr. Wilson's note. [396—66]

Q. Mr. Guy Wilson's note, or just Mr. Wilson's note?

A. I don't know which I said, but I asked for Mr. Wilson's note anyway.

Q. And whoever you asked gave you the note, did they? A. Yes, sir.

Q. And you didn't have to pay any money to get it? A. I didn't.

Q. You got the note simply by going there and asking for it? A. Yes, sir.

Q. You say you don't know whether you saw Mr. George Kester on that occasion or not?

A. No, sir.

Q. Your mind is a blank in that respect? You have no idea whether you saw him or not?

Mr. TANNAHILL.—We object to it as leading and suggestive and argumentative, and an improper way to examine a witness.

Mr. GORDON.—I had no intention of being offensive about it.

Q. Do you remember seeing Mr. George Kester when you went to the bank that day?

A. I don't remember who was in the bank.

Q. Would you say you didn't see him?

A. I wouldn't say that I did or didn't; I don't remember whether he was there or not.

Q. You have no recollection of who you saw there that day? A. No, sir.

Q. Did you know anybody else in the bank except

(Testimony of Mrs. Ella Wilson.)

Mr. Kester, even to speak to? A. No, sir.

Q. How long after you signed the deed did you go to the bank to get the note?

A. I don't know how long it was; it was in the afternoon.

Q. Well, haven't you any idea how long it was?

A. It might have been two or three hours; I couldn't say. [397—67]

Q. Do you know whether you went directly from Mr. Otto Kettenbach's office to the bank or not?

A. I expect I had my lunch first; I don't remember just where I went.

Q. And did you get your lunch before you went to Mr. Kettenbach's office or after?

A. I don't remember.

Q. What did you do with the note after you got it?

A. Took it home and burned it up.

Q. The same day that you received it?

A. I suppose so.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Wilson, you and your husband went over to see Mr. Dwyer about locating your husband on a claim, did you not? A. Yes, sir.

Q. You was with Mr. Wilson at that time?

A. Yes, sir.

Q. And you heard Mr. Wilson ask Mr. Dwyer if he could locate him on a timber claim, did you?

A. Yes, sir.

Mr. GORDON.—Objected to on the ground that it is not proper cross-examination and is a matter not

(Testimony of Mrs. Ella Wilson.)

brought out on the examination in chief.

Mr. TANNAHILL.—Q. And you heard Mr. Dwyer tell him that he thought he could locate him on a timber claim? A. Yes, sir.

Q. Did you also hear Mr. Wilson ask him if he could borrow the money for him to pay for the claim and pay his expenses? Did you hear Mr. Wilson ask Mr. Dwyer if he could borrow the money for him to pay or the claim? [398—68] A. Yes, sir.

Q. Did you also hear Mr. Wilson ask Mr. Dwyer about what the claim was worth? A. Yes, sir.

Q. And did you notice, did you see Mr. Dwyer figure up about what the expenses would be? Do you remember seeing Mr. Dwyer, with Mr. Wilson, your husband, figure up about what the expenses would be, and then Mr. Dwyer gave Mr. Wilson about the value of that claim at that time, or when he could sell it?

A. Yes, sir.

Mr. GORDON.—I presume my objection can still run to this line of cross-examination.

The SPECIAL EXAMINER.—Yes.

Mr. TANNAHILL.—Q. Did you hear Mr. Dwyer tell Mr. Wilson that there ought to be \$150.00 in it for the claim, that it ought to net him \$150.00 when the claim was sold? A. Yes, sir.

Q. Over and above expenses? A. Yes, sir.

Q. Now, Mrs. Wilson, this is the only agreement that you know of being made between Mr. Dwyer and Mr. Wilson, is it not? A. Yes, sir.

Q. And that was the agreement which you referred

(Testimony of Mrs. Ella Wilson.)

to in your examination and in your evidence in the two trials at Moscow, which was read by Mr. Gordon in the record, and of which you were asked in your direct examination? A. Yes, sir.

Q. And the substance of that agreement was, according to your best recollection of it, and according to your best understanding of it, was that Mr. Dwyer was to locate Mr. Wilson on a timber claim, and Mr. Wilson was to pay him a location fee, and Mr. Dwyer was to help him get the money or borrow the money for him for the land and pay the expenses? [399—

69] A. Yes, sir.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Wilson, I understood you to say that you went with Mr. Wilson to see Mr. Dwyer about taking up a timber claim? A. Yes, sir.

Q. What was said at that conversation?

A. Mr. Wilson asked Mr. Dwyer if he could get a claim for him, and asked what the claim would be worth and what the expenses would be, just the same conversation that Mr. Tannahill was asking me about.

Q. I know, but I want you to tell what it was.

A. He asked him if he could get the money for him, borrow the money some place for him, if he knew of a place where he could get the money; and Mr. Dwyer told him he wanted a location fee, and they figured the expenses and about what the claim would be worth after all expenses were paid.

(Testimony of Mrs. Ella Wilson.)

Q. You say that the only agreement that you know about, and the one that you referred to in your testimony at Moscow, and the one that Mr. Dwyer referred to in his conversation with Mr. Wilson just prior to making final proof was that agreement that you have just related. Is that correct?

A. Yes, sir.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all. [400—70]

[**Testimony of Fred W. Shaeffer, for Complainant.**]

FRED W. SHAEFFER, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Fred. W. Shaeffer?

A. Yes, sir.

The SPECIAL EXAMINER.—Speak loud enough so that we can hear, Mr. Shaeffer.

WITNESS.—Well, that's my name.

Q. How do you spell it? A. S-h-a-e-f-f-e-r.

Mr. GORDON.—Where do you reside, Mr. Shaeffer? A. Here, in Lewiston.

Q. How long have you resided in Lewiston?

A. I think about nine years; somewhere along in there.

Q. What was your occupation in May, 1902?

A. I guess that was the spring that I was working for the Lewiston National Bank.

Q. In what capacity were you employed at the Lewiston National Bank?

(Testimony of Fred W. Shaeffer.)

A. Well, I was janitor of the building.

Q. And at that time were you acquainted with Mr. George H. Kester? A. Yes, sir.

Q. One of the defendants in this suit?

A. Yes, sir.

Q. And Mr. William F. Kettenbach?

A. Yes, sir.

Q. And Mr. William Dwyer?

A. Yes, sir. [401—71]

Q. How long had you known Mr. Kester before you went into the bank?

A. I didn't know him at all; I had just seen him, was all. I wasn't acquainted with him at all only by sight.

Q. Do you remember what year you went into the bank, or how long before you made a timber and stone filing?

A. Well, I guess it must have been—I guess it was in March, 1902, I think it was, just about the same spring.

Q. The same spring that you made your timber entry?

A. I think it was. Let's see—no—probably it was the next spring; I think I went in one spring, and the next spring. It was in 1902, I think, I took up the claim, wasn't it? I guess my filing will show. I think it was that spring or that year that I took up the claim that I went there to work.

Q. Your best recollection is, as I understand you, that you took up a claim the same spring you went into the bank?

(Testimony of Fred W. Shaeffer.)

A. Yes; I think that is what the filing calls for.

Q. I show you timber and stone land sworn statement signed by Fred. W. Shaeffer, dated May 5th, 1902, and ask you if that is your signature to that paper? A. It looks like it; yes, sir.

Q. And whether you filed the same in the land office on or about the date it bears?

A. Yes, sir; that is my signature.

Q. And you filed the paper in the land office?

A. Yes, sir.

Q. I show you a notice of publication of Fred W. Shaeffer, bearing the same date, and ask you if you filed that paper at the same time? A. Yes, sir.

Q. I show you the testimony of Fred. W. Shaeffer given on final proof, dated July 25th, 1902, and ask you if that is your signature to that paper?

[402—72] A. Yes, sir.

Q. Speak a little louder.

A. Yes, it looks like it.

Q. I show you the cross-examination of Fred. W. Shaeffer on final proof, and I will ask you if that is your signature?

A. Yes, sir, that is my signature.

Q. Mr. Shaeffer, will you state what induced you to take up a timber claim?

A. Well, I took up a timber claim because I thought I could make a little money out of it.

Q. Well, was that a notion of your own, or did someone suggest that to you?

A. Well, Mr. Kester asked me if I had ever taken up a timber claim, and I told him no.

(Testimony of Fred W. Shaeffer.)

Q. Now, state what was said at that time.

A. And he said I could make \$100.00 if I would take up a claim, and I told him all right. That was all that was said at that time that I remember of. He asked me if I had ever taken up a claim, and I told him I hadn't.

Q. Where was that conversation had?

A. That was right down there in the public part of the bank where the people come in, along about three o'clock, just after they had closed the door in the afternoon—out in front, you know.

Q. And did you have any conversation at any other time shortly thereafter, about taking up a timber claim?

A. Yes; a short time afterwards why Mr. Kester told me that I could arrange my work so I could go up to Kendrick the next day and I would meet Mr. Dwyer there.

Q. Now, that was Mr. George H. Kester?

A. Yes, sir.

Q. And the Mr. Dwyer you referred to is Mr. William Dwyer? A. Yes, sir. [403—73]

Q. And what was Mr. Kester's position in the bank at that time? A. He was cashier.

Q. Now, how long after the first conversation that you had with him that you have related was the second one?

A. It wasn't very long. I don't remember. It wasn't but a few days, according to my best recollection now.

Q. Now, was anything said at either of those talks about who was to pay for the claim?

(Testimony of Fred W. Shaeffer.)

A. No, sir. Well, when I went up he said he would let me have the money to pay expenses up there when I went to Kendrick.

Q. When you went to Kendrick? A. Yes, sir.

Q. Well, was that at the time that you had the talk with him that you have related, that he said Mr. Dwyer would be up at Kendrick? A. Yes, sir.

Q. And will you repeat again what he said to you at that time about expenses?

A. Well, that was all, that he would let me have the money to pay my expenses up there.

Q. And how long after that conversation did you go up to Kendrick?

A. Well, I went the next day. I straightened up my work and went the next morning.

Q. Did you meet anyone at Kendrick? Was Mr. Dwyer there?

A. Yes, sir, Mr. Dwyer, and I don't know—there was quite a little party,

Q. How far was the timber from Kendrick?

A. Well, it was up about—I think it was about three miles from the Grangeville postoffice—I think it is—there is a little postoffice there.

Q. And how did you go from the train to the timber? What sort of a conveyance did you have?
[404—74]

A. Well, there was a saddle-horse there for me.

Q. And was Mr. Dwyer at the depot to meet you?

A. Yes, sir, him and some other parties; I didn't know who the other parties were.

Q. Did you have a letter from Mr. Kester to Mr.

(Testimony of Fred W. Shaeffer.)

Dwyer? A. No, sir.

Q. Well, when you arrived at Kendrick did you state your mission to Mr. Dwyer, or did Mr. Dwyer say anything to you about it, or what happened?

A. Well, I don't remember just what was said. I went out and met him and I don't remember just what was said. Anyhow, there was a saddle-horse there for me, and we started off then.

Q. Did Mr. Dwyer take you over to the timber claim?

A. Yes, sir. We went out to his—he had a home-stead right adjoining it, and we went up there and got dinner at his place about three o'clock in the afternoon, and then we walked out on to it after dinner.

Q. And did you go back to Lewiston the same day?

A. No, sir. I left my saddle-pony there. Some man had gone in a buggy with the driver from Kendrick, and I left my saddle-pony for him to go on up farther into the timber, and he drove I think to the Grangeville postoffice there—a man that runs the postoffice there—and we stayed there till morning and then drove down to Kendrick the next morning.

Q. And then returned to Lewiston? A. Yes, sir.

Q. And did you have any talk with Mr. Kester on your return? A. Well, I think so.

Q. Well, did you tell him that you had been up there, and that you had got located? A. Yes, sir.

[405—75]

(Testimony of Fred W. Shaeffer.)

Q. Did you have a description of the land?

A. I don't remember just about that.

Q. Sir?

A. I say, I don't remember just about that.

Q. Well, did you get your expenses when you came back? A. Yes, sir; he paid them.

Q. Now, state what happened. Did you ask Mr. Kester for it?

A. Well, he gave me money to pay for the filing and to pay for the publication.

Q. Mr. Kester did? A. Yes, sir.

Q. And did he give you your expenses—the money that you had expended in going up on the trip?

A. Well, I had saved some little money out of my pocket up there. He didn't know what it would be when I went up there, and I don't think I turned that in at all. I think I paid that out of my own pocket, and I don't think I turned that in when I came back.

Q. Well, did he pay part of your expenses in going up there?

A. Yes, sir; he said he would pay my expenses.

Q. And you were away from the bank how many days?

A. Well, I went up one morning, and was back the next day.

Q. You were still paid your salary for the time you were off? A. Yes, sir.

Q. Where did you have this sworn statement that you have identified—this first paper you filed in the land office—prepared?

A. Well, I don't remember about those papers. I

(Testimony of Fred W. Shaeffer.)

lost that part of it out. Indeed, I couldn't tell you. I haven't any idea how those papers were fixed. What was done about them I couldn't say. I don't remember about them.

Q. Well, do you know where you received them? Do you know who gave them to you? [406—76]

A. Indeed, I don't remember about the papers, and I wouldn't like to make any statement, because really I have just lost that part of it out about them papers, because I came in at the time and was so busy and there was so much going on that I have just lost that part of it out; I don't remember how those papers were arranged.

Q. Did you go to the land office to file them alone, or did some one go with you?

A. Well, I went on up to the land office alone.

Q. Did you meet anybody there?

A. I don't remember just what was done about the papers, but anyhow I went in there with Mr. Molloy and paid my filing.

Q. Was Mr. Dwyer at the land office when you made your filing? A. I don't think so.

Q. Was Mr. Kester there?

A. Well, I don't know; he may have been; I don't remember just about it.

Q. Do you remember whether or not Mr. Kester went with you to the land office?

A. I don't think he went with me. Anyhow I went up to the land office alone.

Q. Well, do you remember whether Mr. Kester was there at the land office?

(Testimony of Fred W. Shaeffer.)

A. I don't remember about that. I do remember I went to Joe Molloy.

Q. Joe Molloy was employed in the land office at that time, was he? A. Yes, sir.

Q. Well, where did Mr. Kester give you the money for your filing fee and for your publication?

A. It was done at the bank, in front of the window.

Q. Was that the day after you returned from viewing the land? [407—77] A. Yes, sir.

Q. Now, in several months it came time to make final proof. Do you remember the occasion of making your final proof? A. Yes, sir.

Q. Do you remember who notified you or told you when the time to make proof arrived?

A. Of course, I knew the date when the final proof should come; so I think I said to Mr. Kester that this was the day to make final proof, and so then he told me to come around in the bank after a while; so after a while I went down in the bank, around in front, after the bank was open, and—

Q. Well, what happened when you went there?

A. Well, Mr. Kester handed me out some money, and I went up and made final proof.

Q. How much money did Mr. Kester hand you?

A. There was 168 acres—I guess about \$430.00, or somewhere there.

Q. And you took that money and went to the land office and made your proof? A. Yes, sir.

Q. Did you have any conversation with Mr. Kester as to what you should say when you went to the land office to make this proof, as to where you got the money?

(Testimony of Fred W. Shaeffer.)

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial, and a matter referring to things occurring subsequent to the filing of the sworn statement, and prior to the making of the final proof.

Mr. GORDON.—Answer the question, Mr. Shaeffer.

A. Well, he suggested that I should have part of that money myself—part of the filing for myself.

Q. Well, what do you mean by suggesting that you should have [408—78] part of the money yourself?

A. Well, he meant that I should have furnished part of that money myself; that is, that \$430.00?

Q. Well, do you mean that you were to actually furnish it, or that that is what you were to say when you went to the land office?

A. He says I only borrowed half of the money.

Q. But you did get it all, didn't you?

A. Yes; he threwed out all the money to me—he throwed me out \$430.00?

Q. And you went to the land office and paid this in, and you did make a statement to that effect?

A. I guess I did. That is what was in the paper, I guess. I don't hardly know what I did say in that statement, but it seems as if it is there all right.

Q. They gave you a receipt for that money and a certificate, when you paid it into the land office, did they? A. Yes, sir.

Q. And what did you do with that receipt?

A. Well, I went down stairs and around to the

(Testimony of Fred W. Shaeffer.)

bank, and he asked me what I had. "Well," I says, "I have got a receipt for it," and I showed it to him and I passed it in through the window, and he looked at it and then he gave me \$100.00.

Q. He did what?

The SPECIAL EXAMINER.—He gave him \$100.00. Who is referred to as "he," Mr. Gordon?

WITNESS.—Mr. Kester.

Mr. GORDON.—Mr. Kester.

Q. It is Mr. Kester that you gave the receipt to, and he gave you \$100.00? A. Yes, sir.

Q. And did you make a deed about that time to anybody of that land? [409—79]

A. Well, I signed a deed shortly afterwards; I don't know who it was to.

Q. Well, now, who told you to sign the deed?

A. Well, I was down there in the bank either that day or the next or a few days afterwards.

Q. I can't hear you. Speak a little louder.

A. I went down to the bank shortly afterwards, within a day or two—a few days afterwards, anyhow; I don't remember just how long—and there was a paper laying on his desk and he said it was a deed and asked me if I would sign it, and so I just signed it.

Q. You didn't get any more money when you signed it, did you? A. No, sir.

Q. You never made any other deed to this land, did you? A. No, sir.

Q. And do you remember whether you read the deed or not? A. No, sir; I didn't.

(Testimony of Fred W. Shaeffer.)

Q. You just signed it because he told you to, is that right? A. Yes, sir.

Q. Did you ever negotiate a sale for this property; or did you just deed it as you were told to, Mr. Shaeffer?

Mr. TANNAHILL.—We object to it as leading and suggestive.

Mr. GORDON.—Answer the question.

A. Well, the deed was there, or he said something about a deed, and I signed it.

Q. And I will ask you whether or not the entire transaction turned out just exactly as you understood it was to turn out when you first talked to Mr. Kester about filing on a claim?

A. Well, I don't know what you mean by that. He said I could make \$100.00 out of it, and I got \$100.00; but I didn't know how it was to come out, or in what way I would make it.

Q. You didn't expect to make the \$100.00 by keeping the claim, [410—80] did you?

A. Well, I didn't know of anybody that ever kept those claims.

Q. How is that?

A. I say I didn't know of anybody ever keeping those claims. They all sooner or later sold them.

Q. But I am speaking at the time you sold, did you know of any people who had sold claims at that time?

A. Well, there was quite a few were buying claims, but I don't know just—well, I hadn't formed any conclusion really about it; but, of course, a person

(Testimony of Fred W. Shaeffer.)

knew at any time that they could turn those claims over to somebody.

Q. Well, who were they turning them over to at that time?

A. Well, I knew there was the Clearwater Timber Company, and there was quite a few companies that was buying claims at that time. There was several people here at that time.

Q. Did anybody offer to buy your claim?

A. No, sir; but then I knew there was somebody buying those claims at the time.

Q. If they had offered to buy your claim, would you have sold it to them?

A. Well, of course, I would have given them the first preference to the claim. I would have gone to them and said, "Here, I have got a chance to sell that claim."

Q. Why would you have given them the first preference?

A. Well, because I got the money from them to pay for it.

Q. Did you ever pay a locating fee for being located on that claim? A. No, sir.

Q. Did you give a note in security for the money you got from Mr. Kester?

A. No, sir. [411—81]

Q. And, of course, you didn't pay any interest, for you only had it that part of a day? A. That's all.

Q. Mr. Shaeffer, when you went to the land office to make the proof, you remember certain questions being asked you, do you? A. Yes, sir.

(Testimony of Fred W. Shaeffer.)

Mr. TANNAHILL.—We object to that as irrelevant, immaterial and incompetent, and a matter relating to things occurring subsequent to the sworn statement.

Mr. GORDON.—Q. I read from his cross-examination that you identified here a moment ago, question No. 10, and ask you whether you remember this question being asked you: “How many thousand feet board measure of lumber did you estimate that there is on the entire tract, and what is the stumpage value of it?” Answer. “2,000 feet; \$2,000.00.” Do you remember that question being asked you?

A. I don't remember what questions were asked there.

Q. That was the day that you turned the receipt in and got the \$100.00 from Mr. Kester?

A. Yes.

Q. Did you think the claim was worth \$2,000.00 that day?

A. I don't remember much about that. The timber seemed to be small timber on the place.

Q. “Question 12 — ”

A. I always thought that claim was worth about \$700.00—\$600.00 or \$700.00.

Q. “Question 12. What do you expect to do with the land and the lumber on it when you get title to it?” “Answer. I intend to keep it.” Do you remember making that answer?

A. Well, I don't remember what was in that.

Mr. TANNAHILL.—It is understood that our objection goes to all [412—82] this line of questions?

(Testimony of Fred W. Shaeffer.)

Mr. GORDON.—Yes.

The SPECIAL EXAMINER.—Yes, that may be understood, Mr. Stenographer.

Mr. GORDON.—Q. Do you know whether you made that answer?

A. I don't remember about the statements.

Q. "Question 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I earned about half of it; borrowed the balance; I borrowed from the Lewiston National Bank." Do you remember answering that question that way?

A. Well, of course I did have part of the money; but then he gave me the money there to pay for it; he threwed me out the whole amount.

Q. And was that answer made in accordance with the suggestions that Mr. Kester made to you?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. Which Mr. Kester made to you when he gave you the four hundred and some odd dollars? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive, and irrelevant and immaterial, and we move to strike out the answer of the witness, on the ground that it was given before I had an opportunity to make an objection.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement identified by the witness Fred. W. Shaeffer, dated May 5th, 1902, the

(Testimony of Fred W. Shaeffer.)

notice for publication, bearing the same date, the testimony of Mr. Shaeffer given at the final proof, dated July 25th, 1902, the cross-examination of Mr. Shaeffer at the same time, and the testimony [413—83] of the other witnesses on the final proof, being part of the land office files, the Receiver's Receipt, the Register's Certificate, dated July 25th, 1902, a certified copy of the patent, dated January 28th, 1904, and a certified copy of a deed dated July 26th, 1902, made by Fred. W. Shaeffer to W. F. Kettenbach and George H. Kester, for a consideration of \$800.00, executed before H. K. Barnett, a notary public, and recorded June 8th, 1903, at the request of the Latah County Abstract Company; all the said papers relating to the east half of the northwest quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of section 27, township 40 north, of range one west, of Boise meridian.

Mr. TANNAHILL.—The defendants waive any further identification of the papers and documents just offered, but object to the following documents offered in evidence: Object to the document designated timber and stone lands, testimony of claimant, and the cross-examination of claimant in connection with the direct examination, on Form 4-370, the testimony of witness under Act of June 3d, 1878, and August 4th, 1892, the cross-examination of witnesses in connection with the direct examination, on Form 4-371, the testimony of witness under Act of June 3d, 1878, and August 4th, 1892, of witness

(Testimony of Fred W. Shaeffer.)

William Dwyer, and the cross-examination of witness William Dwyer, and the Receiver's Receipt in duplicate, No. 3795; upon the ground that they are irrelevant, incompetent and immaterial. And the defendants severally move to strike out all of the evidence of the witness in relation to action No. 388 and No. 407, on the ground that it is irrelevant, incompetent and immaterial in support of each of those actions, and the documents just objected to are irrelevant, incompetent and immaterial in support of each of the other actions, or in support of any of the actions, being matters relating to the final proof and occurring subsequent to the filing of the sworn statement.

Said documents were thereupon marked by the Reporter as Exhibits 2, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, and 2L. [414—84]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Shaeffer, as I understand you, you began work as janitor of the bank some time before you took up this claim?

A. Yes; it was in March when I went to work for them.

Q. And when was it you took up the claim?

A. Well, I guess it must have been along in June, wasn't it?

Mr. GORDON.—The 5th of May.

WITNESS.—Or May, was it?

Mr. TANNAHILL.—Q. You had got quite well acquainted with Mr. Kester during that time, had

(Testimony of Fred W. Shaeffer.)

you? A. Well, yes, I was well acquainted.

Q. You were sociable and friendly?

A. Yes, sir.

Q. And you did the usual janitor work around the bank, did you? A. Yes, sir.

Q. Now, as I understand you, the first—well, you knew that people were taking up timber claims, did you not, seeing them going in and out of the land office?

A. Yes, seeing them going in and out, I knew they were taking up timber claims.

Q. Did you also take care of the land office?

A. Yes, sir.

Q. And you kept the hall in condition leading into the land office, did you not? A. Yes, sir.

Q. And you had heard a great deal of talk about taking up timber claims? A. Yes, sir.

Q. Do you remember that you talked with anyone, or made any suggestion to anyone, that you would like to take up a timber claim? [415—85]

A. Oh, I may have talked about taking up a timber claim. Of course, I might have said something about something of that kind, but it was in a casual way.

Q. And you may have said something of that kind in Mr. Kester's presence that he overheard?

A. Well, I might have—not that I know of though,—not that I know of.

Q. You may have said something of that kind in his presence?

A. I may have; I don't remember, though.

(Testimony of Fred W. Shaeffer.)

Q. Now, do you remember of talking about your sister taking up a timber claim along about that time?

A. Well, I talked to Mr. Dwyer about that, when I got a claim, about getting a claim for my sister, and he told me there was one back—I don't know how far it was from where we were up then. I think I said to him when we went up there on our trip, I spoke to him, or something—I don't remember just when it was—anyhow, I spoke to him about getting a timber claim for my sister.

Q. And he told you that that belonged to a Mrs. Henson, and he would see if she wouldn't relinquish her right?

A. I know he spoke of somebody having a timber claim which he would get for her.

Q. And do you remember that you thought that if you could get that half section there together—one for you and one for your sister—that you would be able to do well out of it, or you would keep it, or something to that effect?

A. Well, I know we talked about getting the claim, but of course I don't remember just all that was said, but I kind of wanted to get a claim for her at that time, I know, I remember that well, and I talked with him about getting a claim for my sister. My sister hadn't come—she wasn't there, but she was coming. I think she came the same day I came down off the train, as I came back from Kendrick.

Q. And when Mr. Kester spoke to you about taking up a claim, as [416—86] I understand you,

(Testimony of Fred W. Shaeffer.)

he told you that you could make \$100.00 out of it?

A. Yes, sir.

Q. If you wanted to take up a claim?

A. Yes, sir.

Q. Or words to that effect? A. Yes, sir.

Q. And as I understand you, in reply to Mr. Gordon's question you said that you didn't know how you was to make that \$100.00, whether it was to sell it to some other company, or to sell it to Kester, or to sell it to anyone, or to keep it?

A. All that was stated was said at that time. He asked me if I had ever taken up a claim, and I told him no, and he said I could make \$100.00 by taking up a claim, and I said all right. Now, that is all that was said at that time. I didn't form any impressions or come to any conclusions, but \$100.00 looked pretty good to me at that time, and I thought if I could make \$100.00, I never thought how, or anything about it, I never came to any conclusions about it, and I just merely said all right, so I suppose you would have to judge just the same as I did, and come to the same conclusions, because it was just merely a passing conversation, and there wasn't either one said one way or the other about it, only that I could make \$100.00 out of it.

Q. You had no intention of doing anything wrong, or violating any law?

A. No, sir, I didn't; if I had I would have told him I didn't want anything to do with it.

Q. And I believe I understood you to say to Mr. Gordon that the only obligation you felt under to Mr.

(Testimony of Fred W. Shaeffer.)

Kester was that you would give him the first or preference right of purchasing it, because he had loaned you the money?

A. Why, sure I would go to them first, or anybody. They supplied the money for me, and of course I would go to them and tell them all about it. [417—87]

Q. That is all the contract or agreement that you have had or that you had with Mr. Kester?

A. That is all that was ever said about it. He said I could make \$100.00, and I said all right, and I didn't ask any more questions, and a few days after he told me if I would go down and get ready to go the next day to Kendrick I would meet Mr. Dwyer there and he would take me up on a claim, and I said all right, and I went.

Q. And you didn't understand that you had any specific agreement to convey your land to anyone before you made your final proof?

A. Well, that was all that was said about it, what I said. That was all that was said about it.

Q. And your sworn statement that you made, that you hadn't agreed to convey it to anyone, before you made your final proof, was true in so far as you know, was it?

A. Well, I don't see hardly—you could draw your own conclusions about it. He said I could make \$100.00, and I said all right. Now, I don't know; I would rather the Court would draw its own conclusions of it, if you can make either one way or the other out of it. If I would say I did or I didn't the

(Testimony of Fred W. Shaeffer.)

other side would have it in for me, and I don't know how to answer the question.

Q. But you didn't understand that you were to deed it to any particular person?

A. Why, I don't know what I could make about it. I never thought anything about it. I was thinking if I could get \$100.00 out of it, or that money out of it, that's all. I didn't think much about it.

Q. But you did feel under obligations to give Mr. Kester the preference right to purchase it, because he had loaned you the money?

A. Why, sure I did. If you had loaned me \$1,000.00 I would say "Why, here, Mr. Tannahill, you let me have the money," and I would go to Mr. Gordon or anybody else, sure. [418—88]

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Shaeffer, just one more question: What was your salary at the bank at the time?

A. I got \$45.00 a month.

Q. And you are employed now just generally, doing work here and there?

A. Yes, sir; I swept the halls and swept the rooms in the building and did things that came up usually—I did most any old thing that came along.

[**Testimony of William Haevernick, for
Complainant.**]

WILLIAM HAEVERNICK, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William Haevernick?

A. Yes, sir.

Q. Where do you reside, Mr. Haevernick?

A. Lewiston, Idaho.

Q. How long have you resided at Lewiston?

A. In Lewiston about 16 years.

Q. Where did you reside in October, 1903?

A. Orofino, Idaho.

Q. What was your occupation at that time?

A. I was in the general merchandise business at that time.

Q. Were you in the general merchandise business as an employee of someone else, or on your account?

[419—89]

A. Well, I had some stock in it. It was an incorporation, and I had some stock in it.

Q. What was the name of this body corporate?

A. The Orofino Trading Company, Limited.

Q. The Orofino what?

A. —Trading Company, Limited.

Q. And you are employed now in what capacity?

A. I am employed at present at the Lewiston Fuel and Transfer Company.

Q. In what capacity are you employed now?

(Testimony of William Haevernick.)

A. As bookkeeper and salesman.

Q. Now, this corporation that you had stock in, do you know the amount of the capital stock?

A. Well, it was approximately about \$7500.00.

Q. Who owned the stock in that concern?

A. Well, Mr. Holmberg and myself owned the principal part of it.

Q. What Mr. Holmberg? A. A. E. Holmberg.

Q. Alexander E.?

A. No—Axel, I believe. A. E., I believe,—I am not sure.

Q. How do you spell that Holmberg?

A. H-o-l-m-b-e-r-g.

Mr. BABB.—It seems to me there is better evidence, and I object to it on the ground that there is better evidence of the stockholders.

Mr. GORDON.—Q. Now, will you state as well as you can who owned the stock in that company?

Mr. BABB.—The same objection as last made.

Mr. GORDON.—Answer the question.

A. There was myself, Mr. Holmberg, my wife, and Mr. Holmberg's wife, and Mr. Kettenbach.

Q. What Mr. Kettenbach? [420—90]

A. Frank.

Q. F. W. Kettenbach? A. F. W.; yes.

Q. How much stock did you have in that concern?

A. Well, as near as I can—

Mr. BABB.—The same objection. It will be understood that this objection may go to all this class of testimony?

(Testimony of William Haevernick.)

The SPECIAL EXAMINER.—Yes, that may be understood.

WITNESS.—I couldn't state exactly how much I had; it was a small amount; I couldn't state exactly how much it was.

Mr. GORDON.—Q. Well, did you have \$2,000.00 worth of stock?

A. Not much of it; my wife had the largest portion of it.

Q. Well, how much did you and your wife have together?

A. Well, we had \$2,000.00 in money in it, then \$1,750.00 that I owed—\$3,750.00. I gave my stock as security for this \$1,750.0; that was between us.

Q. And who did you secure that from?

A. I borrowed that money from Frank Kettenbach and gave him my stock as security.

Q. Who was the president of that concern at that time? A. Mr. Kettenbach was at that time.

Mr. BABB.—The same objection as to that.

Mr. GORDON.—Q. Do you remember taking up a claim or making an entry under the timber and stone act? A. Yes, sir.

Mr. TANNAHILL.—We object to the evidence of the witness in relation to claims 388 and 407, upon the ground that he is not named as an entryman therein, and his evidence in relation to those two actions is irrelevant, incompetent and immaterial.

Mr. GORDON.—[421—91] Q. I show you Timber and Stone Lands Sworn Statement dated October 26th, 1903, signed William Haevernick, and ask

(Testimony of William Haevernick.)

you if you signed that paper and filed the same in the land office at Lewiston, Idaho, on or about the date it bears? A. That is my signature.

Q. And you filed it in the land office about the date you made it? A. I suppose so; yes.

Q. I show you the notice for publication of the same date, and the Nonmineral Affidavit of William Haevernick, and ask you if that is your signature to the Nonmineral Affidavit, and if you filed those papers in the land office? A. Yes, sir.

Q. I show you the testimony of William Haevernick given at the final proof, dated January 6th, 1904, and ask if that is your signature to that paper?

A. Yes, sir.

Q. And the cross-examination, I will ask you if that is your signature to that? A. Yes, sir.

Q. Mr. Haevernick, who located you on this timber claim?

A. A gentleman by the name of Mr. Mortimer.

Mr. BABB.—What was his first name?

A. If I ain't mistaken, I think it was Joe.

Mr. GORDON.—Q. And did you have to pay him a location fee?

A. I don't recollect, but I don't believe I did. He was a neighbor of ours there; or rather, he lived right close by.

Q. Do you know who prepared your sworn statement and your other filing papers for you?

A. Well, it was in Orofino, a man by the name of Merrill. It was under the old Shoshone County administration, I believe, and he was [422—92]

(Testimony of William Haevernick.)

Deputy Clerk, I believe, of Shoshone County.

Q. Did your wife take up a claim at the same time that you did? A. Yes, sir.

Q. And did you and she come down and make your filing at the same time? A. Yes, sir.

Q. I will ask you whether or not you paid for your wife being located?

A. She paid it all in one check; yes.

Q. No—I say, being located?

A. Oh, for being located? No, I don't think so.

Q. Did Mr. Mortimer locate her, too?

A. Yes.

Q. Now, do you remember the occasion of making your final proof? A. Sure.

Q. I will ask you if you paid for your claim and your wife's claim at the same time?

A. Yes, sir, I believe I did.

Q. And your wife's name is what? A. Alma.

Q. A-l-m-a?

A. A-l-m-a. It might have been two checks, I wouldn't say positive. It might have been two checks, I wouldn't say positive; but I think it was one.

Q. But you did pay it?

A. Yes, sir; I drew it on her account.

Mr. BABB.—I object to the evidence as to the check on the ground that there is better evidence.

Mr. GORDON.—Q. Do you know where those checks are?

A. They were regularly returned into the Orofino Trading Company. [423—93]

(Testimony of William Haevernick.)

Q. Well, what became of them?

A. I beg pardon?

Q. What became of those checks?

A. Well, it was returned again to the Orofino Trading Company after it had been deposited. It had been through the Idaho Trust Company, and then back again, and was charged up to our account, I guess. In the course of business they were returned to us again at Orofino.

Q. And what have you done with them?

A. They was there at the time, I guess.

Q. I say, where are the checks now?

A. I don't know.

Q. Well, have you destroyed them, or lost them?

A. I didn't have charge of them.

Q. What?

A. The bookkeeper (Mr. Holmberg) had charge of it.

Q. Now, let me understand that: Did you draw a check on this concern? A. Yes, sir.

Q. And was it a banking concern?

A. We done a certain amount; we issued exchange on Spokane and other towns, and received deposits and the like of that, and we carried our own checks.

Q. You received deposits from the general public?

A. Yes, sir.

Q. And did you have any money on deposit at that time?

A. No. They were charged to my account.

Q. Now, explain how they were charged to your account. What do you mean by that?

(Testimony of William Haevernick.)

A. Well, they were charged to my running account. I drew a salary at that time, I forget now what it was, about \$100.00 to \$125.00, and between Mr. Holmberg and myself we agreed that at the end of the business year these charges against us would be liquidated by the profits [424—94] that had accrued during the business year, if our salary—if we hadn't saved enough out of our salaries to cover it.

Q. Now, if I may understand you—it seems a little unusual to me, anyhow,—you drew checks on this corporation, and those checks were held in the treasury of the concern, and there was a settlement made once every year of the checks that you and the other member drew on the company?

A. They were just simply charged to our open account.

Q. And if there were enough profits at the end of the year to liquidate those checks, why they were taken up that way; and if there were not you would pay the difference? Is that the way I understand you?

A. Well, there was a little balance against me when I settled up, but it was all liquidated.

Q. Well, I am not inquiring into that. I want to know the method in which they got money out of that concern?

A. Well, I couldn't explain it, only when that check came in it was charged against me on an open account.

Q. Well, you didn't have any account there, as I understand it?

(Testimony of William Haevernick.)

A. An open account. Well, I had my salary account, and what provisions I drew out of it, it was all charged against me on my open account, the same as this check was charged against me on my open account. When I paid my grocery bill I gave a check for it, and when I paid my butcher's bill I gave a check for it, and it was charged against me on an open account.

The SPECIAL EXAMINER.—Well, your corporation there did a sort of a banking business, then?

A. Yes; it was on a small scale.

Q. When you drew a check on that corporation it was charged to your account with the corporation?

A. Yes, sir.

Q. Against you? [425—95] A. Yes, sir.

Q. On your running account?

A. Yes, sir—just an open account.

Q. You had a sort of a mercantile department and a banking department; wasn't that it?

A. No. Sometimes I had a little balance coming to me, and sometimes I didn't. Most of the times it was against me, and in red ink, though. (Laughing.)

Mr. GORDON.—Q. And how long after you made your proof did you negotiate for a sale of this property?

A. Well, it was in the neighborhood of about 12 months, I should judge—nine or ten or twelve months—I couldn't say positively.

Q. And with whom did you negotiate?

A. I transacted the sale to Mr. Kettenbach.

Q. And did you sell it to him? A. Yes, sir.

(Testimony of William Haevernick.)

Q. And what did he give you for it?

A. Now, I couldn't say positively. It is between \$650.00 and \$800.00; I wouldn't say positively.

Q. Well, do you remember what your agreement with him was, as to what you would receive from it, when you negotiated with him—what he told you he would pay you for it?

A. No. He just merely told me what he would give me for it. I asked him if he would like to buy it, and he told me what he would give me for it.

Q. Well, do you remember what that was?

A. No, I don't remember the amount exactly.

Q. Well, that negotiation was for your entry and for your wife's also?

A. Yes, sir—all three-quarter sections, yes, sir.

Q. And one of you got a 40 acres and the other got an 80 acres, [426—96] is that correct?

A. Yes, sir.

Q. Now, how was this settlement made? Did you get any real money for your claim?

A. Well, it was in making a settlement when I sold out, and how the settlement was exactly made I don't know. As I say, I was in red ink; or rather, I was indebted to the Orofino Trading Company one way or the other, and when the settlement was made it was in the whole transaction, because Mr. Anderson, the gentleman that bought me out, he borrowed some money from Mr. Kettenbach, and it was such a mixed up affair couldn't explain it to-day how it was. It was in the settlement we had, anyway; it was in full settlement for the business I done with the Idaho

(Testimony of William Haevernick.)

Trust Company and the Orofino Trading Company; it was all liquidated in the settlement.

Q. And you don't know how it was settled?

A. I couldn't trace it to-day if I tried.

Q. Do I understand that this claim was turned in to settle your account with the Orofino Trading Company?

A. Some way that way, yes, sir. It was there to straighten up my account with the Orofino Trading Company. I was behind.

Q. Well, was there any agreement as to what you were to get for it, or was it turned in?

A. No, sir, there was no agreement at all. I just merely asked him what he would give for it, and he told me what he would give for it, and I kind of hemmed and hawed and thought it was too little, I recollect well.

Q. You made all the negotiations for the sale of your wife's property? A. Yes, sir.

Q. I will ask you whether you had any agreement with Mr. Frank Kettenbach before you made your entry that you would sell that land to him?
[427—97] A. No, sir.

Q. Did you ever tell anybody that you had an agreement of that kind?

A. No, sir, I didn't tell anyone.

Q. You never made a statement of that kind to anybody?

A. After I got the land I made a statement to some parties that was interested in the flume business that

(Testimony of William Haevernick.)

I had taken up the land, or intended to take it up.

Q. Who were those parties?

Mr. BABB.—I object to this line of inquiry, because it is not limited, and don't designate the person, or the time or place, and lays no foundation for impeachment; and furthermore, the Government would have no right to impeach its own witness.

Mr. GORDON.—Q. Who were those parties that you had this conversation with?

A. Well, I think one of them was Jim Jump. He was a partner of Mr. McGill's.

Q. Was that before you got your final receipt?

A. Oh, no, not before. After I intended to take it up and made up my mind, after Mr. Mortimer showed me the land, and Mr. Jump was interested in the flume business, and I thought it might be a good place to start, and some of it was in the bottom of the creek, and I mentioned it to him.

Q. Now, what did you mention to him?

Mr. BABB.—We object to this conversation as immaterial.

WITNESS.—Well, I don't know just what that was. I recollect well that I mentioned to him that I took up this land.

Mr. GORDON.—Q. Well, that is not what I am getting at. I asked you if you told anybody that you had an agreement with Mr. Kettenbach, as I understand it, and then this conversation you bring up was in response to my [428—98] question?

A. No, sir. I never had any agreement with Mr. Kettenbach in regard to it at all.

(Testimony of William Haevernick.)

Q. And you never told anybody that you had an agreement?

Mr. BABB.—The same objection.

WITNESS.—No, sir, I never. [429—99]

Q. Do you remember, when you went to the land office to make your final proof, on the cross-examination that you identified here as having been signed by you, this question being asked you, question No. 17: “Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession? Answer. Earned it in my merchandizing business. Two years.”

Mr. TANNAHILL.—We object to it on the ground that it is not inconsistent with any statement he has heretofore made, and on the further ground that it is irrelevant and immaterial and a matter relating to final proof, and a matter long subsequent to the filing of the application.

A. Well, I did earn it in merchandising. I had a merchandising business then; I had that interest in the store there.

Mr. GORDON.—Q. Did you have that amount of money in your actual possession for two years?

A. I had \$2,000.00 in my possession in actual money.

Q. What do you call actual money?

A. Which I put into the Orofino Trading Company.

Mr. BABB.—Objected to as immaterial and irrelevant.

Mr. TANNAHILL.—And our same objection goes

(Testimony of William Haevernick.)

to all the questions in evidence along this line.

The SPECIAL EXAMINER.—Yes, the reporter can note that the objection runs to all that line of questions, without repeating it.

WITNESS.—I say that I had at that time earned, one way and another, two thousand dollars, and I had that invested in the Orofino Trading Company at that time.

Mr. GORDON.—Q. Is that what you call having money in your actual possession? Is that what you meant?

A. I might have had a small balance to my credit there, or some balance to my credit there, which I couldn't accurately say right now.

Q. But still you turned this claim over to liquidate your [430—100] indebtedness to that corporation though, didn't you? A. No.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. No, I didn't turn it in to the company; I sold it outright.

Mr. GORDON.—Q. Did you get any money for it?

A. I don't know; it went into the settlement with the Orofino Trading Company.

Q. The money you got out of it was turned in to liquidate your indebtedness to the company?

A. A portion of it; I don't know how the balance of it went. I got out of the whole transaction. I got \$2,000.00 out of it, and I don't know how it was. It was such a mixed-up affair that I couldn't tell right now, or wouldn't try to.

(Testimony of William Haevernick.)

Mr. GORDON.—We offer in evidence timber and stone sworn statement of William Haevernick, dated October 26, 1903; the notice of publication, dated October 27, 1903; nonmineral affidavit of William Haevernick, bearing the same date; the testimony of William Haevernick given on final proof, dated January 6, 1904, and the cross-examination thereof; the testimony of the witnesses given on final proof; the receiver's receipt and the register's certificate, dated January 6, 1904; certified copy of the patent, dated November 1, 1904, all of said papers relating to the entry of William Haevernick to the southeast quarter of the southeast quarter of section 23, the northeast quarter of the northeast quarter of section 26, township 37 north of range 2 east, Boise meridian.

The above exhibits were thereupon marked 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N, and 3O.

Mr. TANNAHILL.—The defendants waive any further identification of the papers just offered in evidence but respectively object to the following documents just offered in evidence: Proof of publication, bearing date January 4, 1904; testimony of witness Joseph Mortimer; testimony of Axel [431—101] Gabrielson, and cross-examination of witness Axel Gabrielson; testimony of claimant William Haevernick, and cross-examination of claimant William Haevernick; receiver's final receipts in duplicate, upon the ground that they are irrelevant and immaterial, and relate to final proofs and matters

(Testimony of William Haevernick.)

occurring subsequent to the filing of the sworn statement.

Mr. BABB.—You might note there that Frank W. Kettenbach and the Clearwater Timber Company severally object to all the testimony on final proof as to anything that took place after the filing of the original sworn statement, on the ground that it is immaterial and irrelevant.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Haevernick, at the time you filed your sworn statement October 26, 1903, had you any agreement with anyone, especially Frank W. Kettenbach, that you would convey the land to him after you acquired title to it? A. No, sir.

Q. Then your sworn statement, as follows: "That I have made no other application under said acts; that 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," that is true, is it? A. Yes, sir.

Q. And it was true at the time you made it?

A. Yes, sir.

Q. How long after you acquired title to the land

(Testimony of William Haevernick.)

was it before you negotiated a sale with Mr. Kettenbach?

A. I couldn't say exactly; it was between seven or eight or [432—102] twelve months. I couldn't say exactly. It was after I sold my interest in the Orofino Trading Company.

Q. There was no talk between you and Mr. Kettenbach that you would sell him this land, before you made final proof? A. No, sir.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all. [433—103]

[Testimony of Mrs. Alma Haevernick, for Complainant.]

Mrs. ALMA HAEVERNICK, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Alma Haevernick, are you?

A. Yes, sir.

Q. And you are the wife of the gentleman, Mr. William Haevernick, who just left the stand?

A. Yes, sir.

Q. Mrs. Haevernick, do you remember taking up a claim under the timber and stone act in October 1903? A. I do.

Mr. GORDON.—Can we just stipulate that she signed these papers, without showing them to her? They are the original land office papers.

Mr. TANNAHILL.—Yes.

(Testimony of Mrs. Alma Haevernick.)

Mr. BABB.—Yes.

Mr. GORDON.—I will just have her identify the signature to the sworn statement.

Q. Mrs. Haevernick, I show you timber and stone land sworn statement, dated October 26, 1903, signed by Alma Haevernick, and ask you if you signed that paper and filed it in the land office about the date it bears? A. I did.

Q. I show you the testimony of Alma Haevernick taken at final proof, January 6, 1904, and the cross-examination thereof, and ask you if that is your signature to that? Can you see it?

A. I can see it. That one is mine.

Q. Well, that is the only signature there is there. Mrs. Haevernick, who located you on your timber claim? A. A man by the name of Mortimer.

Q. Did you pay him a location fee?

A. I don't think so. [434—104]

Q. And when you filed the sworn statement and the other filing papers, when you initiated your entry, at the land office, did you pay a filing fee?

A. Do you mean the first papers?

Q. Yes. A. Yes.

Q. And did you pay that yourself, or did your husband pay it for you? A. My husband paid it.

Q. And when you made your final proof and purchased the land in the land office did your husband also pay that fee? A. He did.

A. And did you negotiate for the sale of this land yourself, or did your husband do the negotiating?

(Testimony of Mrs. Alma Haevernick.)

Mr. BABB.—We object to that as immaterial and irrelevant.

A. The land was all sold in a body.

Mr. GORDON.—Q. Did you do any of the negotiating? A. No.

Q. You did what your husband advised you to do in the matter? A. I did.

Q. And did you know to whom you sold?

A. We sold it to Frank Kettenbach.

Q. Did you get any of the money from the sale of that? A. No.

Q. May I ask you if your husband made the negotiations and sold your claim and his claim at the same time? A. At the same time.

Q. And brought you the deed and you signed it?

A. I signed it.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mrs. Alma Haevernick, dated October 26, 1903; the notice of publication of Alma Haevernick; the nonmineral affidavit; the [435—105] testimony of Alma Haevernick, given on final proof, dated January 6, 1904, and the cross-examination thereof; the testimony and the cross-examination of the witnesses on final proof, and the cross-examination thereof; the receiver's receipt and the register's certificate, dated January 6, 1904; certified copy of the patent, dated November 1, 1904, issued to Alma Haevernick, all relating to the entry of the southwest quarter of the northeast quarter of section 26, township 37, north of range 2 east, Boise meridian.

(Testimony of Mrs. Alma Haevernick.)

The above exhibits were thereupon marked 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K, 4L, 4M, 4N, and 4O.

Mr. TANNAHILL.—We object to all of the papers relating to the final proof, on the ground that they are incompetent, irrelevant and immaterial and we object to all of the evidence, and especially as the same applies to No. 388 and 407, on the ground that they are not named as parties and that this entry is not involved in the last two cases mentioned, and it is irrelevant and immaterial for any purpose. The defendants waive any further identification of the papers.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Haevernick, you had no agreement or understanding with anyone to convey this land to them, before you made your final proof, had you?

A. No, sir.

Q. And you had no such agreement at the time you filed your sworn statement? A. No.

Q. You took it up for your own use and benefit?

A. Yes, sir.

Mr. TANNAHILL.—That is all.

Mr. BABB.—Q. Mrs. Haevernick, I believe you stated that you did not personally receive any of the purchase money Mr. Kettenbach paid to your man?

A. Not individually, no. [436—106]

Q. You did not mean by that that the deed to

(Testimony of Mrs. Alma Haevernick.)

him was a gift, or anything of that kind, did you?

A. No.

Q. It was a sale, was it? A. It was a sale.

Q. Do you remember now the amount that he paid for the land? A. No, I do not.

Q. It was some hundreds of dollars, was it not?

A. Yes, near \$800.00, but I am not sure.

Q. Your husband attended for you to the receipt and disbursement of the money, did he?

A. He did.

Q. With your consent? A. He did.

Q. And the money was actually paid and disbursed in accordance with your wishes, was it?

A. The money was paid.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Haevernick, how do you know the money was actually paid and disbursed?

A. Because it was turned over for a debt.

Q. To whom was it turned over?

A. To the Orofino Trading Company.

Q. Was it to liquidate a debt that you and your husband owed Mr. Frank Kettenbach?

A. No, it was personal debts, it was debts we contracted ourselves.

Q. But did you and your husband borrow \$1700.00 from Mr. Frank Kettenbach? A. He did.

Q. And wasn't this in part payment of that?

A. I don't remember that it was.

Q. Well, what debt have you in mind, if you don't

(Testimony of Mrs. Alma Haevernick.)

mind telling, [437—107] that it was in payment of?

A. Well, it was from actual living expenses.

Q. With the Orofino Company?

A. With the Orofino Trading Company.

Q. And that was the final settlement, was it?

A. That was the final settlement.

Q. But at the time you settled you and your husband drew out \$2,000.00 in cash, out of the company, didn't you?

A. That was the payment Mr. Anderson paid to us when we sold the property, and this other was a payment to Mr. Holmberg, different parties.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock to-morrow morning. [438—108]

On Wednesday, the 24th day of August, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of William J. White, for Complainant.]

WILLIAM J. WHITE, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William J. White?

A. Yes, sir.

Q. Mr. White, where do you reside?

A. Orofino.

Q. Idaho? A. Yes, sir.

Q. How long have you resided at Orofino?

A. About 14 months.

(Testimony of William J. White.)

Q. And previous to that time where did you reside?

A. I lived up on my homestead, 14 miles north of Pierce City.

Q. And where did you reside in April, 1904?

A. In April, 1904?

Q. Yes, sir.

A. That was six years ago. I think at that time I was living in Lewiston.

Q. You have resided in Idaho since 1904, anyhow?

A. Yes, sir.

Q. Since the first part of 1904? A. Yes, sir.

Q. Are you married? A. Yes, sir.

Q. What is your business?

A. I am in the banking business now.

Q. What was your business in 1904? [439—109]

A. Well, if I was residing in Lewiston I was running a ferry at that time.

Q. Running a ferry? A. Yes, sir.

Q. Where is that crossing?

A. Right here crossing the Clearwater, right below the bridge.

Q. Are you related by marriage or otherwise to Mr. William F. Kettenbach? A. Yes, sir.

Q. What is the relationship?

A. He is my brother-in-law; he married my sister.

Q. He married your sister? A. Yes, sir.

Q. Are you acquainted with Mr. George H. Kester? A. Yes, sir.

Q. Are you in any way related to him?

A. Yes, sir; he is my brother-in-law.

(Testimony of William J. White.)

Q. He is your brother-in-law? A. Yes, sir.

Q. You both married sisters? A. Yes, sir.

Q. Are you related to Mrs. Mamie P. White?

A. She is my wife.

Q. Oh, she is your wife? A. Yes, sir.

Q. Is Elizabeth White your mother?

A. Yes, sir.

Q. Do you know the relationship between Mr. William F. Kettenbach and Mr. Frank W. Kettenbach? A. Frank is Will's uncle.

Q. You took up a timber claim on April 25th, 1904, and I will [440—110] ask you how long prior to that time you went to view this land?

Mr. TANNAHILL.—We object to the evidence of the witness in support of bill and actions No. 388 and No. 407, upon the ground that the witness nor his wife (Mamie P. White) are named in either of these bills or in either of the actions, and his evidence is wholly irrelevant and immaterial as the same relates to these two particular suits.

The SPECIAL EXAMINER.—You may answer the question, Mr. White.

The last question was thereupon repeated by the Reporter.

WITNESS.—Well, I couldn't say exactly; probably—Oh, it might have been a month—I don't remember.

Mr. GORDON.—Q. It was some time prior?

A. Yes, sir.

Q. And with whom did you go to view the land?

A. With whom?

(Testimony of William J. White.)

Q. Yes. A. With Mr. Dwyer?

Q. Mr. William Dwyer? A. Yes, sir.

Q. And did you and Mr. Dwyer go alone, or did others compose the party?

A. Well, there was several in the party, six or seven of them; my mother and my wife and Mrs. Kester.

Q. Who is Mrs. Kester? What is her name?—Edna P. Kester? A. Yes, sir; Edna P. Kester.

Q. Did Mrs. Martha E. Hallett go along with that party? A. Yes, sir.

Q. Well, is she related in any way to the family?

A. No, I think not.

Q. Who arranged for that party to go?

A. Why, Mr. Dwyer, I believe. We wanted a claim.

Q. Mr. Dwyer wanted what? [441—111]

A. Mr. Dwyer took the party in the woods at the time we went in.

Q. Do you know whether or not at the time you went to view this land it was open to entry?

A. Yes, sir, it was.

Q. It was or wasn't? A. It was.

The SPECIAL EXAMINER.—Just speak a little louder, Mr. White.

WITNESS.—It was, yes.

Mr. GORDON.—Q. I can't hear.

A. It was.

Q. It wasn't?

A. It was open for entry, yes, sir.

The SPECIAL EXAMINER.—Just speak a little

(Testimony of William J. White.)

louder, Mr. White, so they can hear you distinctly.

Mr. GORDON.—Q. What were your arrangements with Mr. Dwyer?

A. He was to locate me on a claim, and I was to pay him \$100.00.

Q. Were they each of them to pay him \$100.00?

A. Yes, sir.

Q. And did you make the arrangements for the rest of them, or who made the arrangements?

A. No, I didn't make the arrangements for anyone except myself, only my wife had a stone and timber act and she wanted a claim too, and we made the arrangements, or rather I made the arrangements for she and I.

Q. Now, you say your wife had a timber and stone act.

A. She had a right to take up a claim under the stone and timber act.

Q. Do you know whether or not there were any homesteaders on any of the claims—on the claims on which you filed?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and [442—112] immaterial.

Mr. GORDON.—Answer the question.

A. No; there were no homesteaders that I know of.

Q. And you didn't have to purchase a relinquishment from anyone, did you? A. No, sir.

Q. And neither did your wife, so far as you know?

A. No, sir.

(Testimony of William J. White.)

Q. Now, where did you go to view this land—what place?

A. We went to Orofino, and from there into Pierce City, and from there we went out on Rheese Creek, where these claims lie just a short ways from the trail; we went out to Rheese Creek, and up on Deer Creek, to Brown's cabin.

Q. Whose cabin?

A. Brown's cabin, they call it. It is just simply a cabin built by a Mr. Brown; and from there we went to our claim.

Q. Now, before you went to look at this land, did you have in mind any particular claim that you were going to locate?

A. Well, I can't say that I did exactly. I knew where these claims were located, yes, sir.

Q. Had you ever seen a plat of them?

A. I think that I had; I couldn't say for sure.

Q. Where?

A. Well, I think that Mr. Dwyer had some plats, and showed us about where our claims would be.

Q. I didn't hear the last of that.

A. I say Mr. Dwyer had some plats, and of course at that time I couldn't tell much about a plat by looking at it.

Q. And where did he show you these plats?

A. Well, I couldn't—I don't know as I can tell you just where it was when he did show them to us.
[443—113]

Q. Did you ever talk with your brother-in-law, Mr. Kettenbach, about taking up a claim?

(Testimony of William J. White.)

A. Not any more than just he knew we were going to take up claims.

Q. And did you discuss with him the nature of these claims and the amount of timber that was on them?

A. No, I don't know as we did, only he said they were pretty good claims—or rather, Mr. Dwyer did.

Q. And where did you have that talk with Mr. Kettenbach?

A. Well, I couldn't—I don't know as I can say. We talked about the claims and talked about locating on them; I couldn't say any particular place.

Q. Do you remember whether or not Mr. Dwyer was present when you had this talk?

A. No, sir, I don't remember whether he was or not.

Q. And did Mr. Kettenbach have any estimates or other data that he showed you to indicate that he knew how much timber was on the claims?

A. No, sir, not that I remember of.

Q. He just told you that they were pretty good claims? A. Yes.

Q. And did you discuss any of the claims— This was before you went to look at the claims, wasn't it?

A. Yes, sir. Well, I'll tell you, I don't remember so much about it, it has been so long ago, about discussing them with Mr. Kettenbach. I know that we talked about claims and about taking them up.

Q. Well, I say, you talked with him about the propriety of taking them up before you took them up? A. Yes, sir.

(Testimony of William J. White.)

Q. And did you talk with him about your wife's claim, too, at the same time?

A. Not any more than telling him she wanted a claim, and we had [444—114] each of us a stone and timber right that we wanted to use, if we could.

Q. Were you advised before you went to the timber how much timber was on these timber claims?

A. No.

Q. Did you know what the claims were worth before you went to see them? A. No, sir.

Q. No one had ever advised you? A. No.

Q. And were you to pay a location fee?

A. Yes, sir.

Q. To whom? A. To Mr. Dwyer.

Q. And how much was it? A. \$100.00.

Q. \$100.00? A. Yes, sir.

Q. How long were you in the timber on the occasion when you went to view it?

A. Well, I don't remember just exactly how long we were in there. I think it was two or three days, somewhere along there. I know we were out about a week, I believe, that we were gone.

Q. Then you returned to Lewiston?

A. Yes, sir.

Q. And why didn't you go to the land office to file immediately after you returned?

A. Why did I go to the land office?

Q. Why did you not go to the land office immediately after you returned?

A. Well, I don't remember whether I did go immediately after I returned or not.

(Testimony of William J. White.)

Q. Do you remember the month that you were up in the timber? [445—115]

A. No, I don't think I do. It seems to me like— Well, I don't remember what month it was.

Q. Who went over the timber with you?

A. Why, Mr. Dwyer showed me the timber.

Q. Did he show you the corners? A. Yes, sir.

Q. And went all through the timber with you?

A. Well, I don't know as we went all through the claims. We went kind of across the claims and he showed us where the corners were.

Q. Was there any other locator along?

A. Well, Mr. Dwyer had a man working for him and his name was Bliss, and I don't remember whether Mr. Bliss was with us when we went on the timber or not.

Q. Now, wasn't that the fall before you located that you were over that timber?

A. Well, I couldn't say for sure. It has been so long ago that we were in there that I don't remember whether we came right up and filed, or just how long it was.

Q. I notice from a paper you filed in the land office, called the testimony of claimant on final proof, in answer to the question when and in what manner you inspected the land, the answer is "October 13th, 1903, went over the land on foot with Edwin Bliss."

A. With Bliss?

Q. And does that bring back to your mind the occasion of being up there, and the time of the year it was?

(Testimony of William J. White.)

A. Well, I remember that Mr. Bliss was in the party, and I think he might have went with us when we went over. We were all together when we went out there, and I couldn't say positively.

Q. Who notified you, if anyone, when to appear at the land office and file on this claim?

A. I don't remember of anyone notifying me. Don't they tell you when to come, when to file your application? [446—116]

Q. What is that?

A. Don't they tell you when to make the application?

Q. No; you are confounding the application with the final proof. I mean were you notified of the time you should go to the land office and file your sworn statement—your initial paper?

A. I don't remember.

Q. Now, do you remember whether or not when you went there that you formed in a line?

A. In the land office?

Q. Yes. A. Yes, sir.

Q. Now, do you remember how many people were in that line, or approximately?

A. Well, when the line first formed I believe there was about probably 12 or 15, and then they kept getting more—all the people who could get in the hall, anyway.

Q. Now, do you remember about what number or position you held in that line?

A. No, I don't believe I do; I was probably along 15 or 20, or somewheres along there.

(Testimony of William J. White.)

Q. And was your wife in the line, too, with you?

A. Well, she— I don't think that— Well, she probably was in the line when we went to file. I don't remember distinctly whether she was or not.

Q. And was your mother there, too?

A. She probably was.

Q. Have you any recollection of it?

A. Well, I don't know positively whether she was or not; she probably was, though.

Q. How long did you remain in the line before you filed? A. I think I was there a day.

Q. Did you remain there overnight? [447—117]

A. I think that I did, part of the night.

Q. You mean that you went there late at night and remained till the next morning, or what?

A. Well, I think that I was there one evening. It seems to me that this line formed—say for instance it formed in the afternoon of to-day, and we would file to-morrow, and I think I was in line—oh, I came in there after the line started—after I seen that they started the line-up.

Q. Now, did anybody advise you that the line had started—that people had started to form a line there?

A. Well, I don't think that they did, any more than just knowing that they had started one.

Q. Did you employ anyone to hold a place in line for you at any time?

A. Well, I don't remember distinctly in regard to that, but I probably would get someone to hold my place if I had to step out.

(Testimony of William J. White.)

Q. Yes; but did you have anybody holding a place in line for you? A. No, sir.

Q. Before you got there? A. No, sir.

Q. And you didn't employ anyone to hold a place in line either for your mother or your wife?

A. No, sir, I didn't.

Q. I show you, Mr. White, a timber and stone lands sworn statement of William J. White, dated April 25th, 1904, and ask you if that is your signature to that paper? A. Yes, sir.

Q. And whether you filed the same in the land office at Lewiston about the date it bears?

A. Yes, sir; that is my signature.

Q. And you remember filing it in the land office?

A. Yes, sir. [448—118]

Q. And that is your signature to the nonmineral affidavit of the same date? A. Yes, sir.

Q. I show you the testimony of William J. White taken at the final proof, dated July 14th, 1904, and ask you if that is your signature? A. Yes, sir.

Q. I show you also the cross-examination taken at the same time as that. Is that your signature to that? A. Yes, sir.

Q. Mr. White, who prepared that sworn statement that I have just shown you?

A. What was the question?

Q. Who prepared this sworn statement and non-mineral affidavit that I have just shown you?

A. Well, I don't remember, if it wasn't prepared in the land office.

Q. What?

(Testimony of William J. White.)

A. I don't remember who prepared that, if it wasn't prepared in the land office.

Q. Did you prepare it yourself? A. No, sir.

Q. Did you pay anyone for preparing it for you?

A. Well, I couldn't say for sure whether I did or not, whether I had that prepared before I went and filed on the land or not. It has been so long ago that I don't remember the proceedings in regard to filing on it.

Q. Were you ever given a description of this land when you were located by Mr. Dwyer?

A. I was given a description, yes, sir.

Q. What did you do with the description? Did you take it to somebody's office and have it prepared, or did somebody prepare the papers and bring them to you? [449—119]

A. Oh, I think I took them to Mullan, who was a lawyer on the same floor as the land office. I think probably that he prepared them.

Q. Is that the gentleman referred to sometimes as Captain Mullan? A. Yes, sir.

Q. And you had those papers prepared before you went in the line-up at the land office?

A. Well, I don't remember distinctly, as I told you, but if I did he prepared the papers, I think. I have a faint recollection of being in his office and having some papers prepared.

Q. Mr. Dwyer didn't attend to that for you?

A. No.

Q. And nobody else?

A. Well, unless it was Cap. Mullan, or they were

(Testimony of William J. White.)

fixed in the land office.

Q. Yes, but I mean— A. No, sir.

Q. If Captain Mullan prepared them, you went there and had them prepared yourself?

A. Yes, sir.

Q. You didn't send somebody else, and somebody else was not acting for you in that capacity?

A. No, sir, I don't think so.

Q. Do you remember how much you paid in the land office when you filed those papers—the first papers? A. No, sir.

Q. Did you pay anything for your filing fee and notice for publication?

A. I think that I did, but I don't remember the exact amount.

Q. And have you any recollection whether or not you paid the filing fees for your wife and the other expenses incidental to initiating that entry of hers?

A. No. I believe she had her papers made out herself. [450—120]

Q. Made out herself, you say?

A. She attended to her papers, those that she had made out. I don't remember of paying anything for her.

Q. Do you know what the value of this claim which you entered was, when you made your filing papers? A. No, sir.

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

A. Well, I imagined when I filed on that claim that it was worth— Well, I didn't know what it was worth.

(Testimony of William J. White.)

Q. And did you know or do you know now how many feet of timber—marketable timber—was on the quarter section on which you filed?

A. At the present time, I had the claim estimated I think about two years ago, and I think there was about five million feet on it.

Q. Five million feet? A. Yes, sir.

Q. Who did you have estimate it?

A. A fellow by the name of Bert Robinson.

Q. Bert Robinson? A. Yes, sir.

Q. And did you know of a market for timber claims at that time?

A. When I had it estimated?

Q. No—I mean when you made your entry?

A. No, I didn't.

Q. You didn't know anyone who was buying timber claims?

A. Yes; Kester and Kettenbach were buying a few, and Sheldon and Clark I believe were buying, and the Clearwater Timber Company were buying timber claims.

Q. Did you know what they were paying for claims?

A. Well, they didn't seem to have any schedule price. Some claims would probably go for \$700.00 or \$800.00, or \$1200.00.

Q. What is the value of your claim to-day?

Mr. TANNAHILL.—We object to that as immaterial. [451—121]

Mr. GORDON.—Answer the question.

A. The claim is worth about \$5,000.00, I think.

(Testimony of William J. White.)

Q. Were you notified by anyone of the time to make final proof? A. To make final proof?

Q. Yes.

A. Yes, sir; I received a notice from the land office.

Q. And you went to the land office?

A. Yes, sir.

Q. And did your wife go with you?

A. I think that she did. I don't remember distinctly.

Q. Was Mrs. White there at the same time that you made your proof? A. My mother?

Q. Yes.

A. Well, I couldn't say for sure. I don't hardly think that she was. She might have been.

Q. Do you know whether Mrs. Kester and Mrs. Hallett were there? A. No, I don't.

Q. And do you remember how much you paid at the land office when you made your proof?

A. No, I don't.

Q. Do you have any idea of approximately what you paid?

A. Well, I think about \$200.00—\$1.25 an acre. I know that I paid \$1.25 an acre on land that I homesteaded, and I don't remember exactly what my stone and timber was.

Q. You have no independent recollection?

A. No, sir.

Q. As to whether you paid \$200.00 or \$300.00, or whether you paid \$800.00?

A. No, I didn't pay \$800.00.

Q. And did you pay for your wife's claim?

(Testimony of William J. White.)

A. No; I think she paid for that herself. [452—122]

Q. And did you furnish the money to her to pay for it? A. Yes, sir; I gave her the money.

Q. And do you remember whether you gave her the money the day she made her proof?

A. No, I don't believe I did. I think I gave it to her some time before that.

Q. How long before?

A. Oh, I think quite a while before. I remember of giving her some money while we were over in Montana, shortly after we were married, and I gave her some money over there; I gave her a couple of thousand dollars, and she had some of that.

Q. And how long were you married before you entered a timber claim?

A. Well, I have been married nine years.

Q. And you were married about three years then?

A. Yes, sir.

Q. And did you give her this money while you were on your honeymoon?

A. No. We were over in Montana, living in Kalispell, when I gave her this money.

Q. Well, just shortly after you were married?

A. Yes, sir.

Q. And do you remember the form in which you paid your money in the land office, whether you paid it in cash or whether you paid it by check?

A. I paid it in cash, if I remember right.

Q. And did you keep your money about you in cash, or did you keep it in some bank?

(Testimony of William J. White.)

A. I kept it in the Lewiston National Bank.

Q. And do you remember whether you drew it out of the bank the morning on which you—

A. I think probably that I would have drawn it out in the morning. [453—123]

Q. Mr. White, have you the title to your claim at the present time? A. No, sir.

Q. Have you conveyed it to anyone?

A. Yes, sir.

Q. To whom? A. To Mrs. Elizabeth White.

Q. To Mrs. Elizabeth White? A. Yes, sir.

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

Q. And how long ago did you convey it to her?

A. I think it was right about the first of the year.

Q. This last year? A. Yes, sir.

Q. Do you know whether the deed has been recorded or not? A. I think that they have.

Q. Do you mean the beginning of the year 1910?

A. Yes, sir.

Q. Do you mind telling us what you sold that claim for—how much?

A. I sold her four claims—four quarter sections—and got \$4,000.00 each for them.

Q. How is that?

A. I sold four quarter sections for \$4,000.00 for each.

Q. For each one? A. Yes, sir.

Q. Now, how long had you had these quarter sections when you sold them?

A. Well, my stone and timber claims, I think I had them about six years.

(Testimony of William J. White.)

Q. Did you sell your wife's claim, too? [454—
124]

A. Yes; we sold all the claims we had up there, four of them, and we had a claim over on Brown's Creek.

Q. Now, let me see if I get this right: To make up these four, you sold your stone and timber entry?

A. Yes, sir.

Q. And your wife's? A. Yes, sir.

Q. And then your homestead? A. Yes, sir.

Q. Now, what made up the fourth one?

A. There was a claim that I bought over in—well, I don't remember the township.

Q. Well, I mean from whom did you buy it from, the entryman?

A. Well, a man by the name of Clave.

Q. What is the name? A. Clave, I think.

Mr. TANNAHILL.—Cleves.

The SPECIAL EXAMINER.—Cleves, is it?

A. Yes, sir.

Q. C-l-e-v-e-s?

A. I think that is the way he spells it.

Mr. GORDON.—Q. And when did you buy that claim?

A. I think it is about three years ago I bought it.

Q. Had you had an opportunity to sell your stone and timber claim before?

A. Well, I probably—not at a very good price; no.

Q. Had you ever offered to sell it to anyone before? A. Before I sold it to my mother?

Q. Yes. A. Yes, sir.

(Testimony of William J. White.)

Q. To whom? [455—125]

A. I offered to sell it to Nat. Brown, of the Clear-water Timber Company.

Q. And is he the only one that you ever offered to sell it to that you can remember?

A. Well, I don't remember distinctly whether I offered to sell it to Mr. Kettenbach or not, but I think I mentioned some of the facts, and I think he said he didn't want it; he wasn't buying any claims.

Q. Did you have any agent or anybody authorized to sell this claim for you? A. No, sir.

Q. Not at any time? A. No, sir.

Q. I understood you to say those claims were sold for \$4,000.00 a piece? A. Yes, sir.

Q. You got \$16,000.00 for the four claims?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of William J. White, dated April 25th, 1904, the Nonmineral Affidavit of William J. White, bearing the same date, the notice for publication of William J. White, also of the same date, the testimony of William J. White given on final proof, dated July 14th, 1904, the cross-examination of Mr. White concerning the same, the testimony of the witnesses who appeared at the final proof, the Receiver's Receipt, the Register's Certificate, dated July 14th, 1904, a certified copy of the patent issued to William J. White, dated the 31st of December, 1904; all of said papers relating to the entry of William J. White, of the south half of the north half of section 14, township 38 north, of range

(Testimony of William J. White.)

5 east of the Boise meridian.

Mr. TANNAHILL.—The defendants waive any further identification of the papers, but severally object to all of the papers offered as the same relates to bill 388 and 407, on the ground that the entry is not [456—126] referred to or described under these two actions, and they are irrelevant and immaterial. And the defendants also severally object to the introduction of any of the documents in evidence, upon the ground that it affirmatively appears that the entry was made in good faith, without any agreement to convey the same to any of the defendants, and that the entry is valid and should not be canceled. The defendants also severally object to the introduction in evidence of all of the final proof papers, upon the ground that they are irrelevant, incompetent and immaterial for any purpose.

Said files were thereupon marked by the Reporter, Exhibits 5, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L, and 5M.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. White, at the time you made your entry had you any agreement, either directly or indirectly, with any person or persons or corporation, whereby you should convey the land to them? A. No.

Q. I will ask you if the affidavit you signed, contained in your sworn statement, in substance that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it

(Testimony of William J. White.)

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," was that statement true when you made it? A. Yes, sir.

Q. And it is still true, is it? A. Yes, sir.
[457—127]

Redirect Examination.

(By Mr. GORDON.)

Q. One question I forgot to ask you, Mr. White: Did you have the money with which to purchase this claim at the time that you went to the land office, of your own; or did you borrow it from someone?

A. I think I borrowed it from my mother.

Q. From your mother? A. Yes, sir.

Q. And you borrowed enough for your own claim and for your wife's claim, too?

A. In making our proof?

Q. Yes.

A. No. I think that I had that money myself.

Q. Now, I don't quite understand you. What did you borrow?

A. Well, at the time I bought this fourth claim—

Q. No—I mean when you made your proof?

A. Oh, did I borrow the money then?

Q. Yes.

A. I don't think I did; I think that I had it myself.

(Testimony of William J. White.)

Q. Well, haven't you any distinct recollection of that?

A. Yes, I think I had this money myself. I could easily find out. It has been quite a long while ago, and I don't remember all the details of it.

Q. Well, did you bank anywhere except at the Lewiston National Bank? A. In Lewiston?

Q. Any place, at that time? A. No, sir.

Q. And have you a distinct recollection of getting the money from that bank when you went to the land office to make your proof? A. Yes, sir. [458—128]

Q. Now, do you remember—

A. I must have done.

Q. Do you remember whether you got it on your check, or whether you borrowed it from someone?

A. Why, I simply gave my check, and it was charged to my account. [459—129]

[Testimony of Soren Hansen, for Complainant.]

SOREN HANSEN, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Soren Hansen? A. Yes, sir.

Q. Where do you reside, Mr. Hansen?

A. Up above Peck, Idaho.

Q. How long have you resided in Idaho?

A. About ten or eleven years.

Q. And how long have you resided in Peck and vicinity? A. Four years.

(Testimony of Soren Hansen.)

Q. Where did you reside in February, 1903?

A. Up here above Lewiston about three miles, three or four miles.

Q. Mr. Hansen, I didn't catch your last answer.

A. Up above Lewiston here about three miles and a half or four miles.

Q. Did you have a ranch there?

A. I had a ranch rented.

Q. Rented? A. Yes.

Q. Did you own any real estate at that time?

A. No, I think not. Well, I might have owned a couple of lots here in town; I don't recollect whether I bought them before that or afterwards.

Q. How large a ranch did you have rented?

A. Why, I don't recollect. I rented different years; some years I had as high as seven hundred acres.

Q. Well, I mean in 1903.

A. Yes. Well, I couldn't remember how much I had that year, because I changed every year; some years I had more, and I have no memorandum or no recollection of how much I had that year, but I had approximately three or four hundred acres. [460—130]

Q. Did you work it on shares?

A. Some I worked on shares and some for cash rent.

Q. I am speaking now about this ranch you had in February, 1903, at the time that you made the timber and stone entry.

A. That is what I can't remember; I don't remem-

(Testimony of Soren Hansen.)

ber now whether I had a ranch rented, the Grooston place, but I can't remember now whether I had that that year. I paid cash for that, and that was four hundred and sixty acres, but whether that was in 1903 or whether I had left that before that or not I can't remember.

Q. You say you paid cash for it. You mean you paid cash rent for it?

A. Yes, I paid cash rent for the Grooston place, four hundred and sixty acres.

Q. You spoke of some town lots you had?

A. Yes, I have got a couple of lots up here in town.

Q. Did you have them in 1903?

A. That is what I can't remember either, whether I had them or not.

Q. Do you remember what you paid for those lots?

A. Yes, I paid \$700.00 for them.

Q. For the two of them? A. Yes.

Q. Did you pay cash for them, or did you borrow the money? A. Yes, I paid cash for those.

Q. I show you timber and stone land sworn statement of Soren Hansen, dated February 26, 1903, and ask you if that is your signature to the sworn statement, and whether you filed it in the land office about the date it bears. A. That is my signature.

Q. I show you nonmineral affidavit of Soren Hansen of the same date and ask you if that is your signature to that? A. Yes, that is my signature.

[461—131]

Q. I show you affidavit made by Soren Hansen before Charles H. Garby, receiver of the land office,

(Testimony of Soren Hansen.)

dated May 26, 1903. Is that your signature?

A. Yes, sir.

Q. I show you the testimony of Soren Hansen, given on final proof, dated June 5, 1903, and ask you if that is your signature? A. Yes, sir.

Q. That is your signature to the cross-examination taken at the same time? A. Yes, sir.

Q. I show you a deed, Mr. Hansen, made and executed by Soren Hansen and Anna K. Hansen, his wife, dated February 17, 1906, grantee blank, consideration \$1.00, to the southeast quarter of section 10, township 39 north of range 3 east, Boise meridian, acknowledged before Charles L. MacDonald, a notary public for Nez Perce County, Idaho, February 17, 1906, and ask you if you signed and acknowledged that deed? A. Yes, sir.

Q. And that is your wife's signature, is it?

A. Yes, sir.

Q. And she acknowledged it at the same time?

A. Yes.

Q. I show you a deed dated May 16, 1908, by Soren Hansen and Anna K. Hansen, to E. W. Thatcher, consideration \$1157.50, conveying the southeast quarter of section 10, township 39 north of range 3 east, Boise meridian. Is that your signature, Mr. Hansen, to that deed? A. Yes.

Q. And that is the signature of your wife to that deed? A. Yes, sir.

Q. And you both acknowledged it May 16, 1908, before Orin Walker, a notary public of Peck, Idaho.

A. Yes, sir.

(Testimony of Soren Hansen.)

Q. I show you another deed, Mr. Hansen, dated March 5, 1909, made by Soren Hansen and Anna K. Hansen, his wife, of Peck, Idaho, [462—132] conveying to William F. Kettenbach, for a consideration of \$1.00, the southeast quarter of section 10, township 39 north of range 3 east, Boise meridian, signed Soren Hansen, Anna K. Hansen, and acknowledged May 15, 1909, before Orin Walker, notary public for Nez Perce County, and ask you if that is your signature to the deed I have just referred to? A. Yes, sir.

Q. That is the signature of your wife?

A. Yes, sir.

Q. And you both acknowledged it on the date set out in the body of the acknowledgment?

A. Yes, sir.

Q. Before Mr. Walker? A. Yes, sir.

Q. Mr. Hansen, what induced you to take up a timber claim?

Mr. TANNAHILL.—We object to any evidence of the witness in relation to taking up any timber claims in so far as they relate to bills and actions numbers 388 and 407, for the reason that the entry is not referred to in these particular actions, and they are wholly irrelevant, incompetent and immaterial.

A. Why, Clarence Robnett.

Mr. GORDON.—Q. Mr. Hansen, state what Mr. Robnett said to you that induced you to take up a timber claim.

A. Why, I met him one day on the street, and he

(Testimony of Soren Hansen.)

says, "Don't you want to take a timber claim, George?" And I said no. I told him I didn't want no timber claim, I didn't have time to go after it, I didn't have the money to spare, I didn't want to put money into a timber claim. And he said he would tend to the whole matter and that it wasn't necessary for me to go up there.

Q. What did he say about the money?

A. Why, he said he could furnish the money, or get the money for me, whichever it was. [463—133]

Q. And now were you to get anything out of that timber claim, or how was that? Was anything said at that time about that?

A. Why, I asked him what there was in it, and he said, "I ought to be able to get you from three to five hundred dollars out of the place."

Q. How were you to get the three to five hundred dollars out of it?

A. Why, when he sold it. He said he would be able to sell it, he had more claims, and he would be able to sell it for me.

Q. And you were to get three or five hundred dollars out of it? A. Yes.

Q. I don't know whether I asked you this: You are sometimes known as George Hansen, aren't you, Mr. Hansen?

A. Yes. That is really my name; it is George Soren Hansen, that is my name; but the way I come to go by Soren Hansen in any legal matters is, when I took out my naturalization papers they didn't get George in, and anything with reference to deeds

(Testimony of Soren Hansen.)

or anything, or a Government matter, that is all the name I can use.

Q. Well, what happened next with reference to taking up a timber claim? Did you tell Mr. Robnett that you would agree to that, or what did you do?

Mr. TANNAHILL.—We object to it as leading and suggestive.

A. Well, I said I thought it would be all right, if he could tend to it for me, if I didn't have to go after it, and didn't have to furnish the money, why, to go ahead.

Q. And when did you see him next, or after that?

A. Why, some time afterwards; I don't recollect the length of time. But I met him on the street again one day, and he said, "I have got a claim for you now, and you can go in and file."

Q. What? A. Go in and file on it.

Q. Well, did you go and file? Just tell what happened.

A. Well, I can't,—I don't know now whether I filed that day or not. It is a long time ago, and I can't tell; I don't recollect the [464—134] transaction just as it transpired at the time.

Q. Do you know where this land upon which you filed is situated?

A. It was out in the Clearwater mountains somewhere.

Q. Have you ever seen it? A. No.

Q. Did you ever go anywhere to look at it, with the view of seeing it? A. No.

(Testimony of Soren Hansen.)

Q. Nobody took you over the land or pretended to take you over the land?

A. No, we couldn't get in there at the time, he said; there was snow—

Q. I will ask you whether or not you ever had any intention of going there to look at it?

Mr. TANNAHILL.—I object to it as irrelevant and immaterial, and he wasn't required to go there and look at it, by law.

A. If there had been somebody to go with me, and we could have went at the time, I would have went, but he said we couldn't get in there.

Q. What explanation did he give?

A. Clarence told me it wasn't necessary to go and look at the land.

Q. Did he tell you why it wasn't necessary?

A. No, I couldn't say whether he did or not. I don't recollect why he explained any reason why, only he said it wasn't necessary.

Q. What brought up the conversation as to whether it was necessary to go and view the land?

Mr. TANNAHILL.—We object to it as irrelevant and immaterial. And our same objection goes to all of this line of evidence.

Q. Did Mr. Robnett go to the land office with you?

A. No. Yes, he did. He went to the land office with me, but he wasn't there when I filed.

Q. This sworn statement that I have shown you, I will ask you [465—135] whether or not he had that prepared for you? A. He had what?

Q. That sworn statement, the first paper you filed

(Testimony of Soren Hansen.)

in the land office.

A. Yes, he went,—well, he went with me to some attorney's office and had that drawed up.

Q. Do you remember the name of the attorney?

A. No, I don't. I didn't know the man, and I don't remember his name; I don't know as I found out at the time.

Q. Then you went to the land office and filed it?

A. Yes.

Q. And were you notified of the time to make final proof? Of the purchase of the land?

A. Notified at the time when I made filings?

Q. Did anyone notify you when you should go to the land office and pay for this timber?

A. Well, I don't recollect whether they did or not.

Q. Do you know how you knew when to go to the land office?

A. Why, I suppose somebody, someone told me at the time, or some time afterwards, but I don't recollect.

Q. And do you remember going to the land office and making your proof?

A. Yes, I remember going to the land office.

Q. Do you remember how much you paid at the land office at that time? A. No, I don't.

Q. Have you an idea how much it was?

A. Why, I think it was \$7.00 or \$8.00, but I don't—you mean for filing fee?

Q. No, I mean when you purchased the land, when you paid for the land.

A. I think it was something about \$400.00.

(Testimony of Soren Hansen.)

Q. Where did you get the \$400.00? [466—136]

A. Why, Clarence Robnett furnished the money.

Q. Then you went to the land office with him, or did you go alone?

A. No, he didn't go with me when I filed. He went up with me to Mullen's office, I think, and had some papers drawed up, but I don't recollect what it was about now.

Q. I am speaking of the time when you paid the \$400.00 at the land office. Did he go to the land office with you then?

A. No, he wasn't in the land office when I paid the money, no.

Q. Where did he give you the \$400.00?

A. Down in the bank?

Q. Which bank?

A. The Lewiston National Bank.

Q. Did you have an account in the Lewiston National Bank. A. No.

Q. Never did?

A. I did not. I used to have, but I didn't at the time.

Q. And did you give any note to secure that money that you got from Mr. Robnett?

A. Yes, I gave a note at the time.

Q. Did you give it before you got the money, or afterwards?

A. Well, now, that I couldn't remember that; I can't say whether it was before or after or at the time.

Q. And when you paid that money into the land

(Testimony of Soren Hansen.)

office they gave you a receiver's receipt for it, did they?

A. I suppose they did, but I don't—

Q. Do you know what you did with that?

A. No, I don't; I don't remember much of the transaction there, it is so long ago.

Q. Now, do you remember how much this note that you gave Mr. Robnett was for?

A. No, I don't know whether that was for \$600.00 or for \$400.00; I don't recollect.

Q. Did you have to pay a bonus for getting that money? A. Yes, I paid \$200.00. [467—137]

Q. And do you know how long that note was to run? A. No, I don't.

Q. You don't remember whether there was any statement or arrangement made as to how long the note was to run or not when you made it?

A. No, I couldn't say.

Q. Well, now, state what the occasion was of your making the deed that you identified, dated February, 1906, in which there is no grantee?

A. Why, Clarence he came to me one day and says, "I got a chance to sell that timber claim for you, and if you will make out a deed to it, why I will, I can turn it over to them whenever it is sold, and I won't have to call on you." So I made out the deed.

Q. Was anything said at that time about what the purchase price of the land should be?

A. Well, now, I couldn't tell whether there was or not.

Q. Now, you delivered that deed to Mr. Robnett,

(Testimony of Soren Hansen.)

did you? A. Yes, sir.

Q. Now, the next deed you identified, dated May 16, 1908, running from Soren Hansen and wife to E. W. Thatcher, do you remember the circumstance of making that deed?

A. Yes, he wrote up to me, he sent the deed, it was already filled up, sent it up to me, and wrote to me to fill it out and have it proved, prove it before a notary public and have it signed and acknowledged and sent down to him.

Q. Have you that letter? A. No, I haven't.

Q. Do you know what became of it?

A. I don't know; I might have it at home, but—

Q. Do you know whether there was anything said as to the consideration for which the property was to be sold then, or was it silent as to that?

Mr. TANNAHILL.—We object to it as immaterial, and not the best evidence. [468—138]

A. I couldn't say whether he said anything about that at the time or not in the letter.

Mr. GORDON.—Q. Now, the third deed that you identified, dated March 5, 1909, running to William F. Kettenbach, what was the circumstance of your executing that deed?

A. Why, that is after,—I didn't send that other deed down to Robnett. I went down myself, and me and my wife to Lewiston, so I just took it in and handed it to him and he says,—well, I don't remember what his explanation was, but anyway he wanted another deed instead of the one I made out for Thatcher, he wanted another one, and so he had an-

(Testimony of Soren Hansen.)

other deed there, and he sent a notary public up to my wife's; she was up to her mother's house,—and had her acknowledge that other deed, and I kept the first deed to Thatcher.

Q. Now, do you remember to whom that deed ran?

A. The second deed?

Q. The one you have just referred to.

A. Yes, that was to the Clearwater Timber Company.

Q. When was that? After you had executed the other three deeds?

A. The other two, the deed in blank and the deed to Thatcher.

Q. And you executed another deed before you did this one to Mr. Kettenbach, is that right?

A. Yes, sir, to the Clearwater Timber Company.

Q. And was that the one you say that you executed down here at Lewiston? A. Yes, sir.

Q. And you say Mr. Robnett attended to that for you? A. Yes, sir.

Q. And then he sent this deed to William F. Kettenbach to you, as I understand?

A. Yes, he wrote to me afterwards again and told me there was a—I forget now whether it was a mistake,—but anyway he wanted another deed. [469—139]

Q. And that was the one? He sent this one to Kettenbach up to you?

A. Yes, he sent that up to me.

Q. Did Mr. Robnett give you any money at any time that you executed any of the deeds?

(Testimony of Soren Hansen.)

A. When I executed that deed to Mrs. Thatcher he gave me \$60.00.

Q. Was that all you ever got out of it?

A. That was all I ever got out of it. He said that would be the amount it would take to foreclose, and he said he couldn't get me any more out of it.

Q. And did you ever have any conversation as to why you didn't get the three or five hundred dollars that was promised you in the beginning?

A. Yes, I spoke to him about that, and he said that was all,—the timber deal was all—you couldn't sell timber, and that was all they could possibly get out of it.

Q. Mr. Hansen, I will ask you whether or not you would have taken up this claim if it hadn't been for the arrangement you made with Robnett the first time that you talked with him about it?

A. No, I would never have taken up any land if it hadn't been for him, that is, no timber land at that time or at that place.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Soren Hansen, dated February 26, 1903; notice of publication of Soren Hansen of the same date; nonmineral affidavit of Soren Hansen of the same date; the testimony of Soren Hansen on final proof, dated June 5, 1903; and the cross-examination thereof; the receiver's receipt and the register's certificate, dated June 5, 1903; certified copy of the patent issued to Soren Hansen, dated August 3, 1904; the testimony of the witnesses on final proof, and the cross-examination

(Testimony of Soren Hansen.)

thereof; and the other files of the land office in Soren Hansen's entry, all the said papers relating to the entry, and being a portion of the entry of Soren Hansen to the southeast quarter of section 10, township 39 north of range 3 east, Boise meridian. We also offer in [470—140] evidence the three deeds identified by the witness Hansen, dated February 17, 1906, May 16, 1908, and March 5, 1909, respectively.

The above exhibits were thereupon marked 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 6I, 6J, 6K, 6L, 6M, 6N, 6O, 6P, 6Q, 6R, 6S, 6T, and 6U.

Mr. TANNAHILL.—The defendants severally object to all of the documents in so far as they relate to bills number 388 and 407, upon the ground that they are irrelevant, incompetent and immaterial. And the defendants severally object to the introduction in evidence of the final proof papers in the offer, the affidavit of Soren Hansen, affidavit of publication, testimony of the witness Edward Knight, cross-examination of the witness Edward Knight, testimony of the witness William B. Benton, cross-examination of the witness William B. Benton, testimony of Soren Hansen, cross-examination of the witness Soren Hansen, upon the ground that they are incompetent, irrelevant and immaterial, and do not tend to prove or disprove any of the issues in the case. The defendants severally waive any further identification of the papers offered.

Mr. GORDON.—Take the witness.

(Testimony of Soren Hansen.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Hansen, I do not know that I understood your statement relative to your first conversation with Mr. Robnett relative to your taking up a claim. Will you repeat the conversation you had with him?

A. Why, he met me on the street and asked me if I didn't want to take up a timber claim, and I told him no, I didn't have time to go after it, and I didn't have the money, I didn't want to spend the money to pay for it, and he told me he would tend to the matter and furnish the money.

Q. When did you have your next conversation with him?

A. Why, I couldn't tell the time, the lap between the two conversations. I met him on the street one day, but as to the length of time, I don't recollect.
[471—141]

Q. Well, where he said that he would sell the claim for you, that he had some other claims, and that you ought to get \$350.00 out of it. What was that conversation?

A. That was the first time, when I first spoke about it.

Q. Well, then, give us all of that conversation, Mr. Hansen.

A. Well, I asked him what I can get out of it, and he said I ought to be able to get from three to five hundred dollars out of it when I sell it.

Q. When you sold? A. Yes.

Q. Now, what else did he say about it?

(Testimony of Soren Hansen.)

A. Why, that is impossible for me to repeat all of the conversation, or whether there was any more conversation or not; I couldn't tell.

Q. I understood you to say that he told you that he would look after the selling of it for you, that he had some more claims?

A. Yes, he said he had more claims out there, and he would take charge and sell the claim.

Q. Then you had no particular agreement to sell it to him?

A. Oh, no, there was no particular—

Q. And you had no agreement to sell it to anyone else in particular?

A. There was no agreement, no, to sell to anyone, only he said he could sell it for me.

Q. I see. That was after you got title?

A. Yes.

Q. Then your affidavit that you made—

Mr. GORDON.—Let me interrupt you there. Your statement that it was after he had title wasn't intended to mean that the conversation was after that, but to sell after he got title?

Mr. TANNAHILL.—No; to sell after he got title.

Q. This affidavit that you made in connection with your sworn statement, "That I have made no other application under said acts"; that was true, wasn't it? You had made no other application, had you?
[472—142] A. No.

Q. "That 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,

(Testimony of Soren Hansen.)

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, and that my postoffice address is Lewiston, Nez Perce County, Idaho." Your affidavit in that respect was true, was it, Mr. Hansen?

A. Yes, it was true, to the extent, unless I told him he could sell it for me, or he told me he could sell it for me, unless that infringed on that,—I am not—

Q. Well, you didn't consider that you had made a contract to sell it to anyone else at the time you made your filing?

A. No, I didn't make a contract to sell it.

Q. Of course, you understand that when anyone takes up a timber claim, he takes it up with the intention of selling it and making some money out of it, when he gets title to it?

A. That was my intention.

Q. And you expected to apply the money to your own exclusive use and benefit? A. Yes, sir.

Q. And you didn't take it up for the purpose of giving to anyone else the benefit of it?

A. No.

Q. You never had any conversation with Mr. Dwyer or Mr. Kester or Mr. Kettenbach regarding it, did you? A. Never.

Q. You didn't take it up for either of those gentlemen? A. No, sir.

(Testimony of Soren Hansen.)

Q. And you had no understanding or agreement with them? A. Not a word. [473—143]

Q. And you had tried repeatedly to sell this claim, had you not, Mr. Hansen? A. Sir?

Q. You had tried repeatedly to sell this claim, had you not, after you acquired title to it?

A. No, I never tried to sell it myself, and I didn't have,—there was no buyer came to me, for one thing.

Q. You had Mr. Robnett try to sell it for you frequently?

A. Mr. Robnett was tending to it; I suppose he was trying to sell it when he had the chance.

Q. Mr. Robnett had tried to sell it to E. W. Thatcher, Mrs. Thatcher, had he, to whom you made this first deed?

A. I suppose; he sent me that deed.

Q. He had also tried to sell it to the Clearwater Timber Company, and you had made out a deed in favor of the Clearwater Timber Company?

A. Yes, I had those changed.

Q. And he had tried to sell it to William F. Kettenbach, and you made out a deed to him?

A. Yes.

Q. Who did you finally sell it to?

A. That is as near as I come to selling it yet; I am holding those deeds.

Q. And you haven't actually conveyed it to anyone?

A. Well, I don't know; there is a deed out for the Clearwater Timber Company. I suppose that is—

Q. You sold it to the Clearwater Timber Company?

(Testimony of Soren Hansen.)

A. That deed I never got back. That is the reason I hold the last deed. I wouldn't deliver this last deed to Mr. Kettenbach before I got the other deed back to the Clearwater Timber Company.

Q. And you never delivered this deed to William F. Kettenbach? A. No.

Q. You had, before that, delivered a deed to the Clearwater Timber Company? [474—144]

A. I delivered it to Clarence Robnett.

Q. Do you know what he did with it?

A. No, I don't.

Q. When was it that you got the \$60.00?

A. That was when I delivered the deed to Thatcher, to Mrs. Thatcher.

Q. He gave you the \$60.00 then? A. Yes.

Q. Did you get any more money when you delivered the deed in favor of the Clearwater Timber Company? A. No, that was all the money I got.

Q. Who was it that gave you the \$60.00?

A. Mr. Robnett.

Q. What did he tell you about it when he gave it to you?

A. He said that was all he could get out of it.

Q. What else did he tell you?

A. Why, I don't recollect; he said something about there was no sale for timber land, or—

Q. And it wasn't a first-class claim, was it?

A. Well, I couldn't tell.

Q. You couldn't say? You don't know anything about that?

A. I don't know anything about that.

(Testimony of Soren Hansen.)

Q. And you never had any negotiations or communication with any officer of the Clearwater Timber Company, did you?

A. No, sir, never saw them.

Q. You had no prior agreement, no agreement to sell it to the Clearwater Company before you made your final proof? A. No, sir.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all, Mr. Hansen.

An adjournment was thereupon taken until two o'clock P. M. [475—145]

At two o'clock P. M. the hearing was resumed.

[Testimony of William McMillan, for Complainant.]

WILLIAM McMILLAN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William McMillan?

A. Yes, sir.

Q. Can you speak a little louder?

A. Yes, that is my name.

Q. Where do you reside, Mr. McMillan?

A. I reside in the Orofino country—about eight miles from Orofino.

Q. How long have you resided at Orofino?

A. I have resided up there about 27 years.

Q. What was your occupation in the spring of 1904?

A. I ranched a little, and carrying the mail.

Q. Do you remember taking up a claim under the

(Testimony of William McMillan.)

timber and stone act? A. Yes.

Q. I show you timber and stone lands sworn statement, dated April 25th, 1904, signed by William McMillan by his mark, and ask you whether you remember signing that paper in that fashion and filing it in the land office on or about the date it bears?

A. Yes. I didn't have no glasses that day and I couldn't see to write my name, and I think Mr. West signed them for me. That is my mark.

Q. And the nonmineral affidavit of the same date, signed William McMillan, you signed that by a mark at the same time, did you?

A. Is there a mark on that?

Q. Yes. [476—146]

A. Well, I guess it was. I think there was two papers at the same time.

Q. I show you the testimony of William McMillan taken on final proof July 18th, 1904, and the cross-examination of William McMillan at the same time, and ask you if that is your signature to both of those papers? A. I think it is.

Q. Mr. McMillan, who first spoke with you about taking up a claim under the timber and stone act?

Mr. TANNAHILL.—We object to any evidence in relation to the taking up of a claim to be given by this witness in support of bill 388 and 407, upon the ground that it is wholly irrelevant, incompetent and immaterial, his entry not being involved in either of these actions.

The SPECIAL EXAMINER.—Now, just read ~~the~~ question to Mr. McMillan, and Mr. McMillan just

(Testimony of William McMillan.)

put your chair up a little and let your foot go down there, and now speak just about as loud as you can to the Reporter there. Your voice seems to be rather low, and that gentleman there has got to get the testimony down.

WITNESS.—Yes. All right.

The Reporter thereupon repeated the last question.

WITNESS.—It is right for me to answer the question?

Mr. GORDON.—Yes, sir.

A. Well, George Kester.

Q. George H. Kester? A. Yes, sir.

Q. Where was that conversation had?

A. It was in my cabin—my house.

Q. Well, what was Mr. Kester's business there at that time?

A. Well, his business, he was up in the upper country some way, and he was well acquainted with me, and he was up in there and it was a nigh cut across that way to Orofino, and he rode past there and called in to see me. [477—147]

Q. When was this conversation?

A. It was in October, 1904, I think.

Q. Was it before you entered your claim?

A. Yes, before I entered the claim.

Q. How long before you entered your claim?

A. Well, it must have been from October to April.

Q. Now, what did Mr. Kester say?

A. Why, he asked me something about whether I had used my right for a timber claim, and wasn't I going to take one, and I told him I hadn't.

(Testimony of William McMillan.)

I didn't know anything about timber claims at that time. I told him I hadn't, and told him that I didn't have money enough to take one without mortgaging my place, and I told him I wouldn't do that, and so he said if I took a notion to take one if I needed a little money he would help me out, which he did. I had part of the money, but I didn't have enough.

Q. Did you see him again or talk with him again before you filed on your claim?

A. No, I didn't. I never seen him till after I had filed on my claim.

Q. Well, you went to view the land, did you?

A. Yes, I went up after that.

Q. How long after that conversation?

A. Oh, about a week or so. There was a little bad weather.

Q. Did anyone give you any instructions as to what you should do, as to how to get a claim?

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

Q. Well, did you know whether or not you had to have a locator go over the land with you, or was anything said about that by anyone?

A. Well, I knew that; I knew that, according to regulations, and I knew there had been a good many locating at that time.

Q. And did you arrange for someone to locate you on this land? A. Well, yes, I did. [478—148]

Q. Well, with whom did you make the arrangements? A. I made the arrangements with Dwyer.

Q. Did you know Dwyer?

(Testimony of William McMillan.)

A. Why, not particularly; I had seen him; I heard he was a locator.

Q. And in this first conversation with Mr. Kester, was there anything further said with reference to taking up this claim besides that he would help you out? A. No.

Q. Or furnish you the money?

A. No, nothing particular.

Q. Well, was there anything said about what you were to do with the claim?

A. No, nothing particular at all, whatever, that I remember of.

Q. Was there anything said to you about the value of the claim?

A. No; but he told me I would be safe enough in taking one, if I could raise the money to prove up; it would come in the market pretty soon. There wasn't any timber claims hardly selling at that time.

Q. Did he tell you that he would insure you so much money over and above expenses?

Mr. TANNAHILL.—We object to that as leading.

WITNESS.—Well, he said I would be safe enough; that I could make \$100.00 or \$150.00 for it anyhow—safe enough to take one.

Mr. GORDON.—Q. Now, how did he express that?

A. Why, he said that I would be safe enough, you know; something to that effect; I couldn't just tell you word for word now.

Q. Well, what was that about the \$100.00 or the \$150.00?

(Testimony of William McMillan.)

A. Well, that he was pretty sure I could make that much out of it above expenses, and I was well satisfied with that at that time, if I could make that much. I didn't know whether I could make it or not. I was pretty sure I could make that, or he wouldn't have told me I [479—149] could make that much.

Q. Did you know of anyone at that time that was buying claims?

A. No, I didn't. I knowed some of them had claims that couldn't sell them.

Q. Did you have any understanding or agreement with Mr. Kettenbach, or Mr. Kester, when you first talked with him, as to whether you were to turn that claim over to him? A. I did not.

Q. Or to anyone he told you to?

A. I didn't have any agreement.

Q. Did you have an understanding?

A. Well, no, I don't know that I had any understanding. I understood that I could turn it over to him if I had a mind to, but I could turn it over to anybody else. I wasn't forced to turn it over to him.

Q. Well, was it your understanding when he made the agreement with you that he would furnish you the money, that you would turn it over to him?

A. No, there was no such agreement as that at all.

Q. What's that?

A. No, I didn't make any such agreement as that at all, whatever.

Q. Well, what did you expect to do with that claim when you took it up?

A. I expected to sell it as soon as I could and get

(Testimony of William McMillan.)

what I could out of it.

Q. And who did you expect to sell it to?

A. Well, I expected to sell it to whoever would buy it. Of course, he told me about it, and I would give him the preference.

Q. But that is what you expected to do when you had your first talk with him and when you came to the conclusion that you would take it up?

[480—150]

A. When I had my first talk with him I didn't have much idea, and I thought it over for a day or two, and then I thought I would.

Q. I asked you who located you on this timber claim. A. A man by the name of Bliss.

Q. Was Mr. Dwyer with you and go over the claim with you?

A. No. Bliss was working for him, and he sent him in his place.

Q. Mr. Dwyer introduced you to Mr. Bliss?

A. Yes. I seen him in Pierce City and Orofino, and I knew him.

Q. Then you waited for six or seven months after you went over the land before you came down to file?

A. Yes.

Q. Who notified you of the time to come to the land office to file?

A. Why, nobody notified me. I could see that in the papers when the land came into market.

Q. Well, it wasn't open to entry, then, is that correct? A. No, it wasn't open to entry till April.

Q. And you filed on this land the day that the land

(Testimony of William McMillan.)

was open to entry, did you?

A. No; I was two or three days late on it. I wasn't here to the day.

Q. You wasn't here the first day?

A. I think it was the first of April, or the third of April, and I went on up on the 5th or 6th.

Q. It was the 25th? A. Of April?

Q. Yes.

A. Well, I was thinking it was the first. I don't remember, then.

Q. Did you have to stand in the line?

A. No, I wasn't in any line.

Q. Do you remember of paying a filing fee in the land office? [481—151] A. Yes.

Q. Do you remember how much that was?

A. I can't remember very well—somewhere about \$15.00.

Q. Do you remember who prepared this sworn statement for you, or the first papers you filed in the land office, which you have identified here?

A. No, I don't know whether I do or not. I can't remember now.

Q. Do you remember where you received those papers?

A. I think it was—I think a man named Cox, I think.

Q. A lawyer?

A. Yes. I think it is him, if I ain't mistaken. It is so long ago I forget.

Q. Had Mr. Cox done any legal work for you before? A. No.

(Testimony of William McMillan.)

Q. Do you know how you happened to go to see Mr. Cox?

A. Well, there was lawyers here then, and about that time they were all busy, and I went to the one that wasn't busy.

Q. Did anyone suggest your going to Mr. Cox?

A. Yes. I don't recollect now who it was. I asked somebody there in the land office where I could get them made out, and they told me where to go.

Q. Did you see Mr. George Kester the day that you made your filing in the land office?

A. I think I did after I had filed; I didn't see him before that.

Q. You saw him the same day?

A. I think I saw him the same day.

Q. And did you talk about this claim then?

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

Q. Did you have any further conversation about getting the money to make proof and purchase the land? A. No, I didn't.

Q. Then several months after that you went to the land office [482—152] again, to make your final proof? A. Yes.

Q. Do you remember whether or not you saw Mr. Kester then, before you made your final proof?

A. Yes, I seen him.

Q. Where did you see him?

A. I seen him at the bank where he worked at the time.

Q. Right in the bank? A. Yes.

Q. And what was your conversation with him then

(Testimony of William McMillan.)

relative to this claim?

A. Why, nothing more than I told him, I says to him I had taken a claim and I haven't got money enough, and he says, "I will help you out," and he wanted to know how much it was, and I told him how much I wanted. In fact, he told me when I first seen him that he would help me out, and he didn't go back on his word.

Q. Now, do you know how much you got on that occasion? A. I don't recollect now.

Q. Do you remember approximately how much it was?

A. I think I got about \$300.00, something like that. I had something over \$100.00 of my own. It took \$400.00 to prove up on, and I had something over \$100.00.

Q. Was that the same day that you made your proof? A. Which?

Q. That you got the money from Mr. Kester?

A. Yes. I came in on the train and proved up the same day.

Q. And did you give Mr. Kester a note?

A. I did not. He didn't ask for any.

Q. You say you didn't, and he didn't ask for one?

A. No.

Q. And you didn't pay him any interest?

A. No. [483—153]

Q. And was there any arrangement or agreement as to when you should repay him the money you got from him?

A. No. Well, I don't know; when I sold him the

(Testimony of William McMillan.)

timber claim I would pay him the money.

Q. Was anything said between you and Mr. Kester at that time as to where you should say you received the money with which to purchase that claim, when that question would be asked in the land office?

A. I don't think there was. I don't think he said anything, no.

Q. You remember going to the land office and being asked some questions when you made your final proof, don't you? A. Yes.

Q. Do you remember this question being asked you on cross-examination when you made your proof: "Question No. 16. Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money," and that you answered "Yes"?

Mr. TANNAHILL.—The defendants severally object to the question, and object to any and all evidence in relation to the final proof, upon the ground that it is irrelevant, incompetent and immaterial.

WITNESS.—Yes. What did I answer?

Mr. GORDON.—You answered "Yes" here, and I asked you if you made it, and you answered yes.

A. Well, give me the question again.

The SPECIAL EXAMINER.—Well, let the stenographer read the question over.

The stenographer thereupon repeated the said question and the answer thereto.

WITNESS.—I answered that yes. I considered that my own money.

(Testimony of William McMillan.)

Mr. GORDON.—Q. The next question, No. 17. “Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?” and the answer is: “Saved it from my earnings. [484—154] Six months.” Do you remember that question being asked you, and that answer being made by you?

A. Yes. Well, I had saved part of it from my earnings, and the rest was my earnings, too. I earned that money right at that timber claim.

Q. And that you had had the same in your actual possession for six months?

A. Well, I didn't have the whole of it in my possession six months—not all of it—I had part of it. I don't think they asked me that question.

Q. Now, how long after you made that proof did you sell this land? A. Two years.

Q. And who did you negotiate with for the sale of it? A. I sold it to Dwyer.

Q. William Dwyer? A. Yes.

Q. Now, who did you have the negotiations with, though? A. What do you mean by that?

Q. Who did you talk with about selling it?

A. I talked with Dwyer. The way I understood he was doing business with Kester, because I seen Kester, and Kester told me whatever business I done with Dwyer was all right with him and the money. Of course, he would have to get that money back when I sold the claim.

Q. Before selling to Dwyer, though, you went to see Mr. Kester about it, is that right?

(Testimony of William McMillan.)

A. Yes, I seen him, yes.

Q. And what did you say to Mr. Kester about the claim at that time?

A. I don't remember what I said. I don't remember.

Q. Well, did you ask him whether or not you could sell it to Dwyer, or anybody else? [485—155]

A. Oh, yes, I understood that, but I could sell it to him; yes.

Q. Well, what did you say to Kester about that?

A. Well, I asked Kester if it was all right, and he said yes.

Q. And do you remember how much Mr. Dwyer paid you for that claim?

A. I don't just recollect now. The whole thing was counted up, what it cost me, and he gave me so much over.

Q. How much did he give you?

A. He gave me \$200.00.

Q. Is that all you got?

A. I got all my expenses and money to pay for proving up and everything.

Q. Now, let me see. Did Mr. Dwyer advance you any money? A. At that time?

Q. Yes? A. No.

Q. And had you borrowed any money from Mr. Dwyer? A. No.

Q. And you sold to Mr. Dwyer, and how much did he give you?

A. I told you I don't remember how much it came to.

(Testimony of William McMillan.)

Q. No—but how much actual money did you get out of it?

A. \$200.00, I think, besides my expenses.

Q. \$200.00? I thought you said \$20.00, is the reason I asked you that.

A. No, sir. I said \$200.00.

Q. Now, out of that \$200.00 did you have any further expenses to meet? A. No, I didn't.

Q. How did Mr. Dwyer pay you that \$200.00?

A. He gave me a check.

Q. And was it his own check or somebody else's check? A. I couldn't say. [486—156]

Q. Well, I mean was it signed by Mr. Dwyer, or was it signed by somebody else?

A. I think it was signed by him. I think it was, if I ain't mistaken. He gave me a check, and I went in the bank and drewed the money.

Q. Two hundred dollars?

A. I drewed more than that. I drewed money enough to pay for the proving up and everything. I drewed \$700.00 or \$800.00, anyhow.

Q. And to whom did you pay the money you had gotten from Kester? A. I paid Dwyer.

Q. You paid it to Dwyer? A. Yes, sir.

Q. And did you pay a location fee?

A. Well, that was counted in with the expenses.

Q. And did you pay that also to Dwyer?

A. Yes, of course. I done the business—the money business—with Dwyer.

Q. You mean the settling?

A. Yes, settling up. I settled up with Dwyer.

(Testimony of William McMillan.)

Q. And after it was all settled up how much did you have?

A. Well, I couldn't tell how much I had. I had \$200.00. I don't know whether I spent any that day or not.

Q. Well, I mean was the \$200.00 clear?

A. Yes, the \$200.00 was clear of all expenses. That was more than I expected to get.

Q. Did you understand who the grantee was in the deed that you made at the instance—when you made the deed that Mr. Dwyer was talking with you about?

A. Yes.

Q. Who? A. Kittie E. Dwyer.

Q. And did you understand who Mr. Dwyer was purchasing it for? [487—157]

A. No, I didn't understand that altogether right. In fact, I didn't care. I was looking out for myself; I wasn't looking out for his business; it was the money side I was looking after. You know that is six years ago, and I forget a good many of these things.

Q. After you talked with Mr. Kester the first time did you endeavor to interest any other people in taking up a timber claim?

A. I didn't try to interest any. I had a neighbor right handy by, and I told him I thought he ought to take one up if he could raise the money to, and he could make a little money, too.

Q. Did you tell them where they could get the money to make the proof?

A. No. I told them they could probably make

(Testimony of William McMillan.)

\$100.00 or \$200.00 if they could get the money to prove up on it.

Q. Did you tell them of the conversation you had with Mr. Kester? A. No, I didn't.

Q. You didn't mention his name?

A. Well, I might have mentioned his name, knowing he was up there, but I didn't tell them anything about the conversation I had with him about the timber claim.

Q. And who were these neighbors of yours which you spoke of? A. Ben. Rowland and wife.

Q. Mr. McMillan, would you have sold this claim to anybody but Mr. Kester, or someone that Mr. Kester agreed that you could sell it to, for the same price that you sold it? A. I don't believe I would.

Q. Did you feel under obligations to Mr. Kester to let him have that timber claim?

A. Not any obligations; I felt I would give him the preference.

Q. Well, did Mr. Kester tell you when you first saw him that he was going to buy timber claims, or was interested in getting timber claims?

A. No, he didn't. [488—158]

Q. Well, what made you think that he should have the first call for that claim?

A. Well, I understood after that that he was buying timber claims, by others.

Mr. GORDON.—I will state to counsel that I have not the deed that was made by Mr. McMillan, and I assume that there will be no objection to stipulating that we can get either an abstract of it or a certified

(Testimony of William McMillan.)

copy, and putting it in the record at that time?

Mr. TANNAHILL.—No, we will have no objections to that.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of William McMillan, dated April 25th, 1904, the Nonmineral Affidavit of William McMillan, of the same date, the notice for publication of William McMillan, of the same date, the testimony of William McMillan given on final proof, and the cross-examination of Mr. McMillan at the same time, dated July 18th, 1904, the testimony of witnesses on final proof, the Receiver's Receipt and the Register's Certificate, dated July 18th, 1904, a certified copy of the patent, dated December 31st, 1904, issued to William McMillan; all of said papers relating to the entry of William McMillan of the southeast quarter of section 21, township 39 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants object to all of the documents offered in evidence in so far as they relate to case No. 388 and 407, upon the ground that the entry is not involved in these two cases, and they are irrelevant and immaterial. And the defendants respectively object to that portion of the documents relating to the final proof, and especially designated as the proof of publication, the testimony of Edwin Bliss, the cross-examination of Edwin Bliss, the testimony of William Dwyer, the cross-examination of William Dwyer, the testimony of claimant, William McMillan, and the cross-examination of claimant, William McMillan; upon the

(Testimony of William McMillan.)

ground that they are irrelevant and immaterial. The defendants respectively waive any further identification of the documents. [489—159]

Said documents were thereupon marked by the Reporter as Exhibits 7, 7A, 7B, 7C, 7D, 7E, 7F, 7G, 7H, 7I, 7J, 7K, 7L, 7M, and 7N.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. McMillan, how long was it after you got your patent before you sold the land to Mrs. Dwyer?

A. I sold the land before I got my patent.

Q. Before you got your patent? A. Yes, sir.

Q. And how long was it after you made your final proof? A. Nearly two years, I think.

Q. Had you made an effort to sell your land to anyone else during that time?

A. No—there was no buyers. Nobody offered to buy it from me.

Q. How much of your own money did you use in paying for the land? A. Eh?

Q. How much of your own money did you use in paying for the land?

A. I couldn't tell you right now. It is quite a while ago. I couldn't tell you.

Q. About how much of your own money did you have? A. Why, \$100.00 or more, I guess.

Q. And the balance of the money you borrowed from Mr. Kester?

A. Yes. I don't know whether I borrowed it or not, but he let me have it.

Q. And you told him you would pay him back

(Testimony of William McMillan.)

when you sold your claim? A. Yes, sir.

Q. You and Mr. Kester were good friends, were you? A. Yes; I was well acquainted with him.

Q. You were well acquainted with him?

A. I expect he wouldn't give anybody else the same chance. He knew me for a long time. [490—160]

Q. I believe you said you had no contract or agreement to sell this land to anyone at the time you made or filed your sworn statement. A. No, sir.

Q. You had no contract or agreement at the time you made your final proof? A. No.

Q. Then your affidavit that you filed at the time you filed upon the land, stating that "I have made no other application under said acts; that 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," that statement was true, was it?

A. Yes, sir, that is true. I helped nobody but myself, and what money I got was for my own benefit.

Q. And that is true now?

A. Yes. I wasn't doing it for anybody else only myself.

Q. And the only obligations you felt under to Mr. Kester was to give him the preference right of purchasing?

(Testimony of William McMillan.)

A. Yes. I thought I had a right to do that.

Q. Sure—and you didn't feel that he was under any obligations to purchase it from you?

A. No, he didn't. Well, he didn't purchase from me—well, he did, really.

Mr. GORDON.—Q. Did you ever make any other deed to this land to anybody?

A. No, sir. [491—161]

[Testimony of Charles Carey, for Complainant.]

CHARLES CAREY, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles Carey? A. Yes, sir.

Q. Where do you reside, Mr. Carey?

A. Pierce, Idaho.

Q. Where did you reside in August, 1904?

A. I was in Lewiston at that time.

Q. What was your occupation?

A. I had a shooting-gallery and a cigar-store, etc.

Q. What had been your occupation just prior to that time, or business?

A. I am a jeweler by trade.

Q. Well, were you in the jewelry business, or in the butcher business?

A. I went to work for Mr. Shaeffer in the winter time, I think, of 1904.

Q. And was that in the butcher business?

A. Yes, sir.

(Testimony of Charles Carey.)

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

A. Why, I wanted to get a claim, and I had Mr. Scotty look out for a claim for me.

Q. Now, what did Mr. Scotty say to you when he first talked to you about it?

Mr. TANNAHILL.—If the Court please, we desire to object to all the evidence of the witness in relation to any claims, upon the ground that the claim filed upon and to which the witness acquired title is not involved in the suit in any of the actions pending, and the evidence is irrelevant, incompetent and immaterial.

The last question was thereupon repeated by the Reporter. [492—162]

WITNESS.—Well, I had asked him to hunt me up some parties that could locate me, and he said he would see what he could do, and it ran along a long time, and I saw him at different times. Scotty worked for me part of the time, and I met him up in the woods one day, up near this timber, and I again asked him if he was going to be able to find anything, and he said he thought he could; and then that fall sometime he came to me one day and said he knew where I could get a claim.

Q. Is that the way of it, or did Mr. Scotty come to you and ask you to take up a claim, and told you there would be \$150.00 in it to you?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial, and cross-examination of his own witness, and improper.

(Testimony of Charles Carey.)

Mr. GORDON.—Answer the question.

A. He came down there and said he knew where he could get me a claim; he said he thought I would be able to get \$150.00 out of it.

Q. And did you know Mr. Dwyer at that time?

A. No, sir.

Q. And how long after that did you meet Mr. Dwyer?

A. Why, I believe it was the same afternoon—the same day.

Q. Well, did Mr. Scott take you around to see Mr. Dwyer? A. I think he walked up with me.

Q. Now, what did he say when he presented you to Mr. Dwyer?

A. He introduced me to him and said that Charlie was a good boy, or Mr. Carey is a good boy, or something like that, and told him what I wanted, that I wanted a claim, and I don't recollect every little word, but that was the substance of it, and Mr. Dwyer told me he thought he could locate me—in fact, he could locate me, and he said he didn't think the way the timber was that there would be over \$125.00 in it.

Q. He told you what?

A. That it wouldn't be over \$125.00 that I would be able to sell it for.

Q. Did Mr. Scott tell Mr. Dwyer when he introduced you to him [493—163] that you were a good boy, or that you were all right?

A. He said, "He is a good boy; he is an all right fellow," and told how long he had known me, and

(Testimony of Charles Carey.)

different things.

Q. And when you were introduced to Mr. Dwyer, what else did he say at that time about taking up a timber claim?

A. He said I wanted to take up a timber claim.

Q. Well, what did Dwyer say?

A. Oh, Mr. Dwyer? He told me that he could locate me, and he said the least said about it would be the better; I had better keep it to myself.

Q. Was there any arrangement then about where you were to get the money to pay for this land?

A. No; I never said anything to Dwyer about money.

Q. Had you said anything to Mr. Scott about the money?

A. Scotty knew I would have to have the money.

Q. Well, you knew you would have to have the money, too, didn't you?

A. I knew I would have to have some.

Q. Did Mr. Scott tell you where you could get the money?

A. He said he thought Mr. Dwyer could get it for me.

Q. Did Mr. Dwyer take you to this timber claim?

A. No, sir.

Q. Are you a timber locator?

A. Why, I have done a little of it since that time. At that time I didn't know anything about timber at all. I have been up there in the timber quite a little now.

Q. How did you know the claim you had in mind

(Testimony of Charles Carey.)

to locate upon was the same claim you had seen on a fishing trip?

A. Well, we were there ten days, and he was around this country and section, and I was pretty sure I had been on the claim.

Q. I understood you to say you knew nothing about the locating business at that time? [494—164]

A. No, not to go out and make a business of locating. I wasn't advertising to locate people, or a regular locator at that time. In fact, I am not now. But then I mean to say that I know a great deal more about the country than I did then.

Q. Could you at that time take a plat and read the descriptions, or run out the quarter sections?

A. Yes, sir.

Q. And tell from that what section of the country it was in, and whether you had been over it?

A. Yes, sir; and there were parties with me that were very familiar—had homesteads right near there.

Q. Did you have any arrangement with Mr. Dwyer to pay him a locating fee?

A. I don't know that there was anything said at that time; I believe not.

Q. Well, let me ask you, if you knew where this claim was and you had been over it why you needed a locator, if you wanted to file on it?

A. The claim was—as I understood it, he held—Well, I didn't know the claim; no; I will take that back; I didn't know where the claim was, of course.

(Testimony of Charles Carey.)

He says, "You have been over there in that territory."

Q. Now, go on and tell what it was that Mr. Dwyer held? A. He had a relinquishment, I suppose.

Q. Well, did you suppose, or didn't you know it?

A. Well, I didn't know it, not until I came to file.

Q. And then he turned the relinquishment over to you? A. Yes, sir.

Q. And did you pay anything for the relinquishment? A. No, I didn't.

Q. Were you asked to pay anything for the relinquishment? A. No, sir. [495—165]

Q. And then you went to the land office and filed your original papers, or your application?

A. Yes, sir.

Q. I show you timber and stone lands sworn statement signed by Charles Carey, dated August 23d, 1904, and ask you if you signed that paper and filed it in the land office the date it bears?

A. That is my signature all right.

Q. I show you the testimony given by Charles Carey on final proof, dated November 18th, 1904, and ask you if that is your signature to that?

A. Yes, sir.

Q. I show you the cross-examination of Charles Carey, taken at the same time, and ask you if that is your signature to that? A. Yes, sir.

Q. Who prepared that sworn statement for you?

A. The first one?

Q. Yes, sir.

A. The first one, I think, Mr. Dwyer made out.

(Testimony of Charles Carey.)

Q. Did Mr. Dwyer take you, immediately after you were introduced to him by Mr. Scott, and prepare that paper for you?

A. No; it was the next day, or within a day or two after.

Q. Do you know where that paper was prepared?

A. It was in a room there right away from the land office.

Q. Do you remember whose office it was?

A. No, I don't know only from hearsay afterwards.

Q. Well, was it in the office occupied by Mr. I. N. Smith, the lawyer?

A. I have understood that since.

Q. You don't know of your own knowledge?

A. I don't know.

Q. Then you took that sworn statement and went to the land office? [496—166] A. Yes, sir.

Q. Did Mr. Dwyer go with you? A. No, sir.

Q. Do you remember how much you paid in the land office when you filed your sworn statement?

A. No, I don't remember exactly.

Q. Do you remember how much it was?

A. No. It was no great sum, but I couldn't say.

Q. Where did you get the money that you paid in the land office? A. Dwyer gave it to me.

Q. Who? A. Mr. Dwyer.

Q. Did you suggest the final proof witnesses, or did Mr. Dwyer suggest them?

A. A few days before we proved up I asked him what there was about it, something like that, and

(Testimony of Charles Carey.)

in a few days I told him my time was up on the notice—the 18th, rather—called his attention to it, and at that time he asked me if I would have the money.

Q. Is that the first time he had said anything to you about the money? A. That is the first time.

Q. Well, when you started this entry, did I understand that you didn't have even the money to file your original papers in the land office?

A. Oh, I had the money.

Q. Sir? A. I had money enough to do that.

Q. Well, why was it you got it from Mr. Dwyer, then?

A. Well, I had understood from Mr. Scotty that he would furnish me the money.

Q. Furnish you all the money you needed?

A. Yes, sir. [497—167]

Q. And did you have to ask Dwyer for it, or did he hand it to you?

A. No; he just handed it to me.

Q. You didn't tell Dwyer that you didn't have the money? A. No; there was no questions asked.

Q. And then I understand you to say you went to Mr. Dwyer when it came time to make the proof, and suggested that you needed the money?

A. A few days before I said it would soon be time to prove up, and he said, "When is it, Charlie?" and I says, "It is the 18th," and he says, "Have you got money enough?" and I told him no.

Q. And what did he say then?

A. I don't remember the words he might have

(Testimony of Charles Carey.)

said. I know I got money from him.

Q. Now, did you get the money the day you made the proof, or how long before?

A. It was the day before, I think.

Q. And what did you do with the money?

A. I deposited it in the Lewiston Trust Company.

Q. Is it the Lewiston Bank, or the Idaho Trust?

A. The Idaho Trust, I guess it is.

Q. How much money did he give you?

A. \$400.00.

Q. And when you deposited it in the Idaho Trust Company, did you just open an account; or did you get a certificate of deposit?

A. I got a certificate of deposit.

Q. Why did you do that?

A. Why, he suggested that. I don't remember. I went in there and deposited it and took a certificate of deposit.

Q. And was there any reason stated by Mr. Dwyer why you should get a certificate of deposit?

A. It seems to me that he said it would be handier for me to [498—168] take to the land office.

Q. Did you take it to the land office?

A. Yes, and they refused to take checks; they wanted the currency.

Q. Do you remember whether or not Mr. Dwyer told you that it would look better if you deposited the money and went there?

A. Yes, he said something like that; that it would look better.

Q. Now, when you got the money from Mr. Dwyer

(Testimony of Charles Carey.)

was there anything said by him as to the questions that would be asked at the land office?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial, relating to the final proof and not to the sworn statement.

Mr. GORDON.—Answer, please.

A. I don't know at that time whether there was or not; there was one time before. I had seen the papers there, or something about it, I don't just recall now; but I knew there was questions there that didn't look just right, and I called his attention to it, and I just forget now—

Q. Do you remember whether you had any discussion with him about certain parts of your sworn statement—the first paper you filed?

A. The first paper?

Q. Yes.

A. That would be the one there in the office. I don't remember about that; I don't believe I did; I think that was filled right out.

Q. But do you remember that your sworn statement contained this clause, to which you were sworn: “That 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 for the benefit of any person except myself”? Do you re-

(Testimony of Charles Carey.)

member whether or not before you signed and swore to that paper that you discussed the [499—169] propriety of taking that oath, with Mr. Dwyer?

A. I couldn't say whether it was the first paper or the second one. This is the—excuse me.

Q. I am speaking of the first paper now.

A. The first paper?

Q. Yes.

A. I can't remember on that first paper, whether it was the first or second one. We discussed that question, but whether it was on the first or second one I don't know.

Q. What did Mr. Dwyer say about that?

A. He says, "You are taking it up for your own benefit."

Q. Did he explain why you were taking it up for your own benefit?

A. Yes; he said, "If you can sell it you will get something for yourself."

Q. Did he argue it with you?

Mr. TANNAHILL.—We object to that as leading and suggestive, and cross-examination of his own witness.

Mr. GORDON.—Answer the question.

A. Yes, we argued it back and forwards and talked it over.

Q. Did he give you a set of the questions that you would be called upon to make answer to on final proof, for you to go over?

A. Yes, I seen a set of those.

Q. Now, where did you see them?

(Testimony of Charles Carey.)

A. He gave them to me to take them down to my home to look them over.

Q. And did he give you any instructions as to them?

A. He said that Mr. Scotty could inform me probably on the questions I wasn't sure of. I asked Mr. Scotty, but he didn't seem to know any more about it than I did myself, and I stopped Mr. Dwyer once and asked him about them.

Q. What did Mr. Dwyer say about it when you stopped him?

A. He said there was nothing wrong about it; that I was taking [500—170] it up for my own benefit. The question that bothered me, one thing was the question—you couldn't hire money, and I was hiring this money.

Q. Was anything said about how you should answer the question about the agreement?

A. Well, I don't know now. I had no agreement to sell to any certain person.

Q. Well, was there anything said about that between you and Mr. Dwyer?

A. I don't just recall now.

Q. And you went to the land office and made your proof? A. Yes, sir.

Q. And you made proof with the money that you had gotten from Mr. Dwyer? A. Yes, sir.

Q. Did I understand you to say how much Mr. Dwyer gave you?

A. He gave me \$400.00, at the time I deposited it in the bank.

(Testimony of Charles Carey.)

Q. Do you remember when you made proof 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?" and that you answered "Yes"? Do you remember that?

Mr. TANNAHILL.—We object to that question, upon the ground that it is irrelevant and immaterial, and we object to all the questions in relation to the final proof upon the same grounds.

Mr. GORDON.—Q. Did you make that answer?

A. Yes, sir.

Q. Was that true?

A. I considered it my money. I hired it.

Q. The next question, do you remember this: "Where did you get the money with which to pay for this land, and how long have you had [501—171] the same in your actual possession?" and the answer is: "Earned it in my business. 12 years." Do you remember that question being asked you?

A. Yes, sir.

Q. And you making that answer? A. Yes, sir.

Q. Was that true? A. No, sir.

Q. The next question, "Have you got a bank account during the past six months; and if so, where?" "Answer. Yes, sir. Idaho Trust Company." Do you remember that question and answer?

A. Yes, sir.

Q. Was that certificate of deposit that you had the only deposit you had with the Idaho Trust Company? A. No, sir.

(Testimony of Charles Carey.)

Q. Now, that question about having the money in your possession for a certain length of time, did you discuss that with Mr. Dwyer?

A. I don't remember of it. I might have done.

Q. Well, what induced you to make that answer?

A. That is where I answered the 12 years, is it?

Q. Yes, and that you earned it in your business.

A. I don't know whether it was Mr. Dwyer or Mr. Scotty suggested that to me; it was one or the other.

Q. After you made your proof, or the same day you made your proof, did you see Mr. Dwyer again?

A. Yes, right after I made proof.

Q. Did Mr. Dwyer go to the land office with you to make your proof?

A. Yes; he was one of my witnesses.

Q. Did he go to the Idaho Trust Company with you to get your certificate cashed?

A. No, sir. [502—172]

Q. The Idaho Trust Company is just on the other corner of the street from the land office, wasn't it?

A. It wasn't very far; it was up there two doors was all.

Q. Did he wait at the land office while you went to get it cashed?

A. He was around the building somewhere.

Q. And when you had made your proof and came out— Did they give you a receipt at the land office?

A. Yes, sir.

Q. And did you meet Mr. Dwyer in the building just after you came out of the land office?

A. Yes, sir.

(Testimony of Charles Carey.)

Q. And what did you do with your receipt?

A. I gave it to Mr. Dwyer.

Q. And then what happened?

A. He gave me a receipt for a location.

Q. And what else did he do at the same time?

A. Well, he gave me \$125.00 that day a little later.

Q. Now, he gave you \$400.00, I understand, to make your proof? A. Yes, sir.

Q. He didn't give you any more money at that time, did he? A. No, sir.

Q. And then you came out of the land office and he gave you a receipt?

A. Well, he gave me \$150.00.

Q. When was that?

A. Well, it was just before I made proof, I guess.

Q. And then you came out of the land office and you gave him your receiver's receipt, and he gave you a receipt for what? A. For a location.

Q. And had you paid him any location fee?

A. Not up until this time. I paid him this \$150.00.

[503—173]

Q. He gave you \$150.00?

A. Yes, before I proved up.

Q. And then did he ask you for that \$150.00?

A. I can't remember what he did say just now. He wrote me out a receipt for the location, and whether he asked me for the money—he must have said something in that regard, but what words he said—

Q. Didn't he tell you that he gave you that \$150.00, and if you would give it back to him he would give

(Testimony of Charles Carey.)

you a receipt for it, to make it look regular?

A. Well, I know he charged \$150.00 for the location.

Q. But it was the same \$150.00 that he gave you?

A. The same \$150.00 that he gave me.

Q. Then did you get any more money that day?

A. I got \$125.00.

Q. Now, state how that happened.

A. Well, we went down to the California Wine House, and he gave me \$125.00.

Q. Now, what did he give you that for?

A. Well, that was for—he said when I took up the claim he said I could get that much out of it if I wanted to sell it.

Q. And that was carrying out his part of the agreement, was it?

A. Well, yes, I think so, as I understand it.

Q. Did you give him a note for this money that you got from him? A. No, sir.

Q. You didn't pay him any interest on it?

A. No, sir.

Q. And did you make a deed to Mr. Dwyer or anybody else? A. Not at that time.

Q. Well, after your proof, on the same day, you went to some office with Mr. Dwyer, did you not?

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

Q. Whose office was it? [504—174]

A. It was over the trust company.

Q. Well, don't you know whose office it was?

A. It said "Kettenbach" on the door, but I don't know who.

(Testimony of Charles Carey.)

Q. Well, do you know which Mr. Kettenbach? There are a lot of them.

A. No. I don't know any of them.

Q. And what did you do when you went in there?

A. I signed some paper.

Q. Now, don't you know what it was?

A. No—I never read the paper.

Q. And do you own any property, Mr. Carey?

A. At the present time?

Q. Yes.

A. Well, not straight. I have a little, but it is sold under deeds in trust.

Q. Well, are you in the habit of signing away property rights which you have, without even reading the papers?

Mr. TANNAHILL.—We object to that as leading and suggestive, and improper, and cross-examination of his own witness.

WITNESS.—I wouldn't at the present time, no. At that time I had never owned anything of that kind. It was new to me.

Mr. GORDON.—Q. I will ask you whether or not you had any interest in this whole transaction other than the \$125.00 that you were told you could get out of it when you first talked with Dwyer?

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness and not a statement of fact; and on the further ground that the witness has stated the conversations and what transpired.

Mr. GORDON.—Answer the question.

A. He told me to go on. He said, "Now, Charlie,

(Testimony of Charles Carey.)

if you can find a buyer that will give you any more money, come and let me know.”

Q. When was that? [505—175]

A. That was that same day.

Q. Did you ever get any more money?

A. No, I never did.

Q. What did you consider that \$125.00 was for that he gave you at the Wine House?

A. I considered I took up his proposition of \$125.00.

Q. Well, didn't you consider that you had already taken his proposition?

A. Well, just as he said, “If you can get another buyer to take it up and get any more money, to go ahead and do it.”

Q. And you already had the money?

A. I had the \$125.00.

Q. Well, what was it you signed when you went to Mr. Kettenbach's office? A. I don't know.

Q. What did it look like?

A. It was a long piece of paper.

Q. Printing on it? A. Some printing on it.

Q. Do you know a deed when you see one?

A. Yes, sir.

Q. Do you know whether it was a deed or not?

A. It was just one sheet—one long sheet.

Q. Did you acknowledge it before Mr. Kettenbach?

A. Yes, sir.

Q. Was the paper prepared when you went there? A. Yes, sir.

Q. And you just signed it? A. Yes, sir.

(Testimony of Charles Carey.)

Q. And did you get your \$125.00 before then or after that?

A. It was afterwards; after I signed the paper.

Q. Immediately after?

A. Well, we walked from there down to the land office—ten minutes, maybe. [506—176]

Q. Now, Mr. Carey, do you remember when this matter of taking up a timber claim was first broached to you that you went out looking for Mr. Scott or whether Mr. Scott came to your place and asked you if you wanted to take up a timber claim?

A. He was working for me when I first asked him to look me up a claim.

Q. Well, do you ever remember any time he ever came to you and asked you if you wanted to take up a claim?

A. At a time after he had already found one, he came down and said, "I know where you can get a claim."

Q. What did he say about it then?

A. He went on and told me it was a pretty fair claim, and said I could get \$150.00 off of it.

Q. What did he say about the expenses?

A. He told me I could get my expenses paid.

Q. What did you tell him?

A. I think I told him I would locate on it.

Q. Wasn't it then that you went right around to Mr. Dwyer's?

A. I believe we went right around and saw Mr. Dwyer that afternoon.

Q. Now, was the conversation that you had with

(Testimony of Charles Carey.)

Mr. Scotty that you were to get \$150.00 for your claim, or \$150.00 for your right?

A. Well, I understood it right at that time.

Q. You understood that you were to sell your right?

A. Everybody in town it seemed as though was selling that way. It seems as though people came along to my place of business every day talking about selling their rights.

Q. Did you know to whom they were selling their rights?

A. There was a good many people buying at that time.

Q. Do you remember that in some of the questions asked you at the land office you testified that you didn't know of any persons that were buying timber claims?

A. I don't know as I remember that question. I don't know of anybody buying, but there was people that was buying, but I didn't know [507—177] them; I wasn't acquainted with anybody.

Q. When you went to the land office the first time and made out your notice of publication, who suggested the final proof witnesses?

Mr. TANNAHILL.—We object to it on the ground that it is irrelevant and immaterial, and relates to the final proof and something occurring subsequent to the filing of the declaratory statement, and irrelevant and immaterial.

The EXAMINER.—Answer the question.

A. Mr. Dwyer.

(Testimony of Charles Carey.)

Mr. GORDON.—Q. Now, do you remember whether or not you had a conversation with Mr. Dwyer just before making your proof, as to what you should testify to in the land office with reference to whether or not you had an agreement?

Mr. TANNAHILL.—We object to it as repetition, irrelevant and immaterial.

The SPECIAL EXAMINER.—Answer the question.

A. I think we did; I am sure we did.

Mr. GORDON.—Q. Now what brought about that conversation?

A. I don't know whether I asked him or he told me without asking; I couldn't say.

Q. What did he tell you?

A. He says, "You haven't any agreement to sell."

Q. Well, what else? A. I don't remember now.

Q. But you did sell though within a half hour afterwards, didn't you?

A. No, I didn't deed the place until six months afterwards.

Q. I am not asking you about deeding it now. I am asking you about selling.

A. No, I didn't consider that I had. He told me if I could find a buyer to let him know.

Q. He had already paid you the \$125.00? [508—178]

A. He had paid me the \$125.00; he said I could realize that on the claim.

Q. And you had realized it? A. Yes.

Q. Then what interest did you have in it?

(Testimony of Charles Carey.)

Mr. TANNAHILL.—Objected to as irrelevant and immaterial.

A. If I could find somebody to pay more I would get more. Scotty told me I ought to get more for it.

Q. What did you expect you would have to do? Give the money back to Mr. Dwyer? You had already taken it from Mr. Dywer?

A. Yes, I supposed I would have to pay him back the money.

Q. Do you remember testifying, Mr. Carey, at the trial of Mr. Kester, Mr. Kettenbach, and Mr. Dwyer, at Moscow, in the spring of 1907?

A. Was that the first case?

Q. Yes. A. Yes, I was over there.

Q. You remember testifying, don't you?

A. Yes, sir.

Q. And do you remember what you said when you testified in that trial as to what you understood you had done when you gave Mr. Dwyer your final receipt?

Mr. TANNAHILL.—We object to that on the ground that the witness has a right to examine his evidence if he wants to before he answers any question in relation to it.

Mr. GORDON.—I haven't any objection to the gentleman seeing his evidence.

A. At that time I was pretty badly rattled, I was pretty badly scared. They had me there in the sweat-box, and they were going to indict me.

Q. What for?

(Testimony of Charles Carey.)

A. If I didn't seemingly go right against what was right.

Q. You admitted to them that you had perjured yourself, didn't you? [509—179]

A. Yes, sir.

Q. And you have admitted here that the statements you made in the land office were untrue, haven't you?

A. Yes, with regard to having the money.

Q. Well, were you scared when this question was asked you? (I read from page 321 of case No. 1605, mentioned in the stipulation on the first day of the hearing.)

A. I was pretty badly excited during all of that.

Q. Were you excited when this question was asked you: "Was there anything said at that time you gave it to him, at the time, by either of you, why he wanted it, or why you gave it to him?" That refers to giving Mr. Dwyer the final receipt. And to which your answer was: "I don't think there was." Do you remember that question being asked you and that answer being made?

A. I don't remember.

Q. Do you remember this question being asked you: "How did you happen to give it to him?" Answer. I had understood previously that I had to deed it over to someone, and I thought that was all there was to it." Do you remember making that answer?

A. I don't know that I do, although I remember I would have to deed it to somebody in order to ever

(Testimony of Charles Carey.)

get any money out of it.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Charles Carey, dated October 23, 1904; the testimony of Charles Carey given on final proof, and the cross-examination thereof, which has been identified by the witness Carey; the testimony of the witnesses on final proof; the receiver's receipt and the register's certificate, dated November 18, 1904, all having to do with the north half of the northeast quarter, and the north half of the northwest quarter of section 15, township 38 north of range 6 east, Boise meridian.

The above exhibits were thereupon marked 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8I, 8J, 8K, and 8L.

Mr. GORDON.— [510—180] Q. I show you receipt signed by William Dwyer, dated November 18, 1904, which reads as follows: "Received of Charles Carey \$150.00 in full for location fee. Signed, William Dwyer." Is that the paper that your referred to awhile ago?

A. Yes, sir.

Q. As being the receipt he gave you for the \$150.00? A. Yes, sir.

Mr. GORDON.—We offer that in evidence.

Mr. TANNAHILL.—The defendants severally object to each and all of the papers offered in evidence, upon the ground that they are irrelevant, incompetent and immaterial. And the defendants especially object to the introduction in evidence of the final proof papers designated as testimony of the claimant Charles Carey, cross-examination of claimant

(Testimony of Charles Carey.)

Charles Carey, testimony of witness William Dwyer, and cross-examination of witness William Dwyer, testimony of witness Melvin C. Scott, and cross-examination of the witness Melvin C. Scott, upon the ground that they are incompetent, irrelevant and immaterial.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Carey, in reply to Mr. Gordon's questions, you stated that you was confused and scared when you was at Moscow, when you testified in the other two trials, that you had been in the sweat-box for a long while, and they threatened to indict you. Who was it that threatened you?

A. I don't know their names; they was supposed to be Government men.

Q. Do you know Mr. O'Fallon?

A. Yes, I believe he was one of them.

Q. Was he one of them? A. Yes, sir.

Q. Do you know Mr. Ruick, who was at that time United States [511—181] district attorney?

A. Yes, sir.

Q. Was he one of them?

A. No, he didn't say anything to me.

Q. Do you know Miles Johnson, who was assistant at that time? A. Yes, he was there.

Q. And was he one of them that talked to you in the sweat-box?

A. He was in there; I don't know,—they was all chipping in, first one would talk and then another;

(Testimony of Charles Carey.)

I don't know which one.

Q. How long did they have you in the sweat-box?

A. I couldn't say just how long,—quite awhile.

Q. Was you in the sweat-box more than once, or different times?

A. I don't remember; I guess just the once.

Q. Now, Mr. Carey, in response to a question from Mr. Gordon, I understood you to say that you did not consider that you had any contract to sell your land to anyone, before you made final proof, and that your statement in that regard is true. That is right, is it?

A. Yes, sir, I never considered that I had an agreement.

Q. Then in your sworn statement, where you swore that, "I have made no other application under said acts." That is true, is it? You had made no other application? A. No.

Q. "That 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." That is true, is it?

A. Yes, I thought it was for my own benefit.

Q. And it was true then, and it is true now?

A. Yes, sir.

(Testimony of Charles Carey.)

Q. Now, Mr. Carey, do you remember that in the former trials [512—182] you were confused and thought that you had signed a deed to your land when you proved up?

A. I thought I had signed something; I wasn't sure what it was; in fact I don't know today.

Q. And do you remember that you made your final proof on the 18th of November, 1904, do you?

A. Yes, sir.

Q. I will show you this deed, dated and acknowledged April 15, 1905, and ask you if you now remember of that being the time that you conveyed the land, that you deeded the land?

A. Yes, I remember this.

Q. And that was when you finally deeded the land away? A. Yes, sir.

Q. Now, do you not remember, Mr. Carey, that the instrument you signed when you made your final proof and gave to Mr. Dwyer was an option which gave him the right to sell the land for you if he could find a buyer?

A. I don't know what the paper was.

Q. It might have been that kind of a paper?

A. It might have been an option for all I know.

Q. And that he told you if you could sell it for any more money to go ahead and sell it?

A. He said to come and let him know.

Q. And you wasn't able to sell it for any more money? A. No.

Q. And you finally told Mr. Dwyer that you wanted to make a settlement and settle up?

(Testimony of Charles Carey.)

A. Yes, that I was going to leave.

Q. And then is when you and Mr. Dwyer got together and settled up, and you gave him this deed?

A. He asked me when I wanted to leave town, and I told him, and he says, "Come around to-morrow or next day and I will see what I can do for you, or let you know," or something to that effect.

[513—183]

Q. And you practically had control of your land up until that time?

A. From what he told me I supposed I did.

Q. And after you gave him this deed you considered that you had no more interest in the land after that? A. No, I considered it sold then.

Q. You are somewhat familiar with the custom of locating people on claims, are you not?

A. At the present time, yes.

Q. And it is customary for people, for a locator to see that they have the proper witnesses, that they get the proper description of the land, and that they get their filing made properly, is it not?

A. It is often the case that they do; it depends how familiar they are themselves with it, whether they are strangers in the country or not.

Q. People who locate on land are usually not very familiar with the boundaries of it or the country, are they?

A. No, you are supposed to show them the land, show them the corners.

Q. Now, Mr. Carey, you remember of testifying at Boise, do you, in the cases of United States

(Testimony of Charles Carey.)

against Kester, Kettenbach and Dwyer, the criminal cases, in which they were acquitted, involving a portion of this same land, and especially involving your claim? A. Yes, sir.

Q. And your evidence there was substantially the same as you have given it here, was it not?

A. So far as I know.

Q. And you stated, Mr. Carey, that you understood at the time you sold your land that you were selling your right, or words to that effect. I will ask you if you haven't since discovered that you was mistaken in that term, in using that term?

A. Yes.

Q. That when a man locates on a piece of land and takes it up [514—184] and afterwards sells it, he is simply selling the land, and that he don't sell his right? A. No.

Q. You also understand that when a man locates on a piece of timber land he usually expects to sell it and make some money out of it? That is your understanding of it, is it not? A. Yes, sir.

Q. And if he does do that, locates upon a piece of land with the intention of selling it and making some money out of it, you do not understand that he is doing anything wrong, do you?

A. Why, no, I don't think so.

Q. When you say that Mr. Dwyer said, "The least said about your entry the better," do you not remember that Mr. Dwyer had a relinquishment to this tract of land at that time that had not been filed, and that he was afraid that if it was made

(Testimony of Charles Carey.)

public that someone would file a contest, or something of that kind, and prevent your filing on it?

A. Well, I couldn't say positively whether he told me that, that there was a relinquishment or not. It seems to me, since you speak about it, that Mr. Scotty told me that, he told me of it before I met Mr. Dwyer.

Q. Told you there was a relinquishment?

A. Yes, it was a relinquishment. It seems to me he told me something about it.

Q. You had no contract to sell your land to Kester and Kettenbach, before you made your final proof, did you? A. No.

Q. And had made no contract to sell it to any particular person, before you made your final proof?

A. No, sir, I never knew who I would sell it to.

Mr. BABB.—Q. Mr. Carey, you spoke about going up stairs over the Idaho Trust Company and signing a paper in some office. A. Yes, sir. [515—185]

Q. You said the sign on the office had the name of Kettenbach? A. Yes, sir.

Q. I will ask you if you didn't go up there to appear before a notary public in there?

A. Yes, a notary.

Q. Who was that notary public? Was it Mr. Otto Kettenbach, or Mr. J. H. Schildts, do you remember?

A. No, I don't remember.

Q. It was a notary you went up there for?

A. Yes, sir.

Mr. GORDON.—May I ask which time your ques-

(Testimony of Charles Carey.)

tion relates to, Mr. Babb?

Mr. BABB.—Well, mine didn't relate to any special time; it related to the time he spoke of being up there, as this deed being signed.

Mr. GORDON.—I hold a deed in my hand, made by Charles Carey, single, to W. F. Kettenbach and George H. Kester, dated April 15, 1905, executed before John H. Schildts, the same date, conveying the north half of the north half of section 15, in township 38 north of range 6 east, Boise meridian, recorded at the request of the Lewiston National Bank, February 3, 1906. It is stipulated by and between the parties hereto that such deed was executed by Mr. Carey on said date, and recorded at the request of the Lewiston National Bank on the 3d day of February, 1906, further identification being waived.

Mr. TANNAHILL.—Q. Mr. Carey, I will ask you if you remember when Mr. O'Fallon and the other special agents were talking to you, if they used the term, selling your right?

A. I don't remember.

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

A. No, sir.

Mr. TANNAHILL.—That is all. [516—186]

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Carey, did I understand you to say that since your entry, or since locating on a timber claim, that you had become a locator?

A. I have done a little; I don't claim to be a professional.

(Testimony of Charles Carey.)

Q. Who did you locate?

A. I have located several.

Q. Name them.

A. That is, I go out and look at the land for them and see whether it is worth locating, and such things as that.

Q. Did you ever take anybody over the land, over a timber claim, and then have them locate on it?

A. Well, I have told them of a good many claims. Location today ain't what it was at the time I located up there, lots of people up there will tell you.

Q. The duty of a locator, as I understand it, is to take people who have a desire to locate or to make entries on various kinds of land, to take them over it and show them the cornerstones?

A. Yes, that is what I understood after I was familiar with the work.

Q. Did you ever take anybody out for that purpose?

A. I am quite familiar with the work, and have been out some, as I say, and have had people ask me my opinion of what the claims would be worth.

Q. But you are not answering my question.

The SPECIAL EXAMINER.—Just answer directly.

A. No, not what you mean, I don't believe I have.

Q. Then you have never located anybody on a claim? A. No, not actually located.

Q. Are you a cruiser?

A. Well, I am familiar with timber.

Q. What experience have you had, familiarizing

(Testimony of Charles Carey.)

yourself with timber? [517—187]

A. I have owned several claims myself.

Q. How many claims have you owned?

A. I have owned three.

Q. Timber claims?

A. Yes, sir, some had timber on, and one was a homestead; of course there was timber on it.

Q. Can you go out into the woods and scale timber?

A. I can estimate a tree.

Q. You can estimate it by counting them?

A. No, but by using my judgment as to the size and how many logs there is in a tree, about what.

Q. Were you ever paid anything by anybody for that service?

A. I was by one fellow; he wanted to take up a forty, and he wanted me to go and look at it to see if I thought it was worth taking up.

Q. Who was that?

A. His name is—he works for the dredge company—George Kissinger.

Q. What did he pay you for that? A. \$10.00.

Q. Did you go up into the timber for him?

A. Yes, sir.

Q. How far is it from here?

A. Oh, it would be around eighty miles from here.

Q. Where were you at the time?

A. I was in Pierce.

Q. How far from Pierce was it?

A. About two miles, or two and a half.

Q. Did you have to hire a team to go over there?

A. No, sir.

(Testimony of Charles Carey.)

Q. And that is the only experience you ever had, either as a locator or estimator of timber? [518—188]

A. In friendship, among my friends, I have been out and looked at quite a good many pieces of timber, for people that I knowed and was interested in seeing them get a claim. I have got two or three parties now that told me to watch out and if I see any vacant land to let them know.

Q. What are you employed at now?

A. I am in Pierce.

Q. What is your business?

A. Oh, common labor, anything I can get to do.

Q. You have spoken of being in the sweat-box. What do I understand you to mean by that?

A. That was the common name the boys was all giving it at that time.

Q. Did you consider that you were in the sweat-box when you were taken into a Government officer's office and asked questions as to what you knew about an alleged offense?

A. That was the name they seemed to call it by.

Q. By whom were you questioned in the United States attorney's office? A. Different ones.

Q. Give who they were. Who were they?

A. I don't know who they were; they all asked me questions.

Q. How many were there?

A. Two or three or four or five.

Q. Was Mr. O'Fallon there? A. Yes, sir.

Q. And Mr. Goodwin? A. Yes, sir.

(Testimony of Charles Carey.)

Q. And Mr. Johnson?

A. Yes, some of the time; I couldn't say that any of them was there all the time.

Q. Did you tell them anything that wasn't true?

A. With regard to the money, I tried to cover that up; I thought [519—189] that was wrong.

Q. But what you told them that was untrue would be evidence in favor of the persons charged, wouldn't it, rather than against them?

A. Against the Government, you mean?

Q. No, the persons that were charged or being investigated.

A. Why, yes, I suppose it was favoring them. You mean favoring Mr. Kettenbach?

Q. Yes.

A. Yes, it was favoring him.

Q. And did you tell all of those gentlemen the same things that you have told in court here to-day?

A. I don't remember.

Q. Did you withhold anything from them?

A. No, I don't remember what I did say.

Q. Did anybody ask you to tell them anything but the truth?

A. They said I wasn't telling the truth.

Q. With reference to where you got the money?

A. No, I think I told them that straight.

Q. Did they tell you you weren't telling the truth about that?

A. Well, when I tried to repeat my land office papers with respect to having it twelve years.

Q. They told you that wasn't true?

(Testimony of Charles Carey.)

A. They told me it wasn't true.

Q. Was that justified?

A. Yes, that was justified.

Q. You say when you testified at the other trial you were scared.

A. In Moscow, yes; we was all scared; we went down there and was all scared.

Q. Were you scared because of your guilty conscience?

A. No, it was the agitation of the thing. People was all there, hundreds of us, I guess, and there were stories circulating and one thing and another.

[520—190]

Q. What did you tell at the trial of Kester and Kettenbach that was different from what you have told here to-day?

A. No difference; I don't know that there is.

Q. You are not scared now, are you?

A. No, sir; not to my best judgment I don't know that there was anything different.

Q. And you went over your testimony in my office at Boise just before the trial of these gentlemen in March, did you not? A. Yes, sir.

Q. And you told practically the same story to me, didn't you? A. As near as I could.

Q. And to the agents of the Government that were there and talked with you about it?

A. Yes, sir.

Q. And you told them practically the same as you testified to at the former trial, didn't you?

A. Yes, I aimed to tell the straight of it, as near

(Testimony of Charles Carey.)

as I could remember.

Q. And there wasn't anyone that showed any disposition to intimidate you then, or threaten you?

A. No, sir; at Boise they was very nice.

Q. And when you were in my office did you still think you were in the sweat-box?

A. No, I didn't.

Q. After you got the \$125.00 from Mr. Dwyer on the day you made your proof, did you ever get any further money for your claim? A. No, sir.

Q. And then the signing of this deed that has been shown you by Mr. Tannahill was just making a deed to put the title in Kester and Kettenbach that you were paid for by Mr. Dwyer the day you made your proof, is that right?

A. He told me the day I met him, the last day, he says, "We will go up here and sign the deed," something like that. I don't think I read the deed the last time; I don't believe I know who it was to.
[521—191]

Q. And you didn't ask for any more money, and you weren't given any?

A. No, I didn't ask for any.

Q. And you really don't know what kind of a paper it was that you signed when you went to Mr. Otto Kettenbach's office, or Mr. Kettenbach's office, directly after making your proof?

A. No, I don't.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all.

At this time an adjournment was taken until to-

morrow morning at ten o'clock. [522—192]

On Thursday, the 25th day of August, 1910, at ten o'clock A. M., the hearing was resumed.

[**Testimony of Mrs. Mamie P. White, for Complainant.**]

Mrs. MAMIE P. WHITE, a witness called by the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Mamie P. White?

A. Yes, sir.

Q. And you are married, Mrs. White?

A. I am.

Q. To Mr. William J. White? A. Yes, sir.

Q. Are you acquainted with one of the defendants in the causes we are trying, William F. Kettenbach?

A. Yes, sir.

Q. Are you a relative of his? A. Yes, sir.

Q. What is the relationship?

A. He is my brother-in-law by marriage.

Q. He married your sister?

A. No; he married my husband's sister.

Q. Your husband's sister? A. Yes, sir.

Q. Do you know Mr. George H. Kester, one of the defendants? A. Yes, sir.

Q. Are you related to him also?

A. He is my brother-in-law.

Q. He married your sister? A. Yes, sir.

Q. Where did you reside in 1904, in April?

(Testimony of Mrs. Mamie P. White.)

A. In Lewiston, across the Clearwater River—the Clearwater [523—193] ferry.

Q. And were you married at that time?

A. Yes, sir.

Q. Do you remember the year that you were married? A. The year? 1901, December 16th.

Q. Mrs. White, do you remember taking up a claim under the timber and stone act, in April, 1904?

A. Yes, sir.

Q. I show you the timber and stone lands sworn statement, dated April 25th, 1904, signed Mamie P. White, and ask you whether you signed that paper and filed it in the land office at Lewiston about the date it bears? A. I did.

Q. And is that your signature to the nonmineral affidavit of the same date? A. Yes, sir.

Q. And the notice of publication, you filed that at the same time, did you? A. Yes, sir.

Q. I show you the testimony of Mamie P. White, taken at the final proof, July 14th, 1904, and I will ask you whether you signed that paper?

A. Yes, sir.

Q. And the cross-examination, taken at the same time? A. Yes, sir.

Q. Mrs. White, will you state the circumstances connected with the taking up of your timber claim?

A. Well, my husband told me about the timber claim, and he said there were a great many people taking them up, and that I had a stone and timber right and that I ought to use it—take advantage of it; that at some future time probably the thing would be of

(Testimony of Mrs. Mamie P. White.)

quite a little value. [524—194]

Q. And how long before you located on the timber claim in question did you go to view the claim?

A. Do you mean before we filed on the claim?

Q. Yes.

A. Well, we were on the claim I believe in October, 1903.

Q. And will you state whether you went alone or with a party? A. I went with a party.

Q. And who composed the party?

A. Mr. and Mrs. Kester—

Q. Mr. and Mrs. George H. Kester?

A. Yes, Mr. and Mrs. George H. Kester.

Q. And that is Mrs. Kester, is Mrs. Edna P. Kester? A. Yes. Mrs. Elizabeth White.

Q. That is your mother-in-law?

A. My mother-in-law. Miss Lizzie Kettenbach.

Q. Is that Miss Elizabeth Kettenbach?

A. Yes, Miss Elizabeth Kettenbach.

Q. Well, go ahead.

A. And Mr. White—my husband.

Q. Did a locator go along with you?

A. Yes, sir.

Q. Who went with you? A. Mr. Dwyer.

Q. Mr. William Dwyer? A. Yes, sir.

Q. And he went from Lewiston?

A. From Lewiston, yes, sir.

Q. This Miss Lizzie Kettenbach that you referred to, is that Miss Elizabeth Kettenbach?

A. Yes, sir.

Q. And do you know what the relationship is be-

(Testimony of Mrs. Mamie P. White.)

tween her and Mr. William F. Kettenbach? [525—195] A. She is his aunt.

Q. Now, what town did you leave the train at when you went to this claim? A. Orofino.

Q. And how far is the claim from Orofino?

A. Well, about—I should say probably about fifty miles.

Q. And how did you travel that route?

A. Well, from Orofino to Pierce we went in rigs, and from Pierce part of the way, as far as Quartz Creek, we went in rigs, and from there on we rode horseback to our claims.

Q. And how long were you away from Lewiston on that excursion?

A. I don't remember distinctly, but I think three or four days.

Q. Three or four days? A. Yes, sir.

Q. Now, do you know why you didn't file or make an application to file immediately upon your return to Lewiston? A. No, sir.

Q. Do you know when you were notified or who notified you when the time to file arrived?

A. Well, I believe my husband told me when it was time to file.

Q. And the day you filed at the land office there was quite a line of people before the door of the land office, was there not? A. I believe there was.

Q. And were you in that line? A. Yes, sir.

Q. And do you remember what position in the line you held? A. I don't remember distinctly.

(Testimony of Mrs. Mamie P. White.)

Q. Well, approximately? How many were there before you?

A. Well, I probably was in the middle of the line. I don't remember.

Q. Well, now, I don't know how long the line was.
[526—196]

A. Well, I don't remember; either. There might have been probably 25 or 30, or maybe more or less; I don't remember.

Q. And I understand that you were somewhere between 10 and 20 from the head of the line?

A. Probably I was.

Q. And how long had you been in that line?

A. I can't say. I know we filed in the forenoon sometime, and we were there in the morning.

Q. And was there anyone holding the place in line for you? A. No, sir.

Q. When you went to the land office and got into the line, were you at the end of the line then, on the morning you filed? A. Well, I don't remember.

Q. Have you any distinct recollection as to whether or not someone had been procured to hold a position in line for you, and when you went there the morning that you filed on your timber claim that they retired, and you took their place?

A. No, sir; I have no recollection of anyone holding a place in the line for me.

Q. Now, do you remember how much you paid into the land office as a filing fee? A. No, sir.

Q. Did you pay anything?

A. I don't remember as to filing whether we paid

(Testimony of Mrs. Mamie P. White.)

anything or not, or how much; it is such a long time ago.

Q. Do you remember who prepared your filing papers? A. Yes, sir.

Q. Who? A. I. N. Smith.

Q. He was a lawyer and had an office in the building in which the land office was?

A. Yes, sir. [527—197]

Q. Do you remember whether or not you paid him anything for that service? A. I don't remember.

Q. Do you remember whether you gave him the names of the persons that were to be your witnesses at the final proof? A. I don't remember.

Q. Do you know whether you gave Mr. Smith the description of the property upon which you desired to file?

A. Well, I can't say distinctly, but I suppose that I did. He made the papers out for me.

Q. Did you go to Mr. Smith's office, or did he bring them to you while you was there in line?

A. I went to Mr. Smith's office.

Q. Several months after you made your application to file on this land and filed your sworn statement, you went to the land office again to make final proof? A. Yes, sir.

Q. Do you remember of paying anything into the land office at that time?

A. I don't remember just about that, but I suppose when I made final proof that I did pay something.

Q. Do you know how much you paid?

(Testimony of Mrs. Mamie P. White.)

A. I think about approximately \$400.00.

Q. \$400.00? A. Yes, sir.

Q. Are you sure about that?

A. I wouldn't swear to it. I don't remember distinctly, but I believe that was it.

Q. Do you remember whether you paid any money into the land office, or whether your husband paid it for you?

A. I think that I paid the money myself.

Q. Did you have an independent bank account at that time? [528—198] A. No, sir.

Q. Did you have any independent income at that time?

A. Well, I had money, but my husband was taking care of it for me, and whenever I needed money I could draw on his account, or ask him for it.

Q. And do you know how much money you had at that time?

A. No, I don't remember exactly how much I did have.

Q. Can you approximate it?

A. I know that at one time that he gave me about \$1500.00.

Q. And when was that; how long before?

A. When we were first married he gave me about that much money.

Q. And did you give it back to him to deposit in his name for you?

A. No— Well, I told him— He didn't give it to me. He told me I could have the money, and I

(Testimony of Mrs. Mamie P. White.)

told him to keep it and then when I wanted it I would ask him for it.

Q. Then he never really gave it to you, but he told you he would keep that much for you?

A. He would keep it for me, yes. It was mine.

Q. Subject to your inclination to spend it?

A. If I wanted to draw on him for that much—
How is that?

Q. I say, subject to your inclination to spend it?

A. Yes, sir.

Q. And do you know where he kept this money?

A. I don't know exactly; I believe he kept it in the Lewiston National Bank.

Q. And did you not know whether he drew the money out of the bank the morning he made proof or not, with which to pay for his claim and your claim also? A. I couldn't say.

Q. Had you ever talked with Mr. William F. Kettenbach about the propriety of taking up a timber claim? [529—199]

A. Well, I don't remember distinctly of talking to him especially about it, although we were all friends, and I suppose we might have talked the matter over at different times.

Q. Had you ever discussed the feasibility of taking up a claim, with Mr. George Kester?

A. Well, I probably have. I don't remember of any special time that I did.

Q. Do you remember of anyone ever telling you what the value of this claim was, before you filed on it? A. No, sir.

(Testimony of Mrs. Mamie P. White.)

Q. Do you remember whether or not you had any idea of how many feet of timber was on the claim?

A. No.

Q. Did you know of anybody that was purchasing timber claims at that time—that was on the market for them?

A. Well, I don't know as I did at that time.

Q. Did you know at that time that Mr. Kester and Mr. Kettenbach were buying timber claims?

A. Well, I probably did.

Q. Can you make that a little more definite, Mrs. White?

A. Well, I will say that I didn't know that they were for a fact buying timber claims.

Q. Had they told you they were buying timber claims? A. No, sir.

Q. Had your husband told you that they were buying timber claims? A. That they were?

Q. Yes? A. No, sir.

Q. Do you remember whether you paid anyone a fee for locating you? A. Yes, sir.

Q. Who? [530—200] A. Mr. Dwyer.

Q. When did you pay that, or did someone else pay it for you?

A. Mr. White—I had Mr. White pay Mr. Dwyer, if I remember. I don't remember distinctly, but I believe Mr. White paid Mr. Dwyer for me.

Q. You haven't a very distinct recollection about it? A. No.

Q. Your impression was that there was a \$100.00

(Testimony of Mrs. Mamie P. White.)

fee for location, and that your husband paid it?

A. Yes, sir.

Q. Now, do you remember whether or not this money which your husband gave you as a present, that he told you he would give you the money just about the time you went into the timber?

A. Well, I know that he gave me some money when I was first married, and as I said, he told me if I wanted to use this money why I could have it. I just let him take care of it for me, and several weeks before I proved up he told me that this money was set aside for me; that that was mine, and it would be ready for me when I was ready to prove up.

Q. You never had actual possession of any of that present until you drew it periodically through him?

A. No. I could draw against his account any time that I wanted to without going to him to see about it.

Q. Well, how did you draw against his account? Did you sign the check "Mamie P. White," or did you sign it "William J. White"?

A. Well, I usually signed it "William J. White, by Mamie P. White," probably.

Q. The reason that I asked you whether you hadn't gotten it just about the time that you inspected the claim was because I see in one of the questions that were asked you at the land office on final proof, that you said in response to the question where you had gotten the money with which to pay for the claim, and the period which you had it

(Testimony of Mrs. Mamie P. White.)

[531—201] in your possession, you answered: "From my husband. He gave it to me as a present last October. Received the money to-day." That was the day you made final proof. Have you any recollection as to whether or not that was about the way in which you received the money, and about the time you received it?

A. Well, Mr. White had given me money at different times, and as I said that he kept this money for me. I don't remember distinctly just exactly when he told me I could have this to prove up on. It was mine all the time, anyway, ever since we have been married, and it was some time before I proved up. I don't remember the date now that he told me that I could have this; but it was mine, and I could have it when I was ready for it.

Q. You have sold your timber claim, have you not? A. Yes, sir.

Q. And with whom did you negotiate the sale?

A. I told my husband that he could sell my claim whenever he wanted to; that when he sold his I wanted him to sell mine, too.

Q. And do you know when he sold it?

A. I believe about a year ago in January.

Q. About 18 months ago.

A. Just about.

Q. And did you receive any money from that claim?

A. I didn't receive the actual cash, no; my husband's and my accounts is just the same as one.

Q. And he attended to all the business for you?

(Testimony of Mrs. Mamie P. White.)

A. Yes, sir, all of it.

Q. Do you know how much your claim was sold for? A. \$4,000.00.

Q. And do you know whether that \$4,000.00 went into your husband's bank account about 18 months ago? A. Well, I think it did.

Q. And do you know to whom you sold it? [532—202] A. Yes, sir.

Q. To whom? A. Mrs. Elizabeth White.

Q. That is his mother? A. Yes, sir.

Q. And do you remember acknowledging the deed—making the deed and acknowledging it before a notary public? A. I don't remember.

Q. You were living in Orofino at that time, were you not?

A. No, sir, not at that time; we were living in Lewiston; we moved to Lewiston shortly before that.

Q. And have you any recollection of making a deed to Mrs. White of that property?

A. I don't remember. I suppose we did, because she has the deed to it, but I don't remember about it.

Q. Do you remember of appearing before a notary public and acknowledging the deed?

A. I don't remember.

Q. Did you ever give your husband—or anybody else but your husband the authority to sell any property for you? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Mrs. Mamie P.

(Testimony of Mrs. Mamie P. White.)

White, dated April 25th, 1904, the nonmineral affidavit of Mamie P. White, the notice of publication, the testimony of Mamie P. White given on final proof July 14th, 1904, the cross-examination of the same (all of which papers have been identified by the witness Mamie P. White), the testimony of the witnesses at final proof, the Receiver's Receipt and the Register's Certificate, dated July 14th, 1904, being the files of the Land Office relating to the entry of Mamie P. White, a certified copy of the patent, dated the 31st day of December, 1904, issued in the name of Mamie P. White, all for the north half of the south half of section 14, township 38 north, of [533—203] range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants waive any further identification of the papers, but severally object to each and all of the documents offered in evidence as the same applies to cases 388 and 407, upon the ground that they are irrelevant, incompetent and immaterial, the entry not having been referred to in these two actions. And the defendants severally object to all of the papers in relation to the final proof, consisting of the proof of publication, the testimony of claimant, Mamie P. White, and the cross-examination of the claimant, the testimony of William Dwyer, a witness for the claimant, and the cross-examination of William Dwyer, the testimony of Edwin Bliss, a witness for the claimant, and the cross-examination of Edwin Bliss, the affidavit of Mamie P. White in support of her application to purchase the land; upon the ground that

(Testimony of Mrs. Mamie P. White.)

they relate to the final proof and matters occurring subsequent to the filing of the initial papers, and they are irrelevant, incompetent and immaterial. And the defendants severally move to strike out all of the evidence of the witness in so far as it relates to bills No. 388 and 407, upon the ground that it is irrelevant, incompetent and immaterial, the entry not having been referred to or involved in these two actions.

Said documents were thereupon marked by the Reporter as Exhibits 9, 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I, 9J, 9K, 9L, 9M, and 9N.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. White, did you have any contract or agreement with George H. Kester, William F. Kettenbach, or William Dwyer, prior to your filing upon this tract of land, that you would convey the land to them? A. No, sir.

Q. Did you have any contract or agreement with anyone that you would convey the land to them, or any part of it, prior to your filing upon the land? [534—204] A. No, sir.

Q. Did you have any contract or agreement that you would convey the land to them prior to making your final proof? A. No, sir.

Q. How long after you made your final proof was it that you sold the land to Mrs. Elizabeth White?

A. Why, I think about three years—three or four.

Q. Then the affidavit that you signed when you

(Testimony of Mrs. Mamie P. White.)

filed your sworn statement, to the effect that "I have made no other application under said acts; that 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," that statement was true at the time you made it, was it? A. Yes, sir.

Q. And true at the time you made final proof?

A. Yes, sir.

Q. And it is true at the present time?

A. Yes, sir. [535—205]

[Testimony of Charles S. Myers, for Complainant.]

CHARLES S. MYERS, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles S. Myers?

A. Yes, sir.

Q. Where do you reside, Mr. Myers?

A. Fraser.

Q. Idaho? A. Yes, sir.

Q. How long have you resided in Fraser?

A. I have resided in that country about fourteen years, maybe fifteen.

Q. What was your occupation in October, 1905?

(Testimony of Charles S. Myers.)

A. I was farming, and I ain't sure whether I had a sawmill at that time or not; I don't believe I did. I wouldn't say positively whether I had a sawmill at that time or not.

Q. Since then you have acquired a sawmill if you didn't have it at that time, have you?

A. Since then I have, yes, sir, if I didn't have it at that time.

Q. What kind of a sawmill is it?

A. It is a small mill—what is called a pony sawmill.

Q. How many men does it take to run it?

A. I generally have about twelve to fifteen men there when I am running.

Q. You took up a claim under the timber and stone act in October, 1905, did you not?

A. About that time.

Q. I show you timber and stone land sworn statement, dated October 30, 1905, signed Charles S. Myers, and ask you if you signed that paper about the date it bears and filed it in the land office at Lewiston?

A. I believe I did; that is my signature. [536—206]

Q. I show you notice of publication of Charles S. Myers, dated October 30, 1905, and the nonmineral affidavit of Charles S. Myers, dated October 30, 1905, and signed Charles S. Myers, and ask you if you signed that paper and filed the two of them in the land office on the date they bear?

A. I expect I did; that is my signature.

(Testimony of Charles S. Myers.)

Q. I show you the testimony of Charles S. Myers, given on final proof, at the land office, January 22, 1906, and the cross-examination thereof, and ask you if those papers were signed by you? A. Yes, sir.

Q. Mr. Myers, what induced you to take up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness in relation to his taking up a timber claim, in so far as it relates to bills 406 and 388, upon the ground that it is incompetent, irrelevant and immaterial, his entry not being involved in either of those actions.

A. Why, well, I hardly know how,—in the first place there was other people taking up claims there, and I was acquainted with this man Steffey, and he was locating, and I told him I wouldn't mind taking up a claim myself.

Q. That was Harvey J. Steffey, was it?

A. Harvey J. Steffey, yes, sir.

Q. And do you remember whether you got a relinquishment from Mr. Steffey?

A. Mr. Steffey,—I don't know how the relinquishment was got, but it was through a relinquishment that I got the claim.

Q. When you made that statement to Mr. Steffey, what arrangement did you make for taking a timber claim?

A. Well, I don't remember just how long it was afterwards, but he came to my place afterwards and told me that he could get me a claim.

Q. Now, state the terms and conditions upon which

(Testimony of Charles S. Myers.)

you could get your claim. [537—207]

A. He told me he could get me a claim; as near as I can remember now, he said it wasn't a very good claim, but he said I could make \$150.00 out of it anyway.

Q. Who was to pay the expenses of taking up this timber claim?

A. I told Mr. Steffey that I didn't have any money at that time, and he said he could let me have the money.

Q. What was your understanding as to what you were to do to make this \$100.00 that you speak of?

A. The \$100.00 or the \$150.00, do you mean?

Q. The \$150.00.

A. Why, I supposed if I wanted to I could sell the claim then and get the money out of it.

Q. And was that your understanding as to what you were to do with it?

A. I understood that I could sell it, yes. He just told me I could make \$150.00, and of course I knew there was timber claims changing hands.

Q. You came down to Lewiston to make your application? A. Yes, sir.

Q. Did you come alone? A. I believe I did.

Q. Did you meet Mr. Steffey here?

A. No, I don't believe Mr. Steffey was here at that time. I couldn't say positively as to that now.

Q. And who paid your expenses down to Lewiston before you filed?

A. Well, Mr. Steffey let me have some money.

Q. How much money did he let you have?

A. I think,—I couldn't say; it wasn't very much

(Testimony of Charles S. Myers.)

at that time though.

Q. Was it \$20.00?

A. It seems to me it was about \$20.00 now; I couldn't say, but I believe it was about \$20.00 he let me have.

Q. Was the \$20.00 to pay your expenses down here and your filing [538—208] fees?

A. It was to help anyway.

Q. I want to know if that wasn't what it was given to you for? A. Yes, I believe it was.

Q. Do you know who prepared this sworn statement for you that I have shown you?

A. No, I don't.

Q. Did you have that before you came away from your home? A. No, I don't think so.

Q. Who piloted you around to the land office when you got here?

A. I wouldn't say absolutely now; Mr. Steffey might have been with me, and if there was anybody with me it was him.

Q. Do you remember going to any lawyer's office to have those papers prepared?

A. I believe we did go into a lawyer's office in the old land office building.

Q. You say we. Who was it?

A. Well, whoever was with me; it must have been Steffey if it was anybody.

Q. Do you know where you met the party that took you to the land office? A. No, I don't.

Q. Were you in the Lewiston National Bank that day?

(Testimony of Charles S. Myers.)

A. I don't know whether I was in the bank or not; I couldn't say.

Q. Your wife took up a timber claim, did she?

A. Yes, sir.

Q. And what is her name?

A. Jannie Meyers.

Q. Did she take up a claim before you did, or after? A. No, it was some time afterwards.

Q. You returned to your home after filing these papers, and do [539—209] you remember being notified when the time came for you to make your final proof?

A. Why, I remember of getting a paper with the notice in.

Q. And had you talked with Mr. Steffey between the time that you made your filing and the time for making your proof?

A. I couldn't say that I did, nor I couldn't say that I didn't, because I have forgotten.

Q. Well, when you started away from your home to make your final proof, did you have the money with which to make proof? A. No, sir.

Q. Had you made any arrangements for it?

A. Yes, Mr. Steffey was to let me have the money.

Q. That was the original arrangement?

A. Yes, sir.

Q. You hadn't talked to him about it since the first time?

A. I couldn't say now; I might have had some conversation before I come down to prove up, I couldn't say, but I know it was understood he was to get me the money.

(Testimony of Charles S. Myers.)

Q. That was understood before you filed on it?

A. Yes, that he was to let me have the money to carry me through, if I didn't have it.

Q. And you came to the land office and made your final proof? A. Yes, sir.

Q. Now, where did you get the money that you made your final proof with?

A. Mr. Steffey gave me the money at the Annex at the Bollinger Hotel.

Q. That was the morning that you made your proof? A. It was the day I made my proof.

Q. Do you remember whether he gave it to you in cash or by check?

A. I believe, as near as I can remember, it was gold coin he gave me. [540—210]

Q. Do you remember how much it was?

A. I don't remember positively, but I believe it was a little better than \$400.00.

Q. And you went right from the Bollinger Hotel to the land office and paid that money and made your proof? A. And made my proof, yes, sir.

Q. Did you ever get any money for your claim?

A. Yes, sir.

Q. How much?

A. I got in the neighborhood of \$150.00, maybe a little bit better; I think it was a little bit over, but right at \$150.00.

Q. Who gave you that? A. Mr. Steffey.

Q. When was that given you?

A. That was given to me after I had deeded the property.

(Testimony of Charles S. Myers.)

Q. Did he give you any money besides the \$400.00 the day you made your proof?

A. I don't remember what day it was that I transferred the property, whether it was the same day or not, but I got the money after,—well, I couldn't say positively when I did get the money, but I know the transaction,—he carried it out.

Q. Who paid your expenses down to Lewiston when you came to make your proof?

A. I couldn't say as to that; perhaps I paid it myself; I couldn't say.

Q. Are you sure about that?

A. No, I am not positive about that.

Q. Wasn't your arrangement with Mr. Steffey that he was to pay all your expenses?

A. Well, Mr. Steffey said he would let me have the money to pay my expenses, and, of course, about coming down, I wouldn't have considered that anything.

Q. To whom did you deed the property?
[541—211]

A. I believe it was to Kester and Kettenbach.

Q. William F. Kettenbach and George H. Kester?

A. I don't know their initials.

Q. You didn't have the money with which to purchase a claim when you entered into this arrangement with Mr. Steffey and you told him so. Is that correct?

A. That is correct; I didn't have the money.

Q. Do you remember whether you spent even a cent of your own money for expenses in coming to

(Testimony of Charles S. Myers.)

the land office to make your sworn statement and filing it, and back to your home, and then down again to make your final proof?

Mr. TANNAHILL.—We object to that on the ground that it calls for a conclusion of the witness and not a statement of the fact. If the money belonged to him it was his, whether he borrowed it or how he got it.

A. I couldn't say positively, but I don't know but what I did have some of my own money when I come down to make my final proof, but I couldn't say positively, for I do not know.

Q. I am asking you whether you paid any of your expenses down here, or whether Steffey gave you the money for that purpose?

A. When I come down to make my final proof, I don't believe Mr. Steffey was with me, and I must have paid my own way down.

Q. Did he give you back the money that you spent?

A. I couldn't say as to that.

Q. Do you remember telling me, Mr. Myers, at Moscow, last fall, when you appeared before the grand jury, that you didn't have to put up a cent of your own money for anything, and that you had no expenses at all in taking up this claim?

A. I don't remember now; it might have been that Mr. Steffey did pay all my expenses, but I could not positively say.

The SPECIAL EXAMINER.—Read that question over. I don't believe you answered the question that Mr. Gordon asked you. [542—212]

(Testimony of Charles S. Myers.)

Mr. GORDON.—Q. Do you remember whether you made that statement to me?

A. I don't remember now.

Q. Do you know whether or not it is a fact that you didn't pay any of your expenses of taking up that claim, and that Steffey gave you the money for every expense you had in connection with it?

Mr. TANNAHILL.—We object to that as leading and suggestive, and cross-examination, and repetition.

A. I could not positively say, because he might have paid all my expenses, because I have forgotten.

Q. Wasn't it your understanding when you first talked with him that he was to put up the money for every expense?

A. I don't know that it was just positively mentioned every expense, but he told me he would furnish me the money to pay my expenses.

Q. Did your wife have any independent income, Mr. Myers, or did she only have such money as you furnished her?

A. Why, not any more than she might have some money from boarding some men there at the mill.

Q. Do you know whether—

A. I think at that time she was boarding a school teacher; a school teacher was boarding with us.

Q. How long had the school teacher been there in January, 1906?

A. Why, I couldn't tell, but the school must have commenced along about some time in September or the first of October, and she would be there from that time.

(Testimony of Charles S. Myers.)

Q. Do you know what board she paid?

A. No, I don't; perhaps about \$3.00 a week.

Q. About \$3.00 a week?

A. I don't think it was more than that; it might have been.

Q. Do you know whether or not the mill was running at that time?

A. No,—what time was that in the year?

Q. January, 1906. [543—213]

A. In January the mill wasn't running; it wasn't running that early in the spring.

Q. When was the mill running?

A. I didn't start up the mill until in the spring perhaps, perhaps in April, some time in April.

Q. And how many men boarded at your house at a time, if you had any mill then?

A. Well, I couldn't say, because sometimes I had some of the men hired that lived around there and they would stay at home, and sometimes they would just be there for dinner, and a few of them would eat there all the time.

Q. I am speaking now of along in March, April, May and June, 1906.

A. Well, I don't know what date I started the mill; I didn't start up in the spring until the frost was out of the logs, and I couldn't say as to just how many men was boarding with me, because some of them boarded with me and some didn't.

Q. None of the men lived with you, did they?

A. Some of the men did, stayed there all the time and worked there.

(Testimony of Charles S. Myers.)

Q. Did you charge them for their rooms?

A. No, just for the board; they had a bunk-house.

Q. What board did they pay apiece, about?

A. Fifty cents a day.

Q. Such as were there? A. Yes.

Q. Do you remember how many men you had employed at the mill in the spring of 1906?

A. No, I couldn't tell.

Q. Couldn't you approximate it?

A. Well, it would run along somewhere about twelve or fifteen men.

Q. This \$150.00 that you say Mr. Steffey gave you, did he give it to you all at one time, or had he made advances to you from time to time? [544—214]

A. I don't remember.

Q. Did the whole transaction turn out as you understood it would from your arrangement with Mr. Steffey when you first talked with him?

A. It did.

Q. Did you ever repay Mr. Steffey the money that you borrowed from him, or was it just considered as the deal being closed when you got the \$150.00, and that would cancel all of it?

A. Well, as near as I can remember, he brought me a statement with all the transactions settled up in it, so much taken out for money he had advanced me, and he gave me the balance.

Q. I will ask you whether or not you would have sold that claim to anybody else but Mr. Steffey had they wanted to buy it?

A. I wouldn't without first giving Mr. Steffey a chance.

(Testimony of Charles S. Myers.)

Q. You felt under obligation to him?

A. I felt under obligation because he had helped me out, and I felt under obligation to give him the first chance.

Q. You felt that Mr. Steffey had a prior right?

A. Yes, sir, because he had helped me.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Charles S. Myers, dated October 30, 1905; the nonmineral affidavit, bearing the same date; the notice for publication; the testimony of Charles S. Myers, given on final proof, and the cross-examination thereof, dated January 22, 1906, all of which have been identified by the witness; the testimony of the witnesses on final proof; the receiver's receipt and the register's certificate, dated January 22, 1906; certified copy of patent issued to Charles S. Myers, dated September 11, 1907; and the other papers attached, from the land office files, all concerning the entry of Charles S. Myers to the northwest quarter of section 29, township 38 north of range 6 east, Boise meridian. We also offer certified copy of a deed made by Charles S. Myers, and Jan-
nie, his wife, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, the northwest [545—215] quarter of section 29, township 38 north of range 6 east, Boise meridian, acknowledged before Fred H. Judd, Justice of the Peace for Nez Perce County, and recorded at the request of the Lewiston National Bank March 26, 1906; also the certificates of recordation attached.

Said above mentioned documents were thereupon

(Testimony of Charles S. Myers.)

marked by the Stenographer as Exhibits 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10I, 10J, 10K, 10L, 10M, 10N, 10-O, 10P, and 10Q.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents just offered in evidence, and severally object to the introduction of any and all of the documents just offered, in so far as they relate to bills 406 and 388, upon the ground and for the reason that the entry is not involved in either of these actions, and they are irrelevant and incompetent and immaterial. And the defendants severally object to the introduction in evidence of all of the final proof papers, and especially the testimony of claimant Charles S. Myers, and the cross-examination of the claimant Charles S. Myers, the testimony of the witness Dominick Cameron, and the cross-examination of the witness Dominick Cameron, the testimony of the witness Harvey J. Steffey, and the cross-examination of the witness Harvey J. Steffy, proof of publication, upon the ground that they are incompetent, irrelevant and immaterial. And the defendants further severally object to the introduction of the papers in evidence, upon the ground and for the reason that all of the papers are not offered, and the following document appearing among the files is not offered in evidence, to wit: “Department of the Interior, United States Land Office. Lewiston, Idaho, January 26, 1906. T. & S. No. 1735. Charles S. Myers. I hereby certify that the Notice of Intention to Make Proof furnished to the Special Agent was lost

(Testimony of Charles S. Myers.)

or destroyed when the Land Office was removed to its new quarters, and cannot be attached hereto. That this claim is in rough, broken mountains, heavily timbered, where the soil is thin and the land worthless for agriculture; that no complaints of fraud have been received from this neighborhood, [546—216] and that I know of no fact which tends to impeach the good faith of this entryman. In witness whereof, I have hereunto set my hand, the day and year first above in this certificate written.

H. V. A. FERGUSON,
Special Agent G. L. O.”

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Myers, your transactions with Mr. Steffy were simply that if you wanted to borrow the money, or didn't have the money yourself with which to pay for the land, he would loan you the money?

A. That was the understanding, yes.

Q. That was the understanding? A. Yes.

Q. You had no contract or agreement whereby you was to sell him the land, at the time you made your filing, did you? A. I had not.

Q. Or at the time you made your final proof?

A. No, sir.

Q. You had no contract or agreement that you was to sell the land to anyone, at the time you made your filing, did you? A. I did not.

Q. And had someone else offered you \$500.00 more than what Mr. Steffey had offered you, and Mr. Steffy wouldn't give that amount, you would have felt

(Testimony of Charles S. Myers.)

perfectly free to sell it to the other parties, would you?

A. I would have, by putting up the money he had loaned me.

Q. Then, your affidavit that you made at the time you filed your sworn statement, "That I have made no other application under said acts; that 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 [547—217] persons whomsoever, by which the title I may acquire from the Government of the United States may insure in whole or in part to the benefit of any person except myself," that was true at the time you made it, was it? A. Yes, sir.

Q. And at the time you made final proof?

A. Yes, sir.

Q. And it is still true? A. Yes, sir.

Q. How long after you made your final proof was it that you sold the land?

A. I don't know, but it was shortly afterwards.

Q. I believe you made your final proof the 22d of January, 1906, your final proof papers show that you made your final proof then? A. Yes.

Q. That is about the time you made your final proof? A. Yes, sir.

Q. I will show you the original deed, and ask you if that is your and your wife's signatures to that deed. A. Yes, sir.

(Testimony of Charles S. Myers.)

Q. The date of it is the 12th of March, 1906?

A. Yes, sir.

Q. That is about the time you sold your land, is it?

A. Yes, sir.

Q. And about the time you made your settlement with Mr. Steffy, and paid him back his money that you had borrowed from him?

A. Yes, it was all settled up in one transaction.

Q. I will ask you to look at this affidavit and state whether or not that is your signature to it.

A. Yes, sir.

Q. And glancing over the affidavit, it is substantially the same as your sworn statement, that you made no contract or agreement to sell your land, prior to the time you made your final proof. That affidavit [548—218] is true, is it?

A. Yes, sir, I hadn't made any contract with anybody.

Q. Who requested you to sign this affidavit?

A. That there?

Q. Yes.

A. Why, I don't know, unless it was Mr. Steffy. He was the man that—

Q. Do you remember that Mr. Steffy brought you the affidavit to sign?

A. I think he did; I believe he had Mr. Todd with him. I couldn't say; it has been so long that I have forgotten.

Q. Well, give us your best recollection.

A. I believe it was him that was with him.

Mr. TANNAHILL.—The defendants severally re-

(Testimony of Charles S. Myers.)

quest that the affidavit just identified be marked as Defendant's Exhibit "A," for identification.

The above mentioned affidavit was thereupon marked by the stenographer as "Defendants' Exhibit 'A,' for identification."

Q. I believe you said you got a relinquishment from Mr. Steffy, did you, Mr. Myers?

A. I got the relinquishment. I don't know who he—he got the relinquishment for me.

Q. You don't know whose relinquishment it was, do you? A. No, I don't; I have forgotten.

Q. Did you file on the land that was described in this relinquishment, or do you remember?

A. I don't remember, but then it was understood that that was it, and I am satisfied it was.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Myers, this affidavit that you have identified, have you ever read that affidavit?

A. Well, sir, I don't know now.

Q. Do you know what is in the affidavit? [549—219] A. No, I don't; I don't remember now.

Q. But Mr. Steffy just brought you this paper, with a notary public, and asked you to sign it and swear to it?

A. I couldn't say whether I read it at that time or not.

Q. Was there any discussion about the affidavit?

A. I don't believe there was.

Q. There was nothing said—you just signed it because Mr. Steffy asked you to?

(Testimony of Charles S. Myers.)

A. I couldn't say as to that; I don't remember whether I read it or not.

Q. Did you ever make any other affidavit to Mr. Steffy, that you know of? A. Not that I know of.

Q. Do you know what the contents of this affidavit is? A. No, I haven't read it; I don't know.

Q. And you have no recollection of any discussion about it? A. I haven't now, no.

Q. You don't know what the affidavit pertains to, do you? A. I don't believe I do.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all. [550—220]

[Testimony of Mrs. Jannie Myers, for Complainant.]

Mrs. JANNIE MYERS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Jannie Myers, are you?

A. Yes, sir.

Q. And you are the wife of Mr. Charles S. Myers, who has just testified? A. Yes, sir.

Q. And you reside at home with him and have ever since he has lived in that part of the country where you now reside, have you? A. Yes, sir.

Q. Do you remember when the sawmill in which your husband is engaged began operations?

A. I think it was about five years ago.

Q. Well, do you remember whether it was in operation when he filed on his timber claim, or when you filed on yours? A. Yes.

(Testimony of Mrs. Jannie Myers.)

Q. Or were you just ranching then?

A. It was when I filed on mine.

Q. Was it when he filed on his? Had it started up then?

A. Well, I think it had. I couldn't say for sure, but I think it had.

Q. Now, he made his application in the fall, in October as I remember, and he made his final proof the latter part of January. The mill didn't run during those months, did it? A. No, sir.

Q. And had the mill—had you all had the mill prior to that time? A. Yes, I think so.

Q. What I mean is this: Did you just get it the fall before you purchased your claim, and that it hadn't run that fall, and you began the [551—221] next spring; or had you had it the summer before?

A. Well, I am not sure, but I think we had run it the summer before—I am not sure.

Q. Who talked with you about taking up a timber claim, Mrs. Myers? A. Mr. Steffey.

Q. Mr. Harvey J. Steffey? A. Yes, sir.

Q. And how long did he talk to you about it before you took up the claim? A. How long before?

Q. Yes. Oh, I mean approximately. Was it a few days, or a month, or what?

A. Oh, it must have been—I think it must have been four or five months.

Q. Well, did he go to your house to see you about it? A. He came up there, yes.

Q. Now, what did he say to you?

A. Well, I just asked him to get me a timber claim.

(Testimony of Mrs. Jannie Myers.)

Q. And what was said?

A. And he said that he would see if he could?

Q. And was anything said about money at that time to purchase the timber claim?

A. No, there wasn't anything said at that time.

Q. Did you have the money with which to purchase a timber claim? A. No.

Q. Did you ask him what it would cost, or have any understanding as to how you would take this claim up?

A. Well, no; I didn't talk with him. We talked at home about it among ourselves. I knew how my husband had got his.

Q. You knew how he had got his, did you?

A. Yes, sir. [552—222]

Q. You knew the arrangements he had with Mr. Steffey about his? A. Yes.

Q. And you discussed that, and was it your idea to get one the same way? A. Yes.

Q. And did you go with your husband when he made the deed and sold his claim?

Mr. TANNAHILL.—We object to any evidence in relation to the deed and the filing upon or proving up upon the timber claim of Mrs. Jannie Myers, in so far as it relates to actions 388 and 407, or either of those actions, upon the ground that the entry of Mrs. Myers is not involved in either of these actions, and the evidence is irrelevant, incompetent and immaterial.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And you knew that he had

(Testimony of Mrs. Jannie Myers.)

sold his claim? A. Yes, sir.

Q. And you knew what he got for it?

A. Well, I knew at the time.

Q. That's what I mean. A. Yes.

Q. And did you make a similar arrangement with Mr. Steffey?

A. No. There wasn't hardly anything said between Mr. Steffey and I.

Q. It was transacted mostly through your husband? A. Yes, mostly.

Q. Now, when you went to take up your claim, who went to the land office with you?

A. Who went to the land office when I took the claim?

Q. Who came down to Lewiston with you to go to the land office?

A. Well, my husband did—no, he didn't, either, I don't think. Let me see, when I took the claim? No, he didn't come down then. [553—223] Miss Rundell came down—Miss Bertha Rundell—and Mr. Steffey went to the land office with me.

Q. Now, who paid the traveling expenses of that journey? A. We did.

Q. Who is "we"? A. Why, myself.

Q. Did Mr. Steffey give you the money to pay those expenses? A. No, sir.

Q. You are sure of that?

A. I feel quite sure. I got the money from home.

Q. Do you know whether Mr. Steffey gave you the money before you left home or not?

A. Well, now, I don't think he did.

(Testimony of Mrs. Jannie Myers.)

Q. I show you the timber and stone lands sworn statement of Jannie Myers,— A. What is it?

Q. I show you the timber and stone lands sworn statement of Jannie Myers, dated March 19th, 1906, and ask you if that is your signature to the same, and whether you filed it in the land office at Lewiston on or about the date it bears?

A. Yes; that is my signature all right.

Q. And you filed it in the land office?

A. Yes, sir.

Q. I show you the nonmineral affidavit of Jannie Myers, of the same date, and ask you if that is your signature, and if you filed that at the same time?

A. Yes, sir.

Q. That was on your first trip to Lewiston?

A. Yes, sir.

Q. I show you an affidavit of Jannie Myers of the same date, sworn to before T. H. Bartlett, Register, and ask you if that is your signature, and if you filed that the same day? [554—224] A. Yes, sir.

Q. I show you the testimony of Jannie Myers, given on final proof June 6th, 1906, and ask you if that is your signature to that? A. Yes, sir.

Q. Is that your signature to the cross-examination, taken at the same time? A. Yes, sir.

Q. Mrs. Myers, do you remember where you had the sworn statement and the other papers that you filed in the land office on the first visit there, prepared? A. What is the question, please?

The last question was repeated by the Reporter.

A. No, sir, I didn't.

(Testimony of Mrs. Jannie Myers.)

Q. Did Mr. Steffey furnish you those papers?

A. Well, I don't remember whether he did or not.

Q. Now, when you filed those papers in the land office, do you remember whether you had any expenses to pay that day?

A. I don't think—the car fare, and such as that, do you mean?

Q. No; I mean at the land office—the filing fee and the publication, etc.? Did you pay any expenses at the land office that day?

A. Well, I think I did. I am not sure.

Q. Well, have you an idea of what the expenses were? A. No, sir, I haven't.

Q. Did Mr. Steffey go to the land office with you?

A. Yes, sir.

Q. Well, do you know whether he paid the expenses or not—the filing fee and the amount requisite for the publication—advertising?

A. No, sir, I don't remember whether he did or not.

Q. Do you remember when you came to make your final proof and pay for this land?

A. Yes, sir. [555—225]

Q. Who notified you as to the time?

A. I suppose it came from the land office.

Q. Had you seen Mr. Steffey in the meantime?

A. I don't remember of it.

Q. Who did you come to Lewiston with on that occasion? A. When we proved up?

Q. Yes.

A. That was—well, the same ones; Mr. Steffey and my husband and Miss Rundell.

(Testimony of Mrs. Jannie Myers.)

Q. Now, who paid the expenses of that trip?

A. Well, I don't remember now who did.

Q. Did you?

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

Q. Did you have an understanding with Mr. Steffey that he was to pay all the expenses and to furnish the money to take up this claim?

A. No, sir; I never had any understanding with him at all.

Q. Well, did your husband make that arrangement with him for you? A. No, he didn't.

Q. You know that is the arrangement your husband had to take up his claim, isn't it?

A. Yes, I think it was.

Q. And didn't I understand you to say that you had the same arrangement?

A. Well, I hadn't made any arrangements with Mr. Steffey about it.

Q. Well, who did you make your arrangements with about it? A. Well, we just talked at home.

Q. Who was at home?—your husband and yourself? A. Yes, sir.

Q. Well, wasn't it your understanding that you were to take up a claim on the same conditions that your husband did? A. Yes, sir. [556—226]

Q. And you knew what the conditions were that he took his up on?

A. Well, I did at the time, yes.

Q. And you knew Mr. Steffey was to furnish the money and to pay all his expenses?

A. Well, I don't know whether he was to furnish

(Testimony of Mrs. Jannie Myers.)

it all or not.

Q. How much money did you pay into the land office when you made your final proof?

A. Well, I think it was \$200.00. I am not sure.

Q. And where did you get that money?

A. Well, I don't remember now where I did get all of it. I think I had part of it myself.

Q. Who did you get the rest from?

A. I think from Mr. Steffey.

Q. Did you get it down here at Lewiston?

A. I think I brought part of it from home, and I think he gave me part of it down here.

Q. Now, do you know how much it was that he gave you? A. No, sir, I don't.

Q. Have you any idea?

A. Well, I haven't much idea.

Q. Did you give him a note to secure it?

A. No, sir.

Q. Did you pay him any interest on it?

A. No, sir.

Q. Did you ever repay him?

A. Well, I suppose he got his pay after the claim was sold.

Q. Have you any remembrance of how much money you brought from home with you?

A. No, sir, I don't remember.

Q. Well, can't you approximate it? Was it \$5.00, or \$10.00, or \$20.00, or \$30.00, or \$40.00?

A. Well, it has been so long ago that I don't remember. [557—227]

Q. How long after you made your proof did you

(Testimony of Mrs. Jannie Myers.)

negotiate for the sale of this land?

A. How long before I sold?

Q. Yes. I asked you how long after you made proof before you sold?

A. Well, it was perhaps six weeks, as near as I can remember.

Q. And who did you talk with about it?

A. Mr. Steffey.

Q. Who else?

A. Nobody that I remember of.

Q. Did you ever talk with Mr. William Dwyer about it?

A. He came by—I think he came by one evening with Mr. Steffey.

Q. And was Mr. Dwyer there when the deed was made?

A. He was there when some papers were signed, I think.

Q. Well, at your home? A. Yes, sir.

Q. What papers did you sign, besides a deed?

A. Well, I don't know whether I signed any or not. (Laughing.)

Q. Did you go to the office of Mr. Judd to acknowledge this, or did Mr. Judd come to the house?

A. I think I went to Mr. Judd's.

Q. Now, do you remember who went with you?

A. I don't remember of anybody going only Mr. Myers.

Q. Was the deed there, or had somebody brought it to the house before you went to Mr. Judd's?

A. Well, I think it was brought to the house.

(Testimony of Mrs. Jannie Myers.)

Q. Do you remember who brought it?

A. Well, I think that must have been Mr. Steffey.

Q. Well, what was the occasion that Mr. Dwyer came there with him? A. Well, I don't know.

[558—228]

Q. Do you remember them being there together relative to this claim? A. No, sir.

Q. Have you any idea of the occasion that Mr. Dwyer and Mr. Steffey were there together?

A. No, sir.

Q. When did you get your money out of this claim?

A. Well, it was soon after it was sold, perhaps a week or ten days.

Q. Did you get any of it before you made the deed?

A. No, sir.

Q. Did you ever get a check from Mr. Steffey?

A. I don't remember getting any check.

Q. Did Mr. Steffey pay you for this property?

A. Yes, sir.

Q. Did he pay you in cash?

A. Yes, sir, I think it was.

Q. How much money did he give you?

A. Well, I think it was about \$125.00—\$120.00 or \$125.00, perhaps.

Q. And is that what you understood he was to give you when he entered the claim?

A. Well, there wasn't any understanding just how much I would get.

Q. Was it approximated how much you would get?

A. He thought about that—that I could get.

(Testimony of Mrs. Jannie Myers.)

Q. Do you know to whom you sold the property—the names of the parties in the deed?

A. Well, I think it was Kester and Kettenbach.

Q. Do you remember whether you read the deed or not? A. No, sir, I don't. [559—229]

Q. Did the entire transaction turn out just as you expected that it would and understood that it would from the time you had your first talk with Mr. Steffey?

A. It turned out just about as we thought it would, yes.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Jannie Myers, the nonmineral affidavit, the notice for publication, the testimony of Jannie Myers given at the final proof and the cross-examination thereof, the affidavit of Jannie Myers, dated March 19th, 1906 (all of which papers have been identified by the witness), the testimony of the witnesses on final proof, the Receiver's Receipt and the Register's Certificate, the cross-examination of Jannie Myers at final proof, and the cross-examination of the witnesses at final proof, a certified copy of the patent, dated September 11th, 1907, issued to Jannie Myers; all relating to the entry of the west half of the southwest quarter of section 25, township 38 north, of range 5 east, of Boise meridian. We also offer a certified copy of the deed dated July 11th, 1906, between Jannie Myers, and Charles S. Myers, her husband, and George H. Kester and William F. Kettenbach, for a consideration of \$450.00, conveying the west half

(Testimony of Mrs. Jannie Myers.)

of the southwest quarter of section 25, township 38 north, of range 5 east, of the Boise meridian, acknowledged July 11th, 1906, before Fred. H. Judd, Justice of the Peace, recorded July 28th, 1906, at the request of the Lewiston National Bank.

Mr. TANNAHILL.—The defendants waive any further identification of the documents offered in evidence by the Government, but the defendants severally object to all of the documents offered in evidence, in so far as they relate to bills No. 406 and 388, upon the ground that the entry is not involved in these two actions, and they are irrelevant, incompetent and immaterial. And the defendants severally object to the introduction in evidence of any of the final proof papers in either of the actions, especially the affidavit of Jannie Myers, the testimony [560—230] of the claimant, Jannie Myers, and the cross-examination of the claimant, Jannie Myers, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, the testimony of the witness Harvey J. Steffey, and the cross-examination of the witness Harvey J. Steffey; upon the ground that they are irrelevant, incompetent and immaterial, relating to matters occurring long after the filing of the sworn statement. And the defendants severally object to the introduction of any of the documents in evidence, upon the ground that it is not all of the documents relating to the entry, there appearing among the papers the following document:

(Testimony of Mrs. Jannie Myers.)

“Lewiston, Idaho, April 6, 1906.

“T. A. No. 1856.

“Jannie Myers.

“I hereby certify that I have made inquiry into this timber claim; that I am informed by the U. S. Postmaster at Fraser, Idaho, that claimant is a married woman, being the wife of a resident of Fraser who is well to do; that she is able to buy the land herself, and that in his opinion she is seeking to acquire title in good faith, and for her own individual use and benefit; and I further certify that I know of no reason why final receipt should not issue, if the proof papers are regular and satisfactory on their face.

“IN WITNESS WHEREOF I have hereunto set my hand, the day and year first above in this Certificate written.

“H. V. A. FERGUSON,
“Special Agent G. L. O.”

Mr. GORDON.—Do you offer that?

Mr. TANNAHILL.—No; I am objecting to any of the papers because you didn't offer it.

Mr. GORDON.—As I remember it, I offered this, and this all goes together. I offered the notice for publication, and that is on the back of it.

Mr. TANNAHILL.—Well, the affidavit just read having been offered [561—231] in evidence by Mr. Gordon, U. S. Assistant Attorney General, the objection on the ground that all of the files wasn't offered is withdrawn.

Said documents were thereupon marked by the

(Testimony of Mrs. Jannie Myers.)

Reporter as Exhibits 11, 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J, 11K, 11L, 11M, 11N, 11-O, and 11P.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Myers, I believe you said you had no special arrangement with Mr. Steffey other than that he would loan you a part of the money or all of the money to purchase the claim, in case you wanted it, is that right?

A. Well, I don't know that we had that arrangement made. I don't remember of it. In fact, we didn't. Mr. Steffey and I didn't have much to say about it.

Q. You had no arrangements with Mr. Steffey that you would sell him the claim, or sell the claim to anyone, before you filed on it, did you?

A. No, sir.

Q. And you had no such arrangements before you made your final proof? A. No, sir.

Q. And you didn't understand that you was under obligations to sell the claim to Mr. Steffey, or to anyone else, at the time you filed on it, or at the time you made your final proof? A. No, sir.

Q. Then, your affidavit that you made at the time you filed your sworn statement, that "I have made no other application under said acts; that 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

(Testimony of Mrs. Jannie Myers.)

contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government [562—232] of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it? A. Yes, sir.

Q. It was true at the time you made it, and at the time you made final proof? A. Yes, sir.

Q. And it is still true? A. Yes, sir.

Q. And the only sale you made of it was some six weeks after you made your final proof, when it was sold to Kester and Kettenbach? A. Yes, sir.

Q. I will ask you, Mrs. Myers, to look at this deed I now hand you, and state whether or not that is your name and the name of your husband attached to the deed. A. Yes, sir.

Q. And you read the deed before you signed it, did you?

A. Well, I don't remember now, but I suppose I surely did.

Q. You understood what you was signing?

A. Yes, sir.

Q. And that it was a deed to the land?

A. Yes, sir.

Q. I will ask you to look at the affidavit I now hand you, and state whether or not that is your signature to the affidavit. A. Yes, sir.

Q. Just glance over the affidavit, and state whether or not you remember the circumstances of your signing that affidavit.

(The witness read said affidavit.)

(Testimony of Mrs. Jannie Myers.)

Q. Do you remember who brought this affidavit to you to sign? A. No, sir, I don't.

Q. Do you remember of Mr. Steffey and Mr. Judd bringing the affidavit to you to sign? [563—233]

A. Mr. Steffey and Mr. Judd, you say?

Q. Yes?

A. I don't remember Mr. Judd being there.

Q. Was Mr. Steffey there when you signed it?

A. Well, I don't remember whether he was or not.

Q. Do you remember the circumstances of your signing the affidavit? A. No, sir, I don't.

Q. That is your signature, isn't it?

A. Yes, sir, that is my signature all right.

Q. But you don't remember the circumstances of your signing it? A. No, sir.

Q. You remember that you signed your affidavit at the same time your husband signed a similar affidavit? There was two affidavits, and Mr. Judd and Mr. Steffey brought them to you to sign? Do you now remember the circumstance?

A. No, sir, I don't.

Q. This affidavit that you made is true, is it, Mrs. Myers? A. Yes, sir.

Mr. TANNAHILL.—We ask that the affidavit just referred to be marked Defendants' Exhibit "B," for identification.

Said document was so marked by the Reporter.

Redirect Examination.

(By Mr. GORDON.)

Q. Do you remember seeing that affidavit before that Mr. Tannahill has just shown you?

(Testimony of Mrs. Jannie Myers.)

A. I don't remember it now, but I have seen it, because it is my writing.

Q. Well, do you remember whether or not you just signed it without reading it over?

A. Well, I don't remember whether I did or not.
[564—234]

Q. As I understood you to say, you remember nothing of the circumstances? A. No, sir.

Q. Or the conversation which brought about the signing of this affidavit? A. No, sir.

At this time a recess was taken until two o'clock P. M. [565—235]

At two o'clock P. M. the hearing was resumed.

[Testimony of Joel H. Benton, for Complainant.]

JOEL H. BENTON, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Redirect Examination.

(By Mr. GORDON.)

Q. Your name is Joel H. Benton? A. Yes, sir.

Q. Where do you reside, Mr. Benton?

A. Lewiston.

Q. How long have you resided in Lewiston?

A. About twenty-six years.

Q. You are a married man? A. Yes, sir.

Q. You are the father of William B. Benton?

A. Yes, sir.

Q. What was your occupation, Mr. Benton, in April, 1902? A. I was selling dry-goods.

Q. Do you remember taking up a claim under the timber and stone act in that year? A. Yes, sir.

(Testimony of Joel H. Benton.)

Q. I show you timber and stone land sworn statement, signed by Joel H. Benton, dated August 28, 1902, and ask you if you signed that statement and filed the same in the land office about the date it bears? A. Yes.

Q. I show you the testimony of Joel H. Benton, given on final proof, November 21, 1902, and ask you if you signed that paper. A. Yes, sir.

Q. I show you the cross-examination of Joel H. Benton at final proof. Is that your signature to that? A. Yes, sir.

Q. Mr. Benton, who first spoke with you about taking up a claim under the timber and stone act?

Mr. TANNAHILL.—We object to the evidence of the witness in so far [566—236] as it relates to cases number 388 and 407, upon the ground that the entry is not involved in these particular cases, and on the further ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—Q. Who first spoke with you about taking up a claim under the timber and stone act?

A. Why, I don't know; everybody was talking about it, the whole town, I don't know. W. A. Smith located me; I think I spoke to him myself.

Q. Had you located a homestead prior to that time?

A. I had started to take up one, yes, sir, gone on to one, but never filed on it.

Q. You had squatted on it?

A. Squatted, yes, sir.

(Testimony of Joel H. Benton.)

Q. What was your arrangement about squatting on the homestead claim?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial, a homestead claim not being involved in these proceedings or in any of the actions now under consideration.

A. Well, we had,—there was some arrangement on that homestead between Mr. Robnett and I.

Q. What was that arrangement?

A. Well, it was that he should,—I would take that up and go on to the land and stay there until it was surveyed, and he was to furnish the money for the expenses while I was there. And then after final proof I was to let him have the land.

Q. Where was this homestead that you refer to?

A. In 39—4.

Q. And near what town was it?

A. It wasn't near any town,—about forty miles from Orofino.

Q. And that was prior to your making your stone and timber entry? A. Yes, sir. [567—237]

Q. Now, did he furnish the money for you to carry out that arrangement with your homestead?

A. As far as I went he did, yes.

Q. Now, without me having to ask each question, you just tell the whole transaction about locating on that homestead, how you were to get the money, and who you were to take up there, and everything in connection with it.

Mr. TANNAHILL.—The same objection to all of this.

(Testimony of Joel H. Benton.)

A. That homestead has nothing to do with any of this timber business.

Mr. GORDON.—Q. I understand that, but I want to know about it just the same.

The SPECIAL EXAMINER.—Just answer the question the counsel asks you.

Mr. TANNAHILL.—It is understood that we have the same objection to all of this evidence, that it is irrelevant and immaterial.

The SPECIAL EXAMINER.—Yes, the objection may run all through this.

A. Of course, that has been eight years ago last spring, and I may not get it in just the same words I had it before, but I will give you the gist of it.

Mr. GORDON.—Q. Tell just as much of it as you remember, and the manner in which you remember it.

A. Well—

Q. Begin at the beginning of this transaction with Mr. Robnett.

A. Well, now, I don't know. I don't know whether I spoke to Mr. Robnett first or whether he spoke to me first, I don't remember that.

Q. Whichever one spoke to the other about it, tell what happened after that.

A. I think I may have said something to him about it, told him to find me some land where I could take it up, take up a homestead, and he said he thought may be he could find a place, and we talked it over several times. Then finally he called me in one day, into the bank, [568—238] into the place where he done his business, in the directors' room.

(Testimony of Joel H. Benton.)

Q. In what bank?

A. The Lewiston National Bank. And I was to go on to the land and do what should be done in the way of taking up a homestead, and he was to furnish the money for the expenses.

Q. Were you to go up with some other people, under a similar arrangement?

A. Yes, there was Mrs. Harris and her two daughters went up there at the same time.

Q. Was that Mrs. Mary Harris?

A. Yes, Mrs. Mary Harris.

Q. And what were her daughters named?

A. Jeanette and Ethel.

Q. Did they have claims near yours?

A. Yes, sir.

Q. The one you squatted on?

A. Yes, in 39—5.

Q. As I understand, this land that you were going to locate a homestead on wasn't open at that time.

A. No, sir, it wasn't open; we just squatted.

Q. Now, state how you were to get the money from Mr. Robnett to carry out this arrangement or agreement that you had with him.

A. Well, he gave me a check-book, and I was to draw checks on the bank.

Q. Did you have a deposit at the bank?

A. No, I had no deposit, no. I made out the checks so as to keep Mr. Robnett straight; I would put "Ex." on for expenses, so that he could keep it straight himself.

(Testimony of Joel H. Benton.)

Q. As I understand, he gave you a blank check-book? A. Yes, sir.

Q. On the Lewiston National Bank?

A. Yes, sir. [569—239]

Q. You didn't have any deposit there? A. No.

Q. And you were to draw these checks and sign them with your own name? A. Yes, sir.

Q. And were you to pay your own expenses while you were locating on this homestead?

A. I kept my own expenses and drew checks for them; I kept track of them, I mean, and also Mrs. Harris' and her daughters.

Q. Did Mr. Robnett come up there during any of the time you were up in the timber on this homestead?

A. I believe he was there in August a little while, a few days.

Q. Was he up there just prior to the time you made your timber and stone filing?

A. I forget what time now, some time in August, though.

Q. Was it before you—? A. Yes, sir, before.

Q. Did you have any conversation with Robnett then about taking up a timber claim?

A. It was very slight. Mr. Smith came in at the same time and—

Q. I am speaking now about Mr. Robnett.

A. I was going to tell you, Mr. Smith came in at the same time, and we all talked together, and Robnett mentioned, if Al. could find me anything to locate me on he would see me through. That is as

(Testimony of Joel H. Benton.)

far as I remember.

Q. Was that the only conversation you had with him about it? A. Yes, sir.

Q. Was he to furnish you the money the same as for the homestead?

A. No, sir, there wasn't a word said about him furnishing me the money, wasn't a word said.

Q. Do I understand that you didn't take up a timber and stone claim at the request of Mr. Robnett?

A. No, sir, I did not. [570—240]

Q. What did Mr. Robnett say to you when he first talked with you in the presence of Mr. Smith about this timber and stone claim?

A. Just as much as I remember about him saying, and there wasn't anything more said about it, was that if Al. Smith found a claim for me he would see me through. Those was the very words he used.

Q. Did he tell you he would furnish you the money?

A. No, sir, he didn't say that at all.

Q. Do you remember testifying at the trial against William F. Kettenbach and others, at Moscow, in the fall of 1907?

A. I remember being there, yes, sir.

Q. You remember testifying, don't you?

A. Yes, sir.

Q. I am reading from case 1605 that was mentioned in the stipulation at the beginning of the hearing. Do you remember, Mr. Benton, whether this question was asked you: "What do you mean by saying he would put you through with it?" And

(Testimony of Joel H. Benton.)

that you answered: "He would furnish me the money to carry me through, while I was up there in the timber he came up there himself."

A. I don't remember those words. I remember that question was asked me, but that meant he was to furnish the money for final proof.

Q. That was the time though that you first talked with him about it? That was the time you talked with him in the presence of Mr. Smith?

A. Yes, sir.

Q. That was the first time that you talked with him about —?

A. The stone and timber.

Q. Then, he did tell you at that time that he would see you through with it and furnish the money for final proof?

Mr. TANNAHILL.—We object to that. The witness' answer in the other trial, just read by counsel, does not so state. The latter part of it is some conclusion that the witness might have drawn, but it does not state in his evidence in the other trial that that was what Robnett told him. [571—241] It does not state in his evidence in the other trial that Robnett told him he would furnish him the money.

Mr. GORDON.—Q. Is that right?

A. No, I think the way it was, the way I remember it, he said he would see me through, and that was all there was to it. There wasn't anything said about money. It was my understanding in my own mind that he was to furnish the money for final proof, but he didn't say that. He just said, "I will

(Testimony of Joel H. Benton.)

see you through.”

Q. And had you ever been on this timber and stone claim? A. Before that, no, sir.

Q. Were you ever on the timber and stone claim before you filed on it?

A. Never was, no, sir, not entirely on it; I was out near it, but never on it.

Q. Were you on the land before you made proof?

A. I went down, Al. Smith took me out one time, but it rained all day, and when we got pretty close to *he* he said, “It’s no use going any further, because it is almost dark,” and I was sick at the time, and he said, “It’s just like this,” he says, “there’s no use in going,” and so we didn’t go.

Q. Then, you came down to Lewiston to make your application, to file on this timber and stone claim, did you?

A. I will tell you how it was, Mr. Gordon. I cut my foot right in there (indicating), and I was laid up for two months, and I had to come out from there. That was before I filed on the timber at all. It bled like a stuck pig, you know, and I couldn’t walk on it, and I had to come out, and it laid me up for two months. I could hobble around on crutches, was all.

Q. You finally came down to Lewiston?

A. On account of my foot being cut, yes.

Q. And you filed on your timber and stone claim?

A. Yes, sir. [572—242]

Q. You filed the sworn statement you have identified here? A. Yes, sir.

Q. Do you remember how much the filing fee and

(Testimony of Joel H. Benton.)

the expenses incidental to that filing was?

A. I don't remember now.

Q. Well, approximately.

A. I can't think now; I don't remember.

Q. You know you paid some fee when you filed?

A. Yes, sir. I forget whether it was \$16.00 now, or what it was.

Q. Where did you get the money to pay that?

A. Well, the filing fee, I had to pay my own expenses going out there to the timber, and I think Mr. Robnett furnished the money for the filing fee.

Q. What do you mean by furnishing your own money going out to the timber?

A. Well, of course, we had some expenses.

Q. Weren't you drawing that expense through that check-book Robnett gave you?

A. This was separate from that, you understand; this was separate altogether. When I went out I told him I had my own money and paid my own expenses. This was a different piece of land from that other, altogether.

Q. I understand that, but I understood that in this check-book, for Robnett's expense you marked it "Ex." and for your own expense—

A. That was for Mrs. Harris' expense and my own, on the homestead.

Q. What did you draw the other checks for?

A. After while when I sold the land—

Q. No, I mean before you sold the land, what were you drawing the checks for?

A. For expenses; as I say, I drew checks for my

(Testimony of Joel H. Benton.)

expenses and Mrs. Harris' expenses for going up and back; she was up and down there two or three times that summer.

Q. How far was this timber claim from your homestead? [573—243]

A. Well, I couldn't say; it was about ten miles, I guess, maybe twelve miles,—I aint sure. I am just guessing at that. It was in 33, wasn't it?

Q. I don't know one from another. Do you remember who prepared your filing papers, your sworn statement for you?

A. No, I don't, because, as I say, I had to hobble around on crutches, and I think my son was there to get it done, and I don't know who did bring them out.

Q. Was your son employed by Mr. Robnett at that time too? A. No, sir.

Q. Do you know who he was employed by at that time?

A. He wasn't employed by anybody; he was out there just the same as me until he came in.

Q. I understood you were out there to assist Mr. Robnett.

A. He came out to stay there with me awhile.

Q. Now, do you remember when the time came around to make your final proof? A. Yes, sir.

Q. And do you remember how much you paid in the land office on the occasion that you made your proof?

A. I think it was something over \$400.00; I ain't sure now.

(Testimony of Joel H. Benton.)

Q. Where did you get the money to make that payment? A. I got it from Mr. Robnett.

Q. That was Clarence Robnett?

A. Clarence Robnett, yes, sir.

Q. Now, did you have any conversation with him or arrangement with him after the first time you saw him that you have referred to about getting that final proof money? A. No.

Q. Did you just go to him the day of the final proof and tell him you wanted the money, or what did you say? A. Yes, sir. [574—244]

Q. Did you give him a note?

A. No, I didn't give any note,

Q. Did you pay him any interest on the money you got from him?

A. No, I couldn't say that I did.

Q. And do you remember of ever repaying that money that you got from Robnett?

A. Well, finally, after about three months, after I finally sold it to him and he got his money for it.

Q. How much did he give you for it?

A. \$1600.00.

Q. Now, did you have any arrangement as to about how much you were to get out of this claim?

A. After the final proof we had an understanding.

Q. Not before?

A. No, sir, there wasn't a word said about it. I could have sold it to anybody just as well as to him as far as that was concerned; there wasn't a word said about it before final proof.

Q. Now, what was this arrangement that you

(Testimony of Joel H. Benton.)

refer to as making with him after final proof, about the sale of this land?

A. Well, after final proof, of course, I wanted more money than he wanted to give me.

Q. How much did he want to give you?

A. \$1,600.00. And I wanted \$2,000.00 for the place.

Q. Why didn't you sell it to somebody else then?

A. Well, as well to him as anybody else; that seemed to be about the price of land.

Q. State now about what arrangement you finally made with him for the sale of this land.

A. Well, he was to give me \$650.00 for it.

Q. Did he give you that much?

A. No, he didn't give me that much.

Q. How much did he give you for it?

A. \$520.00. [575—245]

Q. Had you ever borrowed any money from Mr. Robnett before you got into this arrangement with him about the homestead? A. No, sir.

Q. You never borrowed any money from him?

A. I should say not; I didn't have to borrow no money from him.

Q. Mr. Benton, what was your understanding with Mr. Robnett when you first talked with him about taking up a timber and stone claim that you were to do for him in consideration that he would furnish you the money?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, and not a statement of any fact.

(Testimony of Joel H. Benton.)

A. We had no understanding.

Mr. GORDON.—Q. Did you ever state on the witness-stand that you had an understanding to that effect? A. No, sir, not on a stone and timber.

Q. I am referring now to a stone and timber.

A. The arrangement we had was on the home-stand, I tell you.

Q. I am speaking now about the stone and timber claim. Please answer my question.

A. I say no. Just as I told you, we was talking about a stone and timber and he said if he could find one he would see me through; that was as much of an understanding as we had. I know what you are referring to there. I may have said there like this, that I had it in my own mind.

Q. That is what I am trying to find out, what was in your own mind, what was the way you understood that transaction.

A. That is the way I thought, but that wouldn't make it a fact.

Q. No, but if I can find out from you what your understanding was, and if I can find out from the other party what his understanding was, then we will know what both understood. Do you remember when you testified at the trial of United States vs. Clarence W. Robnett?

A. Yes, sir. [576—246]

Q. At Moscow, which was referred to in the stipulation heretofore mentioned as No. 1607, that in answer to a question by the district attorney, on page 329, you said: "This arrangement, as I under-

(Testimony of Joel H. Benton.)

stood it, was that I was to take up the land and he was to furnish all the money to pay all expenses, and after the expenses were taken out it was to be divided up?" A. That was on the homestead.

Q. No, I am speaking now about the timber and stone claim.

A. Well, you understand, Mr. Gordon, that Mr. Ruick had us pretty near scared stiff up there for a little while, and we got mixed up. Ruick had us all scared stiff up there; there's no use denying he did, because it was a fact.

Q. Were you under indictment? A. Yes, sir.

Q. Are you under indictment now?

A. I understand not.

Q. You are not mixed up now, are you?

A. No, I am not mixed up now, but I confess I was mixed up then. That was the arrangement about the homestead.

Q. Let us see now whether you were mixed up or not. At that trial Mr. Ruick handed you a sworn statement, and then this question follows: "Is that the sworn statement which you signed in the United States land office? Answer. Yes, sir, I think it is. That is my name there. Question. You haven't any doubt of it? Answer. No, I have no doubt of it. Question. And in duplicate? Answer. Yes, sir, that is my signature." Do you remember those questions being asked you and those answers being made by you? A. Yes.

Q. "And said papers were marked Plaintiff's Exhibit 14, for identification." I show you the same

(Testimony of Joel H. Benton.)

paper, marked Plaintiff's Exhibit 14, and ask you if that isn't the same paper you were looking at when Mr. Ruick was asking these questions of you at the trial of Mr. Robnett. [577—247]

A. That is my signature there.

Q. And that is the same paper he was talking to you about then, isn't it?

A. I couldn't swear it would be the same paper, but that is my signature.

Q. How many of these papers did you sign,—only the two, wasn't it? A. Yes, sir.

Q. It was in duplicate? A. Yes, sir.

Q. You never had any other sworn statement in that case, did you?

A. No. I say that is my signature there; I know that.

Q. Now, let us see whether you were mixed up then or whether you are mixed up now. Then this statement was made: "Read over this paper, Mr. Benton, and state whether you recall the provisions contained therein in relation to whether you had any agreement in relation to the land. Answer. I don't understand your question. Question. Read it over and state whether or not you recognize those provisions or statements as the statement at the time you made it? Answer. Yes, sir; as I understand it. I see that in there. I didn't quite catch your question. Question. You were sworn to this. You testified to that? Answer. Yes, sir. Question. At the time you made this statement under oath you filed your sworn statement, had you entered into any

(Testimony of Joel H. Benton.)

agreement with any person respecting the disposition of this land, when you should get title to it?" Then there was an objection by counsel, and the next question was: "Did you have any agreement respecting this? Answer. Well, I had— Question. Kindly answer the question. Answer. Yes, sir. Question. With whom did that agreement exist? Answer. Clarence Robnett." Do you remember those questions being asked you and those answers being made by you?

A. Why, I remember,—I can't remember all those things now, eight years ago, seven years ago, but it must be so. [578—248]

Q. But this hasn't been seven years ago; this was less than three years ago that this took place.

A. That was at the trial of Kettenbach, was it?

Q. No—at the trial of Mr. Robnett.

A. I certainly was mixed then if I said it was about the stone and timber, if I said there was an agreement.

Q. Mr. Benton, don't you know that Mr. Ruick wouldn't give you any papers to look at concerning any homestead entry, that the Court ruled that evidence out and wouldn't let him go into that?

MR. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial, and cross-examination. A. I don't know.

MR. GORDON.—Q. Don't you know that when those questions were being asked you you were holding this in your hand?

MR. TANNAHILL.—I object to that, on the

(Testimony of Joel H. Benton.)

ground that the witness didn't hold it in his hand. I was there and knew something about that.

Mr. GORDON.—Well, I was just going on the record that you went to the Circuit Court of Appeals on.

A. I don't know about that at all. I know very well that Mr. Ruick had me all mixed up anyhow, and if I swore there that I had that kind of an agreement on the stone and timber claim, as I said a while ago, as I supposed the thing, it was so, but I was thinking all the time about the homestead.

Q. Let us go a little further and see if this will refresh your recollection: "Question. Was that agreement made before you filed this application? Answer. Yes, sir. Question. Or this sworn statement? Answer. Yes, sir. Question. State what the agreement was. Give the language of Mr. Robnett and your own as to the title and disposition of these lands, the entire arrangement concerning it."

A. That was on the first trial of Robnett, wasn't it? [579—249]

Q. Yes, it was the trial of Robnett. Do you remember those questions being asked and those answers made by you?

A. Let me see that paper again. This is the paper you are talking about?

Q. Yes, sir.

A. That is on the filing of the stone and timber, isn't it?

Q. Sworn statement, yes, sir.

A. As I say, I was mixed up. Mr. Ruick had me mixed up. That agreement was on the homestead

(Testimony of Joel H. Benton.)

and nothing else.

Q. Did you ever file on your homestead?

A. No, sir, I never filed on it.

Q. You never filed any paper on it?

A. Never filed any paper whatever.

Q. How could you have gotten mixed up then, Mr. Benton, in thinking he was showing you a paper and talking about a homestead entry?

A. I said I got mixed on the homestead and timber claim.

Q. Then, this question on page 329 of the record that I have referred to, in No. 1607, "Question. Now I am asking you what that agreement was and if they desire the details, *they desire the details*, they may ask it. Answer. I can give it in detail, and just exactly what it was. Question. Well, that is all I want. Answer. Oh, it was some time before this. Question. I recognize that fact, knowing that that was true, I wanted to confine you under the rules of this court as closely as possible to an answer to my question direct in relation to the stone and timber entry, because the Court has ruled that matters relative to other land claims are not to be admitted. I am asking you what this arrangement was. Answer. The arrangement, as I understood it, was that I was to take up the land, and he was to furnish all the money to pay all expenses, and after the expenses were taken out, it was to be divided up." Do you remember making those answers to the questions asked you?

A. I suppose I did; I don't remember now, but I

(Testimony of Joel H. Benton.)

suppose I did. [580—250]

Q. The next question, on page 330: "Question. Who, if anyone, suggested that arrangement? Answer. Mr. Robnett, and I had the arrangement with him. Question. Well, now, then, do I understand this arrangement was the result of a conversation had between you and Mr. Robnett? Answer. Yes, sir." Do you remember those questions being asked and those answers being made by you?

A. If I made those answers on the stone and timber, I got it mixed up with the homestead business, because that was the arrangement we had on the homestead, and, as I say, there was nothing said about the stone and timber except just what I tell you, that he would see me through; that was the only thing that was said about the stone and timber.

Q. I understood you to say that you got the \$400.00 and some odd dollars from Mr. Robnett with which to make your final proof? A. Yes, sir.

Q. And where did you receive that money from him?

A. He paid it to me in the director's room of the Lewiston National Bank.

Q. Was it in cash? A. Yes, sir.

Q. And did you go directly from that room up to the land office to make your proof? A. Yes, sir.

Q. Was anything said to you on that occasion by Mr. Robnett as to what you should testify to with reference to questions that would be asked you when you went to pay that money into the land office?

A. I think there was something said about it.

(Testimony of Joel H. Benton.)

Q. Did Mr. Robnett have a set of the final proof papers down in the directors' room of the bank and go over them with you and discuss with you how you should answer the questions?

A. No, he didn't have all; he had a few questions,— he didn't have all.

Q. He had a blank form, did he? [581—251]

A. I don't remember; but he had only a few questions.

Q. Do you remember what those questions related to? A. One related to the money.

Q. And that matter was discussed, as to what you should say as to where you got the money?

A. I think so, yes.

Q. You weren't mixed up then, were you? You knew what you were doing then, didn't you?

A. Yes.

Q. What was said about the money at that time?

A. What was said about money?

Q. Yes, between you and Mr. Robnett, about what you should say about the money, when you went to the land office?

A. All he said was I should say it was mine.

Q. And that is what you did say when you went to the land office, isn't it? A. Yes, sir.

Q. Do you remember this question being asked you on your cross-examination at the land office, question seventeen, "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 that you answered, "Earned it in selling goods. One day." Do

(Testimony of Joel H. Benton.)

you remember making that answer?

A. No, not in selling goods one day.

Q. The one day referred to the time you had had it in your possession.

A. Yes, I said something like that.

Q. That wasn't true, was it? A. No, sir.

Q. And you and Mr. Robnett fixed that up before you went up to make that statement, didn't you?

A. In the bank there, yes.

Q. And then this question was asked you: "Have you kept a bank account during the last six months, if so, where? Answer. Yes, Lewiston National Bank." You never had a bank account there, did you? [582—252]

A. No, I guess not. In a way I had a bank account there; I drew checks on the bank.

Q. Do you remember, after you and Robnett were indicted, that Robnett came to see you to talk these matters over? A. Yes, sir.

Q. And he wanted you to swear a certain way, did he not? A. Yes.

Q. And what did he tell you?

A. What did he tell me?

Q. Yes,—on that occasion?

A. I don't just know what you mean.

Q. Well, what was the conversation you had with him; what was the subject of it?

A. Why, he said if we would both tell the same thing we would both get out.

Q. And you declined to tell the same thing as he did then. Is that correct? A. Yes, sir.

(Testimony of Joel H. Benton.)

Q. Do you remember whether or not, in that conversation, he wanted you to say that the money he had advanced to you in these matters was a loan, and that you declined to do it? A. Yes.

Q. You never considered it a loan, did you?

A. Well, not a loan; I never gave a note for it.

Q. Before you went to the land office to make this final proof, at the conversation that you and Mr. Robnett had in the directors' room at the bank, do you remember discussing the question as to what you should say when you were asked at the land office whether you had an agreement or not with him concerning that timber claim?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial.

A. I didn't quite understand your question.
[583—253]

Mr. GORDON.—Q. Do you remember, when you were in the directors' room with Robnett, just before you made final proof, that you were going over some questions with Robnett as to how you should answer them?

A. The only thing was about the money; that is all I remember about now, about the money.

Q. Do you remember whether or not, in that conversation, there was a discussion as to what you should say when you were asked if you had an agreement with anyone about that land?

A. I don't think that was discussed at all; I don't remember it at all.

Q. Mr. Benton, have you talked this case over with

(Testimony of Joel H. Benton.)

anyone since these last trials?

A. Why, I have talked to several people about it.

Q. You have talked to some of the special agents of the Government, have you not? A. Yes.

Q. And did you read this testimony over, at their instance?

A. I read it over before I went down to Boise.

Q. Where did you read it?

A. In some rooms in the Weisgerber building.

Q. In whose office?

A. It seems to me that it was in Johnson's office, wasn't it?

Q. They are in the same building,—I don't know. Who showed it to you?

A. Mr. Watt and Mr. Smith.

Q. And you had no misunderstanding about it when you read that testimony then, had you?

A. No, but I remember they showed me my evidence on the last trial of Kettenbach and others; they didn't show me my evidence on the Robnett case, just the evidence on the last trial of Kettenbach and Dwyer.

Q. Do you remember at the trial of Robnett that we have referred to, page 342, that this question was asked you: "And the agreement you have [584—254] spoken about was going up with Mrs. Harris and some of the other members of your church to file on the homestead? Answer. My agreement was carried on through to the stone and timber, the same agreement." Do you remember making that reply to the question I read?

(Testimony of Joel H. Benton.)

A. No, I don't remember, but, as I said before, in my last testimony there, that was my supposition in my own mind, that that same thing went through, but the fact was there wasn't a word said about selling the land to him, the stone and timber

Q. Then, when you had your first talk with Robnett about taking up a timber and stone claim, do I understand you to say that it was your understanding then that your timber and stone claim was to be taken up under the same arrangement you had as to the homestead?

A. I would like to answer that by—

The SPECIAL EXAMINER.—You can answer it yes or no.

Mr. GORDON.—Answer it yes or no, and then explain what you have to say about it.

A. I can say yes, in a way. Here is the way of it: I remember the question asked me, "What do you mean by saying he would see you through."

Q. Explain now what your understanding was.

A. Why, that he would furnish me the money to go ahead for final proof and expenses. I think that question was asked me; I know that question was asked me.

Q. What were you to do with the land after you got your proof made?

A. Well, there wasn't a word said about it.

Q. What was your understanding that you were to do with it?

A. Well, my understanding was that he was to furnish me the money to prove up on, and there

(Testimony of Joel H. Benton.)

wasn't no understanding between him and I about that stone and timber, only as I might have thought I would let him have it, as long as he had furnished me the money, I thought I would let him have it, but I never agreed to sell that land at all. [585—255]

Q. You have said that enough to impress me with that fact, Mr. Benton, but I want to know what your understanding was that you were to do in order to get him to carry his part through that you have told about.

A. I say I understood he was to furnish me the money to carry it through, and the expenses and the final proof.

Q. Now, you have told twenty times what he was to do. What were you to do?

A. Why, I suppose,—my understanding was that I was to let him have the land.

Q. The same as it was with the homestead?

A. But there was nothing said about it.

Q. As I say, I am sufficiently impressed that that is the idea you are wishing to convey, but all I wanted was your understanding at the present time. Do you remember this question being asked you at the trial of Mr. Robnett that I have referred to several times, right in connection with the other questions I have read to you: "What I desire to get at is whether or not he said anything at that time with reference to stone and timber entries? Answer. When we was up in the timber he did, but the agree-ment as to how we should divide was not mentioned there, but it was my understanding and the subse-

(Testimony of Joel H. Benton.)

quent facts would prove that he had the same understanding and I can give you it if you want me to." Do you remember the question being asked you then and your making that answer I have read?

A. Yes, sir.

Q. You remember them, do you? A. Yes, sir.

Q. And that answer you made, it is true, is it not?

A. Yes, sir.

Q. You weren't excited about that question and answer, were you? You knew what you were saying?

A. I knew what I was saying. [586—256]

Q. And you were telling the truth about it, weren't you? A. I believe I was.

Q. Do you remember whether or not, when you were discussing the questions you should answer in the land office at final proof relative to whether or not you had an agreement, that you and Mr. Robnett discussed whether you had an agreement because it wasn't in writing?

A. I don't remember anything about that at all.

Q. You don't remember that?

A. No, sir; that question was raised before I went into the timber though. I remember his saying this, that as long as we didn't have it in writing it was all right.

Q. That was when he first talked with you about—

A. About the homestead. I don't remember any such thing about the timber.

Q. That as long as you didn't have an agreement in writing it would be lawful?

A. That was before we ever went into the timber

(Testimony of Joel H. Benton.)

at all; that was on the homestead.

Q. Mr. Benton, did I ask you to whom you made a deed? A. You didn't ask me, no, sir.

Q. Do you remember to whom you made a deed?

A. To Clarence Robnett.

Q. To Clarence W. Robnett? A. Yes, sir.

Q. That was how long after you made your proof?

A. I think about three months; I ain't sure.

Q. This man Al. Smith that located you, did he charge you a location fee? A. Yes, sir.

Q. How much? A. I think it was \$50.00.

Q. Did you pay him, or did Mr. Robnett pay him?

A. Mr. Robnett paid him. [587—257]

Q. Then, why did you say you paid him?

A. I didn't say I paid him.

Q. Oh, I understood you did. Excuse me.

A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Joel H. Benton, dated August 28, 1902; the testimony of Joel H. Benton on final proof; the cross-examination of Benton on final proof; the testimony and cross-examination of the witnesses at final proof; the receiver's receipt and the register's certificate, dated November 21, 1902; certified copy of patent issued to Joel H. Benton February 25, 1904, all relating to the entry of the south half of the southwest quarter, and the south half of the southeast quarter of section 15, township 39 north of range 3 east, Boise meridian; also certified copy of deed, dated December 29, 1902, between Joel H. Benton and Lida Alice Benton, his wife, to

(Testimony of Joel H. Benton.)

Clarence W. Robnett, consideration \$1600.00, to the south half of the southwest quarter and the south half of the southeast quarter of section 15, township 39 north of range 3 east, Boise meridian, executed before Otto Kettenbach on the same date as the deed, and recorded at the request of the Shoshone Abstract Company April 27, 1903, at the office of the recorder of Shoshone County.

Said last above mentioned documents were thereupon marked by the stenographer as Exhibits 12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12 I, 12J, 12K, 12L.

Mr. TANNAHILL.—The defendants waive any further identification of the papers, but severally object to the introduction of the papers in evidence in support of bills No. 388 and 407, upon the ground that the entry is not involved in those two cases, and they are irrelevant and immaterial. The defendants severally object to that portion of the papers offered in evidence relating to the final proof, and especially the testimony of claimant Joel H. Benton and the cross-examination of the claimant Joel H. Benton, the testimony of the witness William B. Benton and the cross-examination of the witness William B. Benton, the testimony of the witness Walter A. Smith and the cross-examination [588—258] of the witness Walter A. Smith, and the proof of publication, upon the ground that they relate to the final proof, occurring long after the filing of the sworn statement, and are irrelevant and immaterial.

Mr. GORDON.—I will say, Mr. Tannahill, that I

(Testimony of Joel H. Benton.)

notice that the notice for publication and the non-mineral affidavit are not with those papers, but they have been exhibits in several trials and may have been mislaid; I haven't kept them out of the record at all.

Mr. TANNAHILL.—Well, that is all right.

Mr. GORDON.—Q. Mr. Benton, in what township was your homestead claim, the one that you homesteaded on? A. In 39-4.

Q. And this is 39? A. —3, I believe.

Q. This isn't the same claim you squatted on as a homestead and afterwards filed a timber and stone on, is it? A. No, sir.

Mr. GORDON.—That is all. [589—259]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Benton, did you ever have any contract, agreement or understanding in regard to the sale of this piece of land, or the conveyance of it, prior to the time you filed your sworn statement, and prior to the time you made your final proof, with William F. Kettenbach, George H. Kester, or William Dwyer? A. No, sir.

Q. Did you have any such agreement with the Clearwater Timber Company, or Elizabeth White, or any of the defendants named in these three actions?

A. I never had a word with them. I never talked with them about it.

Q. And as I understand you, you had no agreement for the sale of your timber claim prior to the time you filed your sworn statement, and prior to the

(Testimony of Joel H. Benton.)

time you made your final proof, with anyone?

A. No. In fact, there was nothing said about it at all.

Q. And there was no such agreement carried out between you and Mr. Robnett?

A. I know I sold him the land afterwards.

Q. You know you sold him the land afterwards? Now, how long after you made your final proof was it that you sold him your land?

A. I made a deed to him, it says there about three months. I don't remember now.

Q. And how much did you get for your land?

A. I got about \$520.00. The consideration of the deed was \$1,600.00.

Q. \$1,600.00? A. Yes, sir.

Q. And from that \$1,600.00 was deducted the money that Mr. Robnett had let you have?

A. Yes, sir. [590—260]

Q. You paid him back the money he had advanced you, out of that \$1,600.00, and that left you about \$530.00? A. \$520.00.

Q. \$520.00? A. Yes, sir.

Q. Then, Mr. Benton, your affidavit that you made when you filed your sworn statement, that "I have made no other application under said acts; that 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

(Testimony of Joel H. Benton.)

acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that statement was true, was it?

A. Well, it was true when I made it. I wanted to raise some money and gain all out of it I could.

Q. I know; but you had made no contract to convey the land at that time?

A. No, I have made no contract to convey the land.

Q. And whatever might have crept into your evidence that you gave over in Moscow in the case of the United States against Clarence Robnett, and the case of the United States against William F. Kettenbach and George H. Kester and William Dwyer, regardless of what you may have said over at Moscow, the statement that you make here now is true, is it not?

A. I didn't get all that.

Q. I say, whatever might have crept into your evidence over at Moscow, the statement that you make now that you had no agreement to convey your land is true?

A. As a matter of fact I didn't make any agreement.

Q. That is true? A. Yes, sir. [591—261]

Q. I will ask you, Mr. Benton, if during your talks with Mr. Robnett if he said anything to you about not letting Mr. Kester or Mr. Kettenbach know of his purchasing the land, or of his arrangements with you?

A. He did, yes, sir; he told me several times he had no connection with them whatever; that he had

(Testimony of Joel H. Benton.)

nothing to do with them at all; it was on his own account.

Q. He was doing business on his own account?

A. On his own account, yes, sir. He told me that several times.

Q. And what was his actions in regard to them not knowing what he was doing in regard to your land? State whether or not he tried to keep that from them, or talked with you where they couldn't hear you.

A. He did; he tried to keep it secret.

Q. He tried to keep it from them?

A. Yes, sir. He took me out in the Directors' room, and didn't want anybody to hear what we was doing.

Q. Now, when you sold your land to Robnett was the \$150.00 that was paid to Al. Smith as a location fee—

A. No—\$50.00.

Q. Or \$50.00? A. Yes, sir.

Q. Was that \$50.00 that was paid to Mr. Smith as a location fee deducted from the purchase price of this land? A. Yes; all expenses were, yes.

Q. And you and Mr. Robnett never agreed on what you should have for the land until about three months after you had made your final proof?

A. No—about three months. You see what the deed is there—about three months—I don't remember just the date of the deed. [592—262]

(Testimony of Joel H. Benton.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Benton, how many times did you go to the Lewiston National Bank relative to this claim?

A. Relative to this claim?

Q. Yes.

A. I didn't go to the Lewiston National Bank about the claim.

Q. No—I mean how many times were you in there to talk to Robnett about this claim?

A. I was there once before I filed, to receive the money.

Q. When you were there did you go in the Directors' room then? A. Yes, sir.

Q. And then when were you there again? You were there again in the Directors' room when you made your final proof?

A. Yes, sir; when I made my final proof.

Q. And did you go to the bank when you made the deed? A. No, sir; he came to my house.

Q. He came to your house? A. Yes, sir.

Q. Now, what was Mr. Robnett's position in the bank during all this time? A. Bookkeeper.

Q. Now, what was it brought about this conversation in which you relate that Mr. Robnett told you not to let either Kester or Kettenbach know anything about it?

A. Oh, I don't know; he just seemed like he didn't want them to know it. Sometimes he would go and shut the door between the Directors' room and the main part of the bank. He didn't say he didn't want

(Testimony of Joel H. Benton.)

them to know.

Q. The Directors' room was a little glass place partitioned off from the rest of the bank, wasn't it?

[593—263]

A. No. At that time it was the room behind. It was a little different from what it is now. It was behind the main part of the room.

Q. Now, what did he say?

A. Oh, I don't know. I say, I don't think he said not to tell them anything about it, but I say from his actions.

Q. You are just judging from the way he acted, and not by anything he said?

A. He told me—that was before, though,—that his actions had nothing to do with the bank.

Q. Is that the way he expressed it? A. Yes, sir.

Q. He didn't mention Mr. Kester or Mr. Kettenbach? A. No, sir.

Q. Then, he never told you that Mr. Kester and Mr. Kettenbach never had anything to do with this?

A. I say he told me he had nothing to do with them; that he was doing it on his own account. He told me he had borrowed the money and mortgaged his home to get the money to do this.

Q. What brought about that conversation?

A. We were talking about expenses.

Q. He told you at that time that he had no connection with Kester and Kettenbach relative to this?

A. Yes, sir.

Q. And that was before you filed on the timber and stone claim? A. Yes, sir.

(Testimony of Joel H. Benton.)

Q. Did he ever make that statement to you after that?

A. No; I never had no conversation with him about it.

Q. About their connection with it? A. No.

Q. That was then prior to August, 1902?

A. Prior to the time of filing. [594—264]

Q. Yes? A. Yes.

Q. Which was August, 1902?

A. Yes. I don't know—I think I filed then, wasn't it?

Mr. GORDON.—Yes. That's all, Mr. Benton.

**[Testimony of Frederick W. Newman, for
Complainant.]**

FREDERICK W. NEWMAN, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Frederick W. Newman?

A. Yes, sir.

Q. A little louder? A. Yes, sir.

Q. Where do you reside? A. Lewiston.

Q. Lewiston? A. Lewiston; yes, sir.

Q. And you resided there in March, 1903?

(No answer.)

Q. You resided in Lewiston in March, 1903?

A. No, sir.

Q. Where did you reside then?

A. Clarkston, Washington.

Q. And what was your occupation?

(Testimony of Frederick W. Newman.)

A. No—I lived on this side of the river. That's right—on this side of the river. I did live in Lewiston. [595—265]

Q. Then, you did live in Lewiston? A. Yes, sir.

Q. What was your occupation in March, 1903?

A. I was running a warehouse—warehouseman.

Q. You were running what? A. A warehouse.

Q. What kind of a warehouse?

A. A grain warehouse—receiving grain—weighing grain.

Q. Were you the owner of this establishment?

A. No, sir.

Q. Who were you employed by?

A. F. W. Kettenbach.

Q. Frank W. Kettenbach? A. Yes, sir.

Q. And what were your duties there?

A. Why, receiving grain, weighing it in, and working in the warehouse, piling it up.

Q. Were you a laborer at the warehouse?

A. Well, I was receiving it, attending to the office work and also laborer at the same time, and shipping out, and such like as that.

Q. What was your salary?

A. Why, it was either—at that time I think it was \$75.00.

Q. A month? A. Yes, sir, or \$70.00.

Q. Were you a married man? A. Yes, sir.

Q. Did you have any children? A. Yes, sir.

Q. How old were they? A. Why, let's see—

Q. Well, how many children did you have?

A. Three. [596—266]

(Testimony of Frederick W. Newman.)

Q. And how old is the oldest one now? A. 13.

Q. And how old is the next oldest?

A. She is going on 11.

Q. And how old is the youngest now? A. 3.

Q. Then, in 1903 you only had two children?

A. I had three children.

Q. Is one of them dead?

A. No. The oldest boy is 13 years old.

Q. And how old is the youngest now?

A. At that time?

Q. How old is the youngest child you have living now? A. Three years old.

Q. Well, he was not born in 1903, then?

A. No, sir.

Q. Well, have any of the children died since 1903?

A. No, sir.

Q. Then, you only had two children in 1903?

A. I had three children. Let me see—no; I only had two at that time; yes, sir.

Q. Yes?

A. Yes, sir. There was one born a few months after.

Q. Did you rent a house in Lewiston, or did you own your home?

A. I paid rent for the ground that I lived on, but I owned the house.

Q. It was just a town lot?

A. Why, it wasn't far from the warehouse. It wasn't exactly a lot. While I didn't make any use of the ground except where the house stood, I had the privilege—there was about two acres in the piece—

(Testimony of Frederick W. Newman.)

I had the privilege of using the ground, but I didn't have much time.

Q. Did you have to pay rent for the ground, Mr. Newman? [597—267] A. No, sir.

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

A. I spoke to Mr. Emery; I asked him in this way: I says, "Mr. Emery, the wood is getting so high, I understand you are locating timber claims up there; is there any chance at all?" "Well," he says, "there isn't much chance; any claim that is of any account," he says, "is gone"; he says, "it has been taken up long ago." He says, "There might be something there yet. I will see you after a while," or some time or another, "and let you know if there is any land to be had."

Q. Well, did you intend that seriously?

A. Yes, sir; I did at the time.

Q. It wasn't a joke, then?

A. No, sir; it wasn't in a joking manner with me.

Q. Which Mr. Emery was this you referred to?

A. Fred. Emery.

Q. And what was his business?

A. I don't know what he was doing at the time—just exactly at the time; he had been running the sawmill here, and I don't know exactly what he was doing just at that time. He was here in Lewiston.

Q. Was he of the firm of Emery & Colby?

A. I think not. I think they had dissolved by that time. No, they were still milling; the mill was still running.

(Testimony of Frederick W. Newman.)

Q. Did you ever talk with Mr. Frank Kettenbach about this timber claim? A. No, sir.

Q. Did you know Mr. George H. Kester at that time? A. Yes, sir.

Q. And did you know Mr. William F. Kettenbach?

A. Yes, sir; I knew them by sight; I don't know as I was on speaking acquaintance with them at that time.

Q. Well, later did Mr. Emery tell you something further about the timber claim? [598—268]

A. Yes, sir.

Q. Now, state what happened.

A. Well, he said I could go up there, and he says, "There is something to be had there yet," and I told him all right, that I would investigate it.

Q. Now, how long after the first conversation did you have the second conversation?

A. Well, I couldn't exactly say. Oh, it must have been a matter of a week or two.

Q. A week or two? A. Yes, sir.

Q. Well, when you first talked to him he didn't know whether there was a timber claim he could locate you on or not, is that correct?

A. That is what he intimated, yes, the way I understood it.

Q. Well, now, state what transpired next in relation to this claim.

A. Well, I looked the matter up then, and I told him that there wasn't much to that.

Q. There wasn't much to what?

A. To the claim, and I says I would like to have

(Testimony of Frederick W. Newman.)

a different claim than that.

Q. Well, had you been to see the claim then?

A. Yes, I saw that land—that whole section of country—previous to that.

Q. And when did you see the whole section of the country? A. Well, up as early as '96.

Q. 1896? Were you a timber cruiser yourself?

A. No, sir; I was working in a logging camp; oh, I should judge it was about a mile—oh, it was more than that; we had a camp within I should judge about three miles and a half from there.

Q. You knew where this timber claim was just as soon as he had selected a place to put you on? [599—269]

A. No. No, I didn't. I had been in through that country, but I didn't know the particular claim. I didn't know anything about that.

Q. And then, when he said that he had a claim what did you say to him?

A. Why, I says for him to wait a few days. I says, "I want to see E. C. Smith, to see if they are loaning any money on Clarkston real estate." I owned a house and lot in Clarkston, and I says to Mr. Smith, "Are you loaning any money on Clarkston real estate?" And he says he would, but he says, "Why not get it over there?" And I says, "I am working for the people over there, and I would rather get it here."

Q. Who was Mr. E. C. Smith?

A. He was cashier of the Idaho Trust Company.

Q. And was Mr. Frank Kettenbach President of

(Testimony of Frederick W. Newman.)
the Idaho Trust Company at that time?

A. Yes, sir.

Q. And before you made any arrangements then with Mr. Smith, or rather with Mr. Emery, you went to see Mr. Smith to see if you could borrow some money? A. To borrow some money.

Q. All right. Go ahead.

A. Well, he told me he did; he would loan me money on Clarkston real estate, and I asked him about the rate of interest, and he wanted to know how long a time I wanted it. Well, I told him a year or two. "Well," he says, "how much do you want?" "Well," I says, "about \$300.00, and possibly \$400.00," I says, "I have some money, but I will let you know how much I want." And then I had no more in regards to getting the money matters—I had no more conversation with Fred. Emery till some time before proving up time.

Q. Well, wait a minute. When was it that you told him that the claim that he referred to was not satisfactory to you?

A. Well, that must have been some time in February. [600—270]

Q. That was before you filed? A. Yes.

Q. Now, you hadn't been up to see the claim then, had you?

A. Not in February I hadn't, only the country what he was talking about; he described it to me as near as he could at that time. "Well," I says, "it is too far away from the river," I says, "Isn't there something closer by?" "Well," he says, "we will

(Testimony of Frederick W. Newman.)

have to see about that.”

Q. Well, then did he get you something closer by the river?

A. Well, it is really closer by than what he showed me first.

Q. Well, did you go up there and go over this claim?

A. I went over in March, I went over the claim that we selected.

Q. With whom did you go over the claim?

A. Fred. Emery.

Q. Did you go all the way up to the claim?

A. Well, I supposed I did, as near as he described it. He showed me the line, and I supposed that was the claim.

Q. Now, tell us where you did go.

A. Well, do you want—?

Q. You started from Lewiston?

A. Yes—we have to start from Lewiston.

Q. Well, tell us where you went to.

A. We went up to Ahsahka.

Q. And how far is that from Lewiston?

A. It is about—that is about 40-odd miles, I don't exactly know—40-odd miles.

Q. And then where did you go after you went this 40 miles?

A. We took up the trail—we took up the river.

Q. Well, how far did you go then?

A. Let's see—about—

Q. Can't you approximate it?

A. Oh, I can somewheres near; it is about 18 miles,

(Testimony of Frederick W. Newman.)

I think, up to Dent's. [601—271]

Q. Dent's? A. Dent's.

Q. And then where did you go?

A. To the island—the big island.

Q. And how far is that from Dent's?

A. It is about 12 miles.

Q. And how far from the big island was the claim which you located?

A. It is somewheres in the neighborhood of seven miles.

Q. Did anyone go along with you besides Mr. Emery? A. Evans—Jim Evans.

Q. Now, when you were up there did you find out who owned the land adjoining the claim which you would be locating on? A. No, I didn't.

Q. Nobody told you?

A. I couldn't find any information whatever.

Q. And nobody but Jim Evans went with you, did I understand you to say? A. Yes, sir, that's all.

Q. How long were you gone from Lewiston?

A. I think we was up there about three days.

Q. Three days from the time you left here until you returned; or were you in the timber three days?

A. No—up from the time we left here, I think, all told.

Q. From the time you left here until you returned?

A. Yes, sir—about three days.

Q. Three days? A. Yes, sir.

Q. And you went the first 40 miles by rail, did you?

A. 40-odd miles.

Q. And you went the rest by saddle horse, or how?

(Testimony of Frederick W. Newman.)

A. Well, we had a pack-horse, and we went afoot a whole lot. [602—272]

Q. How long after you returned did you file?

A. Well, I don't know; it must have been a couple of days before I filed on it.

Q. Do you remember what month it was that you went up there—went up to the timber?

A. I think it was the fore part of March.

Q. Was there any snow up in there at that time?

A. Yes.

Q. Sir?

A. Yes, sir; there was some snow up there.

Q. Very deep?

A. Well, in places it was, and towards the river it wasn't so very deep.

Q. How deep was it?

A. Oh, there was snow in places and in places there wasn't.

Q. Did you have to go on snowshoes? A. No.

Q. How deep was the deepest you went in on the trail?

A. Oh, there was places where there was drifts you could go knee-deep, or better.

Q. Now, after you went up there with Mr. Emery, or while you were up there, was it then that you learned that the claim was better than you thought it was?

A. Yes; I thought it was closer to the river than what he first presented to me—what he told me.

Q. Do you know how much timber was on that claim?

(Testimony of Frederick W. Newman.)

A. No, I didn't really know, only just what him and Jim said about it—Jim Evans—Evans and Emery.

Q. And you came back to Lewiston and made your filing, did you? A. Yes, sir.

Q. Who prepared the first papers that you filed in the land office? [603—273]

A. I think it was Fred. Krutinger, or Cox. I think it was in Cox's office—Fred. Krutinger, I think it was.

Q. Did you pay any fee for that service?

A. Yes.

Q. How much?

A. Well, I don't know what it was—\$1.50 or \$2.50.

Q. Do you remember what your expenses were in going from Lewiston up into the timber and returning? A. No, I don't.

Q. Haven't you any idea?

A. Because Jim Evans had grub at the island there, and it didn't cost me very much. I didn't have to pay for everything I got.

Q. I understand that; but I want to know what you did pay for, and how much it was?

(No answer.)

Q. Did you pay anything on this excursion?

A. Well, yes.

Q. Well, how much?

A. Well, that trip cost me somewheres about \$8.00.

Q. And did you pay a location fee?

A. I paid \$100.00 for that.

Q. When did you pay that—before you filed?

(Testimony of Frederick W. Newman.)

A. No.

Q. When—after you sold?

A. After I sold, yes. That was the understanding, if I ever did sell to pay it after it was sold.

Q. What was that?

A. That was the understanding—to pay him if I ever sold, to pay him after it was sold.

Q. And you were not to pay unless you did sell?

A. Oh, I was to pay anyway, but I was to give him a note, to make him good for it, he says. [604—274]

Q. Did you give him a note for it?

A. No, I didn't.

Q. Do you remember whether or not you paid a filing fee when you presented your first papers at the land office?

(No answer.)

Q. Can't you think?

A. I don't remember whether I did or whether I didn't, or how much it was. I don't remember now.

Q. Who went to the land office with you when you filed your sworn statement?

A. Why, Emery and Evans and Bishop.

Q. Mr. Lon E. Bishop?

A. Lon E. Bishop, and Smith, I think it was.

Q. What Smith? A. I think his name is Smith.

Q. Who went with you to the office when you had your filing papers prepared?

A. I think Fred. Emery did.

Q. Did you suggest the names of the witnesses for final proof at the time you made your initial application? A. Oh, I don't think I did.

(Testimony of Frederick W. Newman.)

Q. Did Mr. Emery go to the land office with you when you filed your sworn statement?

A. I think he did.

Q. And you say you have no recollection of naming the witnesses for final proof?

A. I don't know as I did.

Q. Now, did you ever learn that Mr. Smith wouldn't loan you the money to make the proof with?

A. I never learned that he wouldn't loan me the money.

Q. Sir?

A. He never said that he wouldn't loan me the money. [605—275]

Q. Then, you never tried to get it from him?

A. No, sir, I didn't.

Q. You remember the occasion of making your final proof, do you? A. Yes, sir.

Q. And how much did you pay to the land office on that occasion?

A. I think it was something better than \$400.00.

Q. Do you know how much more than \$400.00?

A. I don't exactly remember now.

Q. Wasn't it just \$400.00?

A. I am not sure as to that. I know what money I had and what money I got from Emery.

Q. Got from who?

A. Got from Emery,—from Colby, rather.

Q. Now, which one did you get it from?

A. From Colby.

Q. And what is Mr. Colby's name?

A. I think it is C. W. Colby.

(Testimony of Frederick W. Newman.)

Q. And you say that he was the partner, or had they dissolved their partnership at that time, with Emery?

A. I don't know. He was bookkeeper there then. It was Small & Emery still operating the mill.

Q. What is that? A. Small & Emery.

Q. I can't hear you.

A. Small & Emery were operating the mill there yet, and Colby was an employee there, keeping books there; whether he was in partnership or not I don't know. He was just known to me as the man that kept the books there.

Q. Now, who went to the land office with you to make your final proof?

A. Why, it was Emery and Evans, Bishop and Smith.

Q. Now, where was Mr. Colby at that time?
[606—276]

A. He came up there, and he only came in the hallway and gave me the money.

Q. When did you make your arrangement with Mr. Colby to get the money to make your proof?

A. It was a few days before; I met Mr. Emery, and I says, "Fred"—I told him the circumstances of the bank; the bank wanted to make me a two-year loan, and I says, "I don't know as I will ever want the money that long or not." "Well," he says, "we don't care to be loaning any money for a year for a small loan like that," he says, "we would like to loan you about \$500.00 for about two years," and I says, "I don't know as I want that much money, and I

(Testimony of Frederick W. Newman.)

don't know as I will want it for two years," and I says to Fred, "Is there any way to get the money to pay for the filing now, instead of going to the bank and borrowing the money for two years?" He says, "I don't know; I'll see."

Q. Now, where was this conversation?

A. That was right here in Lewiston.

Q. Whereabouts in Lewiston?

A. I think somewheres on the street. I was working at the time and I met him down town. I says, "I can get the money from the Idaho Trust Company by mortgaging my home," and I asked him then if there wasn't private money besides going to the bank, because they wanted to loan it for two years.

Q. Well, you have told us about that. And what did he say?

A. He says he would see me in a few days.

Q. How long was that before final proof?

A. I don't think that was much over two or three days.

Q. And then when did he tell you that he would let you have it, or could get it for you?

A. Well, that was—I don't know whether it was the same afternoon or the next day.

Q. And then he told you that he could get it for you? A. Yes. [607—277]

Q. Did he tell you where he could get it?

A. Let me see: I think he did; I think Colby had the money, he said.

Q. Where did he tell you you could get it?

A. Well, I think it was right on the street when he told me.

(Testimony of Frederick W. Newman.)

Q. No—but where did he tell you he could get the money?

A. He said Colby had the money. “Well,” I says, “I am pretty busy; can you arrange it so I can get the money?” He said that he could.

Q. You never had a talk with Colby about it?

A. No, sir.

Q. And did you make any arrangements to meet him to get the money?

A. Well, Fred did—I didn’t.

Q. I mean to meet Mr. Emery. Did you make any arrangements to meet him and get the money from him?

A. No, I didn’t, not from him. He said Colby would bring the money around.

Q. And did you tell him when you were going to the land office?

A. Yes; he knowed when I was going.

Q. Well, did he know the time of day you were going, or was he going to hang around all day?

A. No, sir; he said in the afternoon.

Q. You didn’t tell him the hour?

A. Not exactly, no, sir.

Q. And you went to the land office? A. Yes, sir.

Q. And did you go in the land office, or—

A. I stayed out in the hallway and Colby came up and Colby handed me the money. He says, “How much do you want?” “Well,” I says, “I don’t know; I have got ninety-odd dollars,” and he says, “I am in a hurry; here it is.” And I says, “How much is there there?” and I don’t [608—278]

(Testimony of Frederick W. Newman.)

know just exactly how he worded it, and he says, "You pay what it costs you at the land office, and if I have made a mistake, if there is anything left over you hand it to Fred Emery."

Q. Colby said this? A. Yes, sir.

Q. He handed you a bunch of money?

A. Yes, sir.

Q. And he told you he didn't know how much was there?

A. Well, he says, "I don't know exactly how much it is; I know somewheres near."

Q. And how much money was there there?

A. Well, I don't know. There must have been \$350.00.

Q. Wasn't it \$400.00?

A. Well, that I don't remember.

Q. Well, Mr. Newman, as I understand, Mr. Colby didn't know how much was there, and he just handed it to you and he said, "If there is more than is needed, hand the balance to Emery"?

A. Fred Emery came right in there when he paid it.

Q. Did Mr. Colby draw the money out of the Lewiston National Bank and hand it to you while you was standing there?

A. I don't know. I was standing out in the hallway.

Q. Did you give him a note for it?

A. Not at that time. He was going away. I asked Mr. Emery this way, if I could get that money for a few days without making out any papers until

(Testimony of Frederick W. Newman.)

I decided what to do, and I says to my wife, "If we get the money from the bank we will have to mortgage our home; if we are going to keep the timber claim we will have to mortgage our home," and she said she wouldn't sign the mortgage.

Q. And you went up in the land office and made your final proof? A. Yes, sir.

Q. And Mr. Emery? A. Yes, sir. [609—279]

Q. And Mr. Bishop? A. Yes, sir.

Q. And Mr. Evans—went along with you?

A. Yes, sir.

Q. You were all there at the same time?

A. Yes, sir.

Q. Was there anything said at the time about the questions that would be asked you at the land office when you made your proof?

Mr. TANNAHILL.— We object to that as irrelevant and immaterial.

Mr. GORDON.—Answer the question.

A. No, sir. I don't remember that there was anything said about it.

Q. Did the gentlemen that went to the land office with you leave the land office at the same time you did?

A. I couldn't positively say whether they did or not. It seems to me they went into the hall; whether they went down stairs or not I don't know. I had to go to work again. I didn't pay much attention to it.

Q. Now, at that time you didn't know whether you were going to sell your claim or not, as I understood

(Testimony of Frederick W. Newman.)

you? A. No, sir.

Q. Nothing had been said?

A. No, sir. Oh, they said this much: I asked Fred Emery, I says "Fred, is there any show of selling this land?"

Q. When was that?

A. That was in the morning.

Q. Before you made your proof? A. Yes, sir.

Q. And what did he tell you?

A. "Well," he says, "he didn't know; there is always sometimes," he says, "there is a chance of people buying." I asked who was buying. Well, he says he didn't know. [610—280]

Q. And you all came out of the land office together, did you?

A. Well, out of the office, yes, sir, I think so.

Q. Well, where did you go then?

A. I went down to the Idaho Trust bank, to fire the furnace.

Q. And what did you do there?

A. Attended to the furnace.

Q. Were you employed there then?

A. Yes, sir.

Q. As a janitor? A. Yes, sir; at the time.

Q. At the Idaho Trust Company?

A. The grain business was dull, you know; there was nothing doing at the warehouse, and it was getting toward spring, and I attended to the fires, and also at another building.

Q. And you went over to the Idaho Trust Company then? A. Yes, sir.

(Testimony of Frederick W. Newman.)

Q. You sold that claim the same day, didn't you, Mr. Newman? A. Yes, sir.

Q. Who did you sell it to?

A. I think the papers was made out to W. F. Kettenbach—I think it was W. F.

Q. Was it W. F. Kettenbach and George H. Kester?

A. Well, I don't remember now whether it was or not. I thought it was—

Q. Well, there hadn't been any arrangement made before you left Mr. Emery and went to fire the furnace? A. No, sir.

Q. What time did you make your proof at the land office? Was it after dinner? A. Yes.

Q. How long after dinner?

A. Well, I don't know. [611—281]

Q. 3 or 4 or 5 o'clock?

A. No; it was shortly right after dinner.

Q. And with whom did you negotiate the sale of this land?

A. I just asked Fred. Emery if there was a chance to sell it—I didn't talk to anybody—I just asked him if a man wants to sell can he sell his land? He says, "What do you want to sell for?" "Well," I says, "the woman objects to putting a mortgage on the property to raise the money." She objected to my putting a mortgage on the home, and I just wanted the money for a few days.

Q. And how much money did he give you in cash that evening? A. He didn't give me any in cash.

Q. What did he give you? A. A check.

(Testimony of Frederick W. Newman.)

Q. For how much? A. I think it was \$200.00.

Q. And you gave him \$100.00 of that for locating you? A. I gave him \$100.00 the next day.

Q. You got the check cashed? A. The next day.

Q. Where was the check drawn on—what bank?

A. Well, I don't know whether it was the Lewiston National Bank or on the Idaho Trust. I cashed it at the Idaho Trust. I was working there. I told Fred. I was busy and for him to come in and I would pay him the locating fee.

Q. And you made the deed and acknowledged it the same day? A. Yes, sir.

Q. Before whom did you acknowledge the deed, do you remember? A. I think it was Barnett.

Q. Did he have an office in the Idaho Trust Company?

A. No; I think it was either in the Beehive or the Adams building, I don't know which.

Q. Now, at the date you filed your sworn statement you hadn't [612—282] been naturalized at that time, had you?

A. Well, I thought I was.

Q. Well, you were not, though, were you?

A. I afterwards found out that I wasn't. I supposed until this fall that I didn't have to take out any papers.

Q. And it was necessary for you to take out your first papers the day you made your sworn statement?

A. Yes, sir.

Q. Who told you that? A. I don't know.

Q. Who told you you were not a citizen of the

(Testimony of Frederick W. Newman.)

United States?

A. I think it was in Krutinger's office. I supposed all the time that my father took out his second papers, but I found out,—well, I always supposed so until here not over two months ago my brother told me that he hadn't; that he took out his first papers, but he hadn't taken out at the time, his second papers. They told me if I had my father's application,—first papers—I told them no; my father was in Wisconsin. "Well," he says, "hadn't you better take out your own papers then?"

Q. Mr. Newman, I show you timber and stone lands sworn statement, dated March 25, 1903, signed by Frederick W. Newman, and ask you whether or not you signed that paper in duplicate, and filed the same in the land office at Lewiston on the date it bears? A. How is that?

The reporter repeated the last question.

A. That is my signature, yes, sir.

Q. And you filed that in the land office?

A. Yes, sir; I think I did.

Q. I show you nonmineral affidavit of the same date, signed Frederick W. Newman, and ask you if you signed and filed that paper in the land office on the date it bears?

A. That is my signature, yes, sir.

Q. I show you the testimony of Frederick W. Newman, taken on final proof, June 17, 1903, and ask you if that is your signature to that paper?

[613—283] A. That is my signature there.

(Testimony of Frederick W. Newman.)

Q. To that paper which I have just called your attention to? A. Yes, sir.

Q. And the cross-examination taken at the same time, is that your signature to that paper?

A. That is my name there.

Q. To the paper that I have just described?

A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone lands sworn statement of Frederick W. Newman, the nonmineral affidavit of Frederick W. Newman, the notice for publication of Frederick W. Newman, the testimony of Frederick W. Newman, given on final proof, and the cross-examination thereof, all of which have been identified by the witness Newman, the testimony and cross-examination of the witnesses on final proof, and receiver's receipt and the register's certificate, dated June 17, 1903, the other papers of the land office files relative to said entry, a certified copy of the patent issued to Frederick W. Newman, August 3, 1904, all relating to the entry of the south half of the northeast quarter and the east half of the southeast quarter of section 23, in township 39 north of range 3 east, Boise meridian. I also offer a certified copy of a deed made by Frederick W. Newman and wife Lelia, dated June 17, 1903, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, the south half of the northeast quarter and the east half of the southeast quarter of section 23, township 39 north of range 3 east of Boise meridian, executed and acknowledged by Frederick W. Newman and Lelia

(Testimony of Frederick W. Newman.)

Newman before H. K. Barnett, Notary Public, on June 17, 1903, and recorded in the office of the recorder for Shoshone County at the request of George H. Kester, August 10, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the introduction of the papers or either thereof, in support of bill No. 388 and 407, upon the [614—284] ground and for the reason that the entry is not involved in these two actions, and they are irrelevant and immaterial in so far as they relate to the two particular actions referred to. And the defendants severally object to all the final proof papers and especially the proof of publication, the testimony of claimant Frederick W. Newman, and the cross-examination of claimant Frederick W. Newman, the testimony of the witness Lon E. Bishop, and the cross-examination of the witness Lon E. Bishop, the testimony of the witness Fred W. Emery, and the cross-examination of the witness Fred W. Emery, and the affidavit of Frederick W. Newman; upon the ground that they are matters relating to the final proof, occurring subsequent to the filing of the declaratory statement, and they are irrelevant and immaterial.

Said documents were thereupon marked by the reporter as exhibits 13, 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K, 13L, 13M, 13N, 13O, and 13P.

(Testimony of Frederick W. Newman.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. As I understand you, you had no contract or agreement with anyone to sell your land before you made your filing,—before you filed your sworn statement? A. No, sir.

Q. You had no contract or agreement to sell it to Mr. Emery? A. No, sir.

Q. Or to Mr. Colby? A. No, sir.

Q. Or to Mr. Kester or to Mr. Kettenbach?

A. No, sir.

Q. And you had no contract or agreement to sell it before you made your final proof? A. No, sir.

Q. Now, when was it you concluded to sell your land in relation to the time you made your final proof? [615—285]

A. I saw my wife at noon, and I says, “I am going to prove up this afternoon,” I says, “will you sign a mortgage so we can get the money from the bank?” And I says, “I made arrangements with Emery to get the money and we can prove up on it all right.” Well, she considered awhile, and then she says, “No, I won’t do it,” she says, “I won’t sign no mortgage.” “Well,” I says, “what will I do? I will have to prove up this afternoon. I will have to ask Emery if he can sell it for us.” And so after we proved up on it I says, “Fred, is there any chance to sell this land now?” He says, “I don’t know.” He says, “I can find out.” He says, “There is always something selling; perhaps somebody will buy it.” He says, “I will see. Maybe it will take a little

(Testimony of Frederick W. Newman.)

time.” “Well,” I says, “will you want a mortgage?” “Well,” he says, “no.” I asked him,—requested him to get the money for a few days, until I decided what to do, whether to mortgage the place or not. And so I went and attended to the furnace, and I says, “Fred, if you can find anybody to buy that you go ahead and sell it, because my woman won’t sign a mortgage.”

Q. Then, the affidavit which you made as follows: “That I have made no other application under said acts; that 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,” that affidavit was true, was it? A. Yes, sir.

Q. It was true at the time you made it?

A. Yes, sir.

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

A. Yes, sir.

Q. And it is still true?

A. Yes, sir. [616—286]

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Newman, you signed and acknowledged the deed the day that you sold your land, as I understand. Now, did your wife sign it the same day?

(Testimony of Frederick W. Newman.)

A. I think she did. I think that evening I went home and she signed it that evening.

Q. You stayed at home with the children while she came down and signed it? A. Yes, sir.

Q. You remember just exactly how long it was after you proved up before you signed the deed, do you? A. No, I don't know just exactly.

Q. Half an hour?

A. Oh, I guess it was longer than that.

Q. Was it an hour?

A. Well, I don't exactly know how long a time I spent in the furnace there.

The SPECIAL EXAMINER.—Well, give the best opinion you can in regard to it.

WITNESS.—Well, I should judge about two hours,—an hour and a half or two hours.

Mr. GORDON.—Q. Now, what else did you have to pay out of this \$200.00 that Mr. Emery gave you besides the \$100.00 that you paid to him for a location fee? A. Well, the advertising.

Q. Oh, they had advanced that to you, had they?

A. He did. No, I paid that myself. He advertised it for me and I asked him what that advertising was. I met him down town and I says, "What will that bill come to?" So I paid Emery the money myself.

Q. Well, that came out of the \$100.00?

A. Yes, it practically would. That was my expense bill. [617—287]

Q. That came out of the \$100.00 which you had left from the \$200.00?

(Testimony of Frederick W. Newman.)

A. Well, I had that already paid, you know, before I got that money, and before I sold the land.

Q. Well, how much did you really make out of your claim?

A. Well, I don't know. I don't think I have much over \$75 or \$80.00 or \$85.00,—I don't know how much.

Q. Did you only make \$30.00?

A. Well, I don't know.

The SPECIAL EXAMINER.—Give your best opinion about it.

WITNESS.—I think I realized more than \$30.00 out of it, but I couldn't exactly say.

Mr. GORDON.—Q. Do you remember making an affidavit before Mr. S. F. O'Fallon on November 3, 1905? A. Yes.

Q. Did you read that affidavit before you signed it?

A. I think I did. He was writing it down in my presence.

Q. And you read it after he got through?

A. I think I looked at it.

Q. Well, do you remember whether or not,—

A. I am pretty sure he handed it to me.

Q. Do you remember whether or not you made this statement in the affidavit,—I will read it to you, and then hand it to you. Referring to the conversation you had with Emery and Colby after you made your proof: "Emery and Colby told me in Barnett's office that the deed was to be made to W. F. Kettenbach and George H. Kester. That was the first I knew

(Testimony of Frederick W. Newman.)

that Kettenbach and Kester had anything to do with the claim, or that it was sold to them. I think it was probably half an hour after I proved up before I signed the deed. I think the check for \$200.00 given me by Colby was on the Lewiston National Bank. I cashed the check the next day and gave Emery \$100.00 due him for locating me. [618—288] I really only received \$30.00 for my claim, and I paid my own expenses to the timber, which was about \$10.00, leaving me \$20.00 clear money out of my claim.” Do you remember whether or not you made that statement, and whether or not it was true?

A. Oh, I must have made it. When I read that statement over I think that is just exactly the way I stated it there.

Q. Well, I am not trying to catch you at all.

A. I remembered it better then, what my expenses was, better than I do to-day.

Q. Well, does that refresh your recollection? Do you remember it now?

A. I remember it now, since you read it there. I think that is the exact affidavit that O’Fallon had written.

An adjournment was thereupon taken until tomorrow morning at ten o’clock. [619—289]

On Friday, the 26th day of August, 1910, at ten o'clock A. M., hearing was resumed.

**[Testimony of Daniel W. Greenburg, for
Complainant.]**

DANIEL W. GREENBURG, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Daniel W. Greenburg?

A. Yes, sir.

Q. Where do you reside, Mr. Greenburg?

A. Lewiston, Idaho.

Q. How long have you resided at Lewiston?

A. Why, I have made my home here for more than 30 years.

Q. What is your occupation?

A. Newspaper man.

Q. And were you engaged in the same business in April, 1904?

A. I think I was following that business at that time.

Q. Were you employed on a newspaper at that time?

A. Well, either then or about that time. I don't just quite remember whether I was off the job or not then.

Q. Can't you remember whether or not you were employed on the 25th of April, 1904?

A. Why, I think I was; I couldn't say, because I had taken some vacations.

Q. Well, was it just a vacation you had taken, or

(Testimony of Daniel W. Greenburg.)

was it that you were not employed?

A. Why, I think it was a vacation.

Q. Are you married, Mr. Greenburg?

A. Yes, sir.

Q. You took up a claim under the timber and stone act, in April, 1904, did you?

A. Yes, sir. [620—290]

Q. Will you state the circumstances of taking up the timber claim—what you did to initiate that claim? A. Yes, sir.

Q. Please do so.

A. Why, at that time—I presume the time I made my filing? Is that the date?

Q. Yes.

A. I offered my filing in the land office for a timber claim.

Q. Well, now, had you done anything preparatory to making that claim, some time before that?

A. Yes, sir.

Q. Well, who first spoke to you about taking up a claim?

A. Why, I first spoke to Mr. Dwyer, and others.

Q. William Dwyer? A. Yes, sir; and others.

Q. Now, when was that you spoke to Mr. Dwyer?

A. Oh, for perhaps a year previous.

Q. And did Mr. Dwyer have any claim that he could locate you on during that year?

A. He thought he could, yes. I told him I wanted to get one and would like to have him look out for me and see whether he could locate me. He told me he would charge a location fee.

Q. And that was a year before you located?

(Testimony of Daniel W. Greenburg.)

A. Well, something like a year. Probably it might have been more.

Q. And you were to pay him a location fee?

A. Yes, sir.

Q. Of how much? A. \$100.00.

Q. Did Mr. Dwyer, after that first conversation you have referred to, come to you later and tell you he had a claim he could locate you on? [621—291]

A. Yes, sir.

Q. When was that?

A. I couldn't say exactly the time; probably within five or six months afterwards.

Q. Well, what did he say then?

A. He said all right. He wanted to know if I would go and see it, and I said yes.

Q. Now, were you connected with any newspaper at that time?

A. Well, sir, I don't remember whether I was or not. I know that I had been employed, not regular, on "The Teller."

Q. That is one of the dailies here?

A. Yes, sir; and I had been off and on that job for a long time.

Q. Were you a reporter at that time?

A. Yes, sir.

Q. Well, now, what else did Mr. Dwyer say to you? What arrangements did he make with you? Tell what happened. He didn't come to you and just say "all right."

A. Oh, we didn't have any arrangements at all. He just simply said he could locate me on a good

(Testimony of Daniel W. Greenburg.)

claim, the one that I thought he could satisfy me on that would be all right. It seemed like timber locations then were a good thing in those days. Everybody was locating on claims. I took all those things under consideration, concerning the fact that he had been recommended as locating a number of people. He had been spoken of as having located quite a number of people.

Q. I can't quite hear you.

A. I say he had been spoken of as having located quite a number of people, and I took the matters under consideration, that this location would be all right.

Q. At the time that you went to view this land, did you have enough money with which to purchase a timber claim? [622—292]

A. Well, I probably didn't have enough, but I probably knew that I could get it.

Q. Where did you know that you could get it?

A. Oh, I could get it most any place in Lewiston.

Q. And did you go to view the claim—the one that you located? A. Yes, sir.

Q. Now, state whether you went alone or with someone. A. I went with Mr. Dwyer.

Q. Anyone else? A. No, sir.

Q. Now, where did you go?

A. I went to Orofino.

Q. What's that? A. Orofino.

Q. Did you go to Orofino with him by rail?

A. Yes, sir.

Q. And how far was the claim from Orofino?

(Testimony of Daniel W. Greenburg.)

A. Well, I couldn't say exactly, probably 40 or 50 miles; something like that.

Q. How much?

A. 30 or 40 miles—I couldn't recall—I couldn't say.

Q. And did you go to any other town after leaving Orofino?

A. No, we didn't go to any other town.

Q. How did you travel from Orofino to your timber claim? A. Horseback.

Q. And how long were you gone from Orofino into the timber and then return to Orofino?

A. Oh, a couple of days, all told—two or three days.

Q. Who furnished the rig in which you traveled?

A. Mr. Dwyer had somebody furnish it; I don't know who it was.

Q. Was there anyone went to the timber from Orofino with you and Mr. Dwyer? [623—293]

A. No, sir.

Q. And who paid the expenses of that excursion?

A. I paid my own personal expenses.

Q. You mean you paid your hotel bill?

A. Yes, sir.

Q. Did you pay anything else?

A. I paid for my horse, yes, sir.

Q. Now, what month was that that you went to the timber?

A. I couldn't say. I couldn't recall, just now.

Q. Well, you filed in April, 1904?

A. Well, I think possibly it might have been three

(Testimony of Daniel W. Greenburg.)

or four months before, but I am not sure.

Q. Well, was it in the winter time, near Christmas, or was it in the fall?

A. Well, no, it wasn't Christmas. It was fair weather; the weather was fair at the time I was up there.

Q. How is that?

A. The weather was fairly good at the time I was there. I couldn't recall whether it was the spring or the fall.

Q. In your testimony before the land office you stated that you went over this land October 13th, 1903. Does that refresh your recollection?

A. Why, it is possible that that was the time that I had gone over it. I couldn't recall right now.

Q. Now, you returned to Lewiston?

A. Yes, sir.

Q. And were you advised that the land on which you were to file later was not open for entry at that time?

A. I think—I don't just remember how it came up, but he said as soon as it was ready to file on it he would let me know.

Q. Now, did you see any other people up there in the timber that you knew? [624—294]

A. Oh, I seen people whom I didn't know.

Q. How is that?

A. People whom I didn't know. I didn't see anyone I knew, particularly.

Q. Mr. Greenburg, I show you timber and stone lands sworn statement signed Daniel W. Greenburg,

(Testimony of Daniel W. Greenburg.)

dated April 25th, 1904, and ask you if you signed that paper, in duplicate, and filed them in the land office, on or about the date they bear?

A. Yes, sir; that is my signature.

Q. And you filed that in the land office the date that you made it? A. Yes, sir.

Q. I show you nonmineral affidavit signed Daniel W. Greenburg, of the same date, and ask you if you signed that affidavit? A. Yes, sir.

Q. I show you the testimony of Daniel W. Greenburg, taken at the final proof, dated July 15th, 1904, and ask if that is your signature to that paper?

A. Yes, sir.

Q. And the cross-examination, taken at the same time, signed Daniel W. Greenburg. Is that your signature? A. That is my signature.

Q. Did Mr. Dwyer give you a description of that land at any time?

A. Yes, sir, I think I had a description.

Q. What did you do with it?

A. I didn't do anything with it; I kept it.

Q. Who prepared the sworn statement that you have identified here?

A. Well, I couldn't say who prepared it, but I think my recollection has been refreshed on that now.

Q. I can't hear you. [625—295]

A. I say I don't remember who prepared it, but I think Mr. Dwyer did, or he said he would have that prepared for me.

Q. And do you remember where you received it?

A. I think I received it at the land office.

(Testimony of Daniel W. Greenburg.)

Q. You paid no fee for having that paper prepared?

A. Well, now, I couldn't recall whether I did or not.

Q. How long did you go to the land office before you were permitted to file your sworn statement?

A. I don't remember how long before it was, but quite a little while, I guess.

Q. Did you stand in a line?

A. I remember there was a line there. Yes, sir; I stood in line.

Q. And how long were you in that line?

A. Why, I myself personally, I didn't stay in all the time.

Q. Did you have someone stay in line for you?

A. Why, I occasionally got people to step in there and hold my place for me.

Q. Do you remember the names of any of the people you had?

A. No, I don't. I think there was fellows around there that were doing that.

Q. Did you pay them for that service?

A. Yes, sir.

Q. How much?

A. I couldn't say just how much now; I don't remember.

Q. How many days before you filed did you first go to the land office and join the line?

A. I don't remember.

Q. Well, was it the day before?

A. Oh, I think it was seven days, or more, probably.

(Testimony of Daniel W. Greenburg.)

Q. Was it seven days? A. It might have been.

Q. What position did you hold in the line?
[626—296]

A. Well, I don't remember, but probably I held—I think it was about No. 11; somewhere along there.

Q. Were you married at that time, Mr. Greenburg? A. Yes, sir.

Q. Have you any children? A. No, sir.

Q. How many? A. No, sir.

Q. Do you remember of paying a fee in the land office when you filed your original papers?

A. Yes, sir.

Q. How much was that?

A. Why, something in the neighborhood of four hundred and odd dollars.

Q. No—I mean when you filed?

A. When I proved up?

Q. Well, I mean when you filed your first papers.

A. Oh, when I filed? I think it was \$8.00. I don't remember what it was, whether I paid a fee or not. I can't recall that.

Q. What was that last answer?

A. I say I don't remember whether I paid anything at that time or not, come to think about it.

Q. Well, do you remember whether or not your arrangements with Mr. Dwyer was that he was to pay those expenses?

A. You mean for the land office?

Q. Yes. A. Yes, sir.

Q. Now, what am I to understand by that answer?

A. You asked me whether I knew whether Mr.

(Testimony of Daniel W. Greenburg.)

Dwyer was to pay that. I say I do know that, yes; that he wasn't to pay it.

Q. That he was not to pay it? A. Certainly.

[627—297]

Q. And you say you don't know whether you paid it or not?

A. Oh, if there was any fee to pay there at the land office, I paid it myself.

Q. But you have no recollection of ever paying it?

A. No, I haven't.

Q. Do you remember when you filed your sworn statement that you also gave notice of publication?

A. Yes, I think I remember something about that; yes, sir.

Q. Do you remember naming the witnesses?

A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. Who were the witnesses?

A. Well, I couldn't say just now. I think one of them was Bliss, and Mr. Dwyer was a witness, I guess, and Stanfield. That is my recollection.

Q. Now, were you notified of the time to make your final proof?

A. Yes— When was I notified?

Q. Were you notified?

A. Yes, sir, I was told when to come—three months, I think they said; something like that.

Q. And you made final proof? A. Yes, sir.

Q. And do you remember how much you paid in the land office at that time?

A. I think I paid in the neighborhood of \$400.00;

(Testimony of Daniel W. Greenburg.)

something like that.

Q. Well, do you know where you got that money from with which to pay it? A. Yes, sir.

Q. Where?

A. Part of it I had myself; part I borrowed from the Lewiston [628—298] National Bank.

Q. Now, do you know how much you had yourself?

A. Why, I had a couple of hundred dollars or so; something like that.

Q. Did you have that in the bank?

A. I don't remember whether I was carrying an account there at that time or not.

Q. Did you carry a bank account anywhere else except the Lewiston National Bank?

A. No, sir.

Q. And with whom did you negotiate in the Lewiston National Bank for that loan?

A. Well, I think I negotiated with Mr. Kester, the cashier at the time.

Q. And how long before you made your proof did you make that negotiation?

A. Well, I couldn't say. I spoke to him of it some few days before—some time before that.

Q. Do you remember whether you gave a note for that? A. Yes, sir.

Q. Do you know whether the note was to the bank, or to Mr. Kester?

A. Why, I presume it was to the bank. It was on one of their regular notes.

Q. You have no recollection whether it was to the bank or to Mr. Kester personally?

(Testimony of Daniel W. Greenburg.)

A. No, sir, I haven't. Oh, I never applied to Mr. Kester personally for it; I applied to the bank.

Q. Through Mr. Kester? A. Yes, sir.

Q. Well, what am I to understand by that? Did you have any preference as to who you got it from; or did you just want to get the money? [629—299]

A. Why, no; I just merely knew he was in the banking business; that that was the place I could get it.

Q. Do you know the period that note was to run?

A. Well, I think my recollection was that it was about 90 days; something like that.

Q. Now, have you any recollection as to whether you were employed on The Teller at that time—at the time that you made your proof?

A. I think I was, yes, sir. I can't recall just positively, but I think I was.

Q. Have you sold your timber claim?

A. Yes, sir.

Q. How long after you made your proof did you negotiate a sale of that?

A. Well, I had thought that— It was some time afterwards, but I didn't know just exactly the time until my attention was called to it.

Q. Well, can you approximate it?

A. No, I couldn't; from my own memory I couldn't say how long afterwards.

Q. Well, was it a week, or six months, or how near can you come to it?

A. Oh, I thought it was probably four or five months, or more. It must have been that long.

(Testimony of Daniel W. Greenburg.)

Q. With whom did you negotiate the sale?

A. I sold it to Mr. Kester.

Q. Directly to Mr. Kester? A. Yes, sir.

Q. And do you remember how much he paid you?

A. I sold it for something about like \$1100.00.

Q. And was the note taken out at that time?

A. Why, I took my note up at the time that I sold it; yes, sir. [630—300]

Q. And did Mr. Kester pay you in cash or by check?

A. Why, I couldn't recall now how it was.

Q. Where did you make this settlement—at the bank? A. Yes, sir; at the bank window.

Q. At what?

A. At the paying window at the bank.

Q. Did you sign the deed at the paying window of the bank?

A. Well, I couldn't recall whether I signed it there or not.

Q. Do you know who prepared the deed which you signed? A. No, sir.

Q. Was it there when you went there to the bank?

A. Well, now, I don't know. I told them to make out the deed, but I don't know just who signed it. I can't remember now.

Q. Did you go over this timber claim when you were up there the first time? A. Yes, sir.

Q. With whom did you go over it?

A. Mr. Dwyer.

Q. Anybody else?

A. No, sir; I don't think there was anybody else.

(Testimony of Daniel W. Greenburg.)

Q. Are you sure of that?

A. Oh, yes, I am sure there was nobody with me.

Q. Was Mr. Bliss up there?

A. I understood he was in the woods.

Q. Did you see him?

A. Well, I don't remember whether I saw him at the time or not.

Q. Did he go over the claim with you?

A. No, sir.

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

A. I think probably in the neighborhood of \$200.00—more or less.

Q. You haven't any definite recollection of how much you borrowed? [631—301]

A. No, I haven't.

Q. Had you ever borrowed any money from the Lewiston National Bank before?

A. Why, I don't remember whether I had before or afterwards. I don't remember. I had borrowed money time and again at the bank.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Daniel W. Greenburg, dated April 25th, 1904, the nonmineral affidavit of Daniel W. Greenburg, bearing the same date, the testimony of Daniel W. Greenburg taken at the final proof, July 15th, 1904, the cross-examination of Daniel W. Greenburg at the final proof, all of which papers the witness has identified, the testimony of and cross-examination of the witnesses at final proof, the Receiver's Receipt and the Register's

(Testimony of Daniel W. Greenburg.)

Certificate, dated July 15th, 1904, a certified copy of the patent issued to Daniel W. Greenburg December 31st, 1904, all relating to the entry of Daniel W. Greenburg of the southwest quarter of section 17, township 39 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally object to all the documents offered in evidence in so far as they relate to bills No. 388 and 407, upon the ground that they are irrelevant, incompetent and immaterial, and not involved in these two particular actions. And the defendants further severally object to the introduction of any of the final proof papers in evidence, especially the testimony of claimant, Daniel W. Greenburg, the cross-examination of claimant, Daniel W. Greenburg, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, the testimony of the witness Edwin Bliss, and the cross-examination of the witness Edwin Bliss; upon the ground that they relate to the final proof, long after the filing of the sworn statement, and they are irrelevant and immaterial. The defendants severally waive any further identification of the papers offered. [632—302]

Said documents were thereupon marked by the Reporter as Exhibits 14, 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H, 14I, 14J, 14K, 14L, 14M.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Greenburg, how long did you say it was after you made your final proof before you sold

(Testimony of Daniel W. Greenburg.)

your land? A. Well, I didn't—

Q. About how long?

A. I didn't know exactly; I thought it was some time afterwards, because it is so long ago that I have forgotten it. I understood it was a month afterwards, but I have forgotten it.

Q. Was there any contract or agreement between you and Mr. Kester or Mr. Kettenbach or Mr. Dwyer, that you should sell your land, before you filed your sworn statement? A. No, sir.

Q. And no such a contract prior to the time you made your final proof?

A. No, sir, none whatever.

Q. Then, the affidavit you made when you filed your sworn statement, in substance that "I have made no other application under said acts; that 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," that statement was true at the time you filed your sworn statement, was it?

A. Yes, sir.

Q. And it was true at the time you made your final proof? A. Yes, sir.

Q. And it is still true?

A. Yes, sir. [633—303]

[**Testimony of Charles Dent, for Complainant.**]

CHARLES DENT, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles Dent? A. Yes, sir.

Q. How old are you, Mr. Dent?

A. What is it?

Q. How old are you? A. 63.

Q. Where do you reside?

A. On the North Fork of the Clearwater.

Q. In Idaho? A. Yes.

Q. What county? A. Nez Perce.

Q. How long have you resided there?

A. 24 years.

Q. What is your occupation?

A. Oh, I farm a little, and blacksmith a little, and I used to raft some down the river. I have got a little stock.

Q. What was your occupation in June, 1903?

A. Well, that is what I have been doing all the time.

Q. Have you a family? A. Yes, sir.

Q. Of what did your family consist in 1903?

A. Oh, I have three children.

The SPECIAL EXAMINER.—Speak a little louder, Mr. Dent.

WITNESS.—I have three children, I say.

Mr. GORDON.—Q. Now, you have a ranch up there? A. Yes, sir. [634—304]

(Testimony of Charles Dent.)

Q. How large is it? A. 160 acres.

Q. Is it a homestead? A. Yes, sir.

Q. Do you know Mr. George H. Kester, one of the defendants in this suit? A. Yes, sir.

Q. How long have you known him?

A. I have known him for some five years, I guess.

Q. Are you related to him in any way?

A. No.

Q. Either by marriage or otherwise? A. No.

Q. Do you know Mr. William F. Kettenbach, one of the defendants in this suit? A. Yes, sir.

Q. How long have you known him?

A. Well, I have known him 15 years, I guess, or 16.

Q. Are you related to him in any way?

A. Not in any way.

Q. Are you acquainted with Mr. Dwyer, one of the defendants? A. Yes, sir.

Q. How long have you known him?

A. I have known him for 10 or 12 years, I guess, anyway.

Q. Did you ever have any business relations with any of them? A. No, sir.

Q. Do you remember taking up a claim or filing an application to enter upon a timber claim, April 2d, 1903?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim so far as the evidence relates to bill 388 and 407, upon the ground that the entry of the witness is not involved in those two

(Testimony of Charles Dent.)

particular actions, and the [635—305] evidence is irrelevant and immaterial.

The SPECIAL EXAMINER.—Answer the question. Read the question.

The Reporter thereupon repeated the last question.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. I show you timber and stone lands sworn statement of Charles Dent, dated April 2d, 1903, and ask you if you signed that statement and filed it in the land office about the date it bears—in duplicate? A. Yes, sir.

Q. I show you the notice for publication of Charles Dent, and the nonmineral affidavit of Charles Dent, dated April 2d, 1903, and ask you if you signed that affidavit and filed the paper in the land office about the date it bears, April 2d, 1903?

A. Yes, sir.

Q. I show you the testimony of Charles Dent at the final proof at the land office at Lewiston, dated June 23d, 1903, and ask you if that is your signature to that paper? A. Yes, sir.

Q. Is that your signature to the cross-examination, taken at the same time? A. Yes, sir.

Q. Mr. Dent, what induced you to take up a timber claim?

A. Oh, I don't know. Everybody was taking claims, and I thought I would take one. Mr. Emory was locating up there.

Q. What's that?

A. Mr. Emory was locator at that time, and he

(Testimony of Charles Dent.)

asked me if I had ever taken a claim, and I told him no, and he wanted to know why I didn't take one. Well, I told him I didn't know as I had much use for one; I couldn't sell it. "Oh, yes," he said, "I could sell a claim most any time." So I concluded I would take one.

Q. Did he tell you how much the claim would net you?

A. Oh, I told him if I could get \$100.00 for the claim I wouldn't [636—306] mind taking one. "Well," he says, "you can easy enough get \$100.00." He says, "Most anybody will give you \$100.00 for it."

Q. Did you have the money at that time with which to purchase a timber claim?

A. I had part of it; I didn't have enough.

Q. I mean when you first spoke to Mr. Emory about it? A. Yes.

Q. How much did you have at that time?

A. Oh, I don't remember now how much I did have. I didn't have quite enough, I know, and I borrowed some from Mr. Colby.

Q. Was there anything said about a location fee?

A. No.

Q. Did you ever pay a location fee? A. No.

Q. You were never asked to pay one?

A. No, sir.

Q. Who located you on the timber claim that you filed upon? A. Mr. Emory.

Q. Mr. Fred. Emory? A. Yes, sir.

Q. What was his business at that time?

(Testimony of Charles Dent.)

A. Well, he was running a sawmill here in town.

Q. And how far is this timber claim and where you live from Lewiston? A. About 65—

Q. Oh, just approximately?

A. About 65 miles; something like that, I think; I couldn't say exactly.

Q. Now, this first conversation you had with Mr. Emory about the timber claim, was that at your house? A. Yes, sir.

Q. He came there and introduced the subject himself; is that [637—307] correct?

A. Well, he usually stopped there. I keep a stopping-place there, and he usually stops there.

Q. As I understand you, he introduced the subject himself, though?

A. Well, him and I got to talking about it, yes.

Q. Now, was there anything said between you and Mr. Emory on the first occasion you talked about this claim as to who would pay all the expenses of taking up the claim? A. Oh, no.

Q. And purchasing it? A. No.

Q. Are you sure of that? A. Yes.

Q. Did Mr. Emory ask you what you would take for your right?

A. No, I don't think he did. I don't think he did.

Q. Is your recollection clear on that subject?

A. Yes, sir, as far as I can remember now.

Q. Do you know with whom Mr. Emory was engaged in business at that time?

A. No, I don't know, only Mr. Colby, I think, maybe he was engaged in business with him. He

(Testimony of Charles Dent.)

was keeping books for him.

Q. Did you and Mr. Emory discuss at your first conversation about the claim, where you would get the balance of the money with which to pay for the claim? A. No.

Q. Mr. Dent, do you remember of ever being called upon by Mr. Francis M. Goodwin, a Special Agent of the general land office? A. Yes.

Q. Did he call upon you at your home?

A. What is it?

Q. Did he call upon you at your home? [638—308] A. Yes, sir.

Q. And do you remember whether that was in the summer of 1905?

A. 1905? Yes, I think it was.

Q. Do you remember of making an affidavit for him? A. Yes, sir.

Q. Do you remember what you said in that affidavit?

A. Well, I don't know as I can repeat it now, what I did say.

Q. You told the truth as near as you could, did you? A. As near as I knew.

Q. Do you remember whether or not you made an affidavit and delivered it to Mr. Goodwin July 22d, 1905, in which you said, "I was located on a timber claim by Fred. Emory"? A. Yes.

Q. And that "I had an understanding with Mr. Emory by which I was to take up a timber claim, he bearing all the expenses, and I was to receive \$100.00 for my right"? A. No.

(Testimony of Charles Dent.)

Q. You say you didn't make an affidavit to that effect, sir? A. No.

Q. Do you remember whether or not in that affidavit you made this statement: "I talked to Mr. Emory before I made my entry. Mr. Emory came to my place and asked me what I would take for my right, and I told him \$100.00, the amount I did receive." A. I told him I would take \$100.00, yes.

Q. And you got \$100.00?

A. Yes, I got \$100.00.

Q. Did you put up any of the expenses yourself?

A. Yes, sir.

Q. How much?

A. Oh, I don't know how much now.

Q. Was it \$50.00?

A. Yes, about, I guess. [639—309]

Q. And that is all you expended in the claim in any manner at all of your own money?

A. Let's see—yes—yes.

Q. Who paid your expenses coming from home to Lewiston when you filed? A. I paid it myself.

Q. Did you get the money from anybody to pay it? A. No, sir.

Q. And who prepared the sworn statement for you that you identified here a few moments ago?

A. Why, I don't know now.

Q. Did you come from your home to Lewiston alone, or did someone come with you?

A. I came alone.

Q. Did you meet Mr. Fred. Emory when you arrived here?

(Testimony of Charles Dent.)

A. No. Oh, yes, I met him after I got here; yes.

Q. Did you meet him by appointment? A. No.

Q. Did you know what it would cost to take up a timber claim? A. Yes.

Q. How much?

A. I don't know now what it was.

Q. You have no idea what it cost?

A. Well, it is \$60.00, or something like that, I guess. I don't remember what it was.

Q. What do you mean? \$60.00 for what?

A. Well, for filing, and so on.

Q. Do you mean was that all the expense that was incurred altogether—in purchasing the land, too?

A. Yes.

Q. Do you remember how much of that \$60.00 you paid when you made your final proof? [640—310]

A. No, I don't remember.

Q. Do you remember how much money you paid in the land office the first visit you made there?

A. When I went to prove up?

Q. No—when you went to file.

A. No, I don't remember now.

Q. Have any idea how much it was?

A. No, I ain't.

Q. Did you ever go over this land?

A. Oh, yes.

Q. With whom?

A. I went over the land years ago.

Q. Well, I mean this particular claim?

A. Well, yes. I used to work up there, and I have been on it many times.

(Testimony of Charles Dent.)

Q. Did you go over it with Mr. Emory?

A. Yes.

Q. Sir? A. Yes, sir.

Q. When?

A. Oh, when he was up there; when he was working there; I was up there with him.

Q. Did you make a special visit for the purpose of going over this land and inspecting the timber on it; or did you just happen to be in that locality?

A. Oh, I just happened to be in there.

Q. And you are sure that you and Mr. Emory went over this claim yourself, are you?

A. Yes, sir.

Q. Do you know where you received this sworn statement that you have identified?

A. No, I don't remember that. [641—311]

Q. Did you go to a lawyer's office to get it?

A. No. I think it was home.

Q. Not before you filed, was it?

A. Oh, no, not before I filed.

Q. Now, where did you get it?

A. Where did I get it?

Q. Yes.

A. Well, I don't know where I got it now. I don't remember.

Q. You came down to Lewiston for the purpose of filing on a timber claim, did you, Mr. Dent?

A. Yes, sir.

Q. And you knew that you had to have some papers to file, did you not? A. Yes.

Q. Now, haven't you any recollection of what

(Testimony of Charles Dent.)

preparation you made to have those papers filed, or prepared?

A. No, I don't remember what I did do.

Q. Do you remember going to any lawyer's office and asking them to prepare you a set of filing papers? A. I don't remember it now.

Q. Did you have a description of the land?

A. No, nothing more than just what Emory told me; he gave me the description.

Q. Well, how did he give you the description? Did he just repeat it to you? A. Yes.

Q. And did you make a memorandum of it?

A. No.

Q. And did you have such a description that you could go to a man and tell him to prepare you a deed of that, and then recite the description?

A. Oh, yes. [642—312]

Q. How? A. Yes.

Q. Can you do it now?

A. I don't know as I can do it now. I have forgot the sections, even, now.

Q. Do you know what section this land is in?

A. I don't know what section it is in. I couldn't tell to save my life.

Q. Do you know what township it is in?

A. I don't know that, either.

Q. Do you know what range it is in? A. No.

Q. Do you know what section and township your homestead is in? A. 38-3—38-2.

Q. And how far is this from your homestead?

A. Oh, it is about 13 miles, I guess.

(Testimony of Charles Dent.)

Q. Then, you returned to your home after filing your sworn statement and the other papers in the making of the original entry? A. Yes, sir.

Q. And how long after that was it that you made your final proof?

A. Well, I couldn't tell you that, either, now.

Q. Well, was it a month, or six months, or a year, or how long?

A. I guess it must have been a year; something like that.

Q. That is, between the time you made your entry— A. Yes, sir.

Q. And the time you made your final proof?

A. I think so.

Q. Who notified you as to the time you were to make proof? A. Who notified me?

Q. Yes, sir.

A. Well, I don't know; I think it was Mr. Emory, though, told me.

Q. And you again came to Lewiston? [643—313]

A. Sir?

Q. You again came to Lewiston? A. Yes.

Q. And at that time had you made any arrangements for getting the final proof money?

A. No, sir.

Q. None whatever? A. No.

Q. And had you ever borrowed any money in Lewiston before then? A. No.

Q. You never had? A. No.

Q. Speak a little louder. A. No, sir.

Q. Did you have an engagement to meet anybody at

(Testimony of Charles Dent.)

Lewiston? A. No, sir, I didn't.

Q. And did you meet anyone here in Lewiston at that time that you knew? A. Yes.

Q. Who did you meet? A. I met Mr. Colby.

Q. Had you ever met Mr. Colby before?

A. Nothing only I was acquainted with him.

Q. Now, did you meet Mr. Colby casually on the street? A. Yes.

Q. And did you have a conversation with him about your timber claim?

A. No conversation, only I asked him to loan me some money, and he let me have it.

Q. How much did you ask him to loan you?

A. I think it was \$100.00.

Q. \$100.00? [644—314] A. Yes.

Q. How much money did you have with you?

A. Oh, I had \$60.00 or \$70.00, or so.

Q. \$60.00 or \$70.00? A. Yes, sir.

Q. Did you give Mr. Colby a note for this \$100.00?

A. No, sir.

Q. Did you borrow any money from anybody else?

A. No, sir.

Q. Did you pay any interest on this money?

A. I didn't pay no interest, because I sold him the claim.

Q. The same day? A. Yes.

Q. There wasn't anything said about selling the claim, though, when you got the money from him, was there? A. No, sir—nothing.

Q. And you had had no arrangements whatever with Mr. Colby before you got this money?

(Testimony of Charles Dent.)

A. No, sir.

Q. Were you in any way exercised by the fact that you came here to prove up on a timber claim, and that you had made no arrangements to get the money?

A. No, sir, I hadn't made no arrangements with anybody.

Q. You didn't care much whether you proved up on it or not, did you? A. No.

Q. Now, can you tell what your expenses had been up to that time, of taking up this claim?

(No answer.)

Q. How much money had you spent in coming down here and going back on these two trips?

A. Oh, I don't know. I couldn't tell. [645—315]

Q. \$30.00? A. I suppose—something like that.

Q. Then, you went to the land office and you made your proof? A. Yes, sir.

Q. Now, when you got this money from Mr. Emory, did he just have it on his person at that time?

A. Yes—Mr. Colby.

Q. Mr. Colby—excuse me. A. Yes.

Q. Now, do you remember that you had \$400.00 that you paid in the land office when you made proof?

A. \$400.00?

Q. Yes, sir. A. No, I didn't have \$400.00.

Q. Well, you must have had, or somebody had it, because you paid \$400.00 for that land in the land office.

A. Well, of course, I must have had it, if that is what it is.

Q. And did Mr. Colby go to the land office with you

(Testimony of Charles Dent.)

when you made proof?

A. Why, yes, he went to the land office with me, but he only just went upstairs and right back again; he didn't stay there.

Q. Where did he give you this money?

A. Down on the street.

Q. In front of the land office?

A. I don't know. It wasn't exactly in front of the land office.

Q. How far from the land office?

A. Oh, I don't know now. I couldn't tell just where it was **I met him.**

Q. Were you on your way to the land office when you met him?

A. No; I was just walking around town.

Q. Alone? A. Yes. [646—316]

Q. Did Mr. Colby wait outside for you—outside of the land office for you, while you were making your proof? A. No.

Q. Now, who else was at the land office that you knew while you were there?

A. Why, Mr. Emory was there, and Mr. Charlie Smith. That's all the men that was there that I remember.

Q. Now, did you and Mr. Charlie Smith and Mr. Emory leave the land office together? A. Yes, sir.

Q. How long after you left the land office did you make a deed for your land?

A. Oh, an hour, I suppose.

Q. Was this in the afternoon or in the morning?

A. Well, I don't know now.

(Testimony of Charles Dent.)

Q. Where did you go to make the deed? Where did you sign the deed?

A. We went to Mr. Barnett.

Q. That was right across the street from the land office? A. Yes, sir.

Q. Now, state what was said about the selling of this land when you came out of the land office; state the conversation that was had.

A. Well, I told Mr. Colby I would sell him the claim, and he says all right, he would take it.

Q. And did he give you the \$100.00 then?

A. Yes.

Q. Well, how much did you get out of this claim, after you paid your expenses? A. I got \$100.00.

Q. But you had spent some money, hadn't you?

A. Yes.

Q. And you sold to Mr. Emory? [647—317]

A. I sold to Mr. Colby.

Q. You sold to Mr. Colby? A. Yes, sir.

Q. And do you know to whom you made the deed?

A. No, I don't know who I made the deed to.

Q. Do you know that you made the deed to Kester and Kettenbach? A. I don't know. [648—318]

Q. Did you read the deed? A. No.

Q. You read it?

A. No, I didn't read the deed; I just signed it,—I think I signed it.

Q. Did Mr. Emery give you the \$100.00 right at that time?

A. He give me the \$100.00 after he come out on the street.

(Testimony of Charles Dent.)

Q. Was Colby there? A. Yes, sir.

Q. Was anything said about the money you had gotten from Colby? A. Anything said about it?

Q. Yes. A. No.

Q. The transaction turned out just exactly as you expected it would and understood it would from the first time you talked with Mr. Emery, did it not?

A. Well, I talked to Mr. Emery when he was at my place, where I would get the money, and he told me he could let me have the money, so I didn't pay no more attention to it.

Q. And, as I say, the transaction turned out just as you understood it would from the start?

A. Yes. He owed me quite a lot of money at that time; he had been stopping there a good deal.

Q. Have you any recollection of spending any money of your own for the expenses of taking up this claim? A. No.

Q. You understood from your first talk with Mr. Emery that you were to make \$100.00 out of this, did you not, sir?

A. Well, I understood I could get \$100.00 for it.

Q. You wouldn't have taken it up if you hadn't been told that, would you? A. No. [649—319]

Mr. GORDON.—Mr. Tannahill, I do not remember whether you made the usual waiver of further identification of the papers that were offered of the former witness.

Mr. TANNAHILL.—Yes, I did.

Mr. GORDON.—If you didn't, that stipulation will go as to those papers too?

(Testimony of Charles Dent.)

Mr. TANNAHILL.—Yes; but I made it.

The SPECIAL EXAMINER.—I think he made it. I think the record will show that he made it.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Charles Dent, dated April 2, 1903, in duplicate, the nonmineral affidavit of Charles Dent, and the notice of publication, of the same date, the testimony of Charles Dent, given on final proof, dated June 23, 1903, and the cross-examination thereof, of the same date, the testimony of the witnesses and the cross-examination of them at final proof, the receiver's receipt and the register's certificate, dated June 23, 1903, certified copy of patent issued to Charles Dent, dated August 3, 1904, all relating to the claim of Charles Dent of the north half of the northeast quarter and the north half of the northwest quarter of section 14, township 39 north of range 3 east, Boise meridian. We also offer certified copy of deed, dated June 23, 1903, made by Charles Dent to William F. Kettenbach and George H. Kester, consideration \$1000.00, conveying the north half of the northeast quarter and the north half of the northwest quarter of section 14, township 39 north of range 3 east, Boise meridian, acknowledged before H. K. Barnett, notary public, the date the deed bears, and recorded in the office of the recorder of Shoshone County at the request of George H. Kester, August 10, 1903.

Said above mentioned documents were thereupon marked by the reporter as Exhibits 15, 15A, 15B, 15C,

(Testimony of Charles Dent.)

15D, 15E, 15F, 15G, 15H, 15I, 15J, 15K, 15L, 15M, and 15N.

Mr. TANNAHILL.—The defendants severally object to the introduction of any of the documents in evidence as offered, in so far as they relate to bills numbered 388 and 407, upon the ground that the entry is not [650—320] involved in these particular actions, and they are irrelevant and immaterial. And the defendants severally object to the introduction of any of the final proof papers in evidence in support of either of the actions or bills, and especially the testimony of claimant Charles Dent, the cross-examination of the claimant Charles Dent, the testimony of the witness Charlie Smith and the cross-examination of the witness Charlie Smith, the testimony of the witness Fred Emory, and the cross-examination of the witness Fred Emory, and the proof of publication, upon the ground that they are matters occurring subsequent to the filing of the sworn statement, and are irrelevant and immaterial. The defendants severally waive any further identification of the papers.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Dent, I understand your first conversation with Mr. Emory was at your place, was it?

A. Yes, sir.

Q. What was that conversation, as near as you can remember?

A. Oh, I don't know; there wasn't much of a conversation about it. He was locating people up there,

(Testimony of Charles Dent.)

and we just got to talking about it, about taking up claims, and he says to me, he says, "You have never taken one up, have you?" And I says, "No." And he says, "Why don't you take up a claim?" And I told him I didn't know, I didn't know as I could sell it if I did take one up, and he says, "Well, you could easy enough sell it for \$100.00," he says, "anybody most would give you \$100.00 for it." Well, I told him I thought if I could get \$100.00 I would take up a claim, but I didn't want to take up a claim and hold it, because I didn't want to pay the tax on it and I didn't know when I could ever sell it.

Q. You meant if you could get \$100.00 over and above what the claim cost you? A. Yes.

Q. There was no understanding or agreement with him that you was to [651—321] sell your claim to him, was there? A. Oh, no.

Q. Or to anyone else? A. No.

Q. When was your next conversation with him; the next conversation I believe was when you asked him if you could borrow the money to prove up on, or something to that effect?

A. I told him I didn't have the money, and he said they could let me have the money if I needed it, Colby said; and he owed me about \$60.00 or \$70.00 then, Emory did, but he didn't just have it with him, so when I come down there I seen Mr. Colby and he let me have the money.

Q. What was your conversation with Mr. Colby?

A. Well, I just told him I wanted to borrow \$100.00, or whatever it was; I don't remember just

(Testimony of Charles Dent.)

what it was.

Q. It cost you about \$400.00 to make your final proof, to pay for your land?

A. I know I had quite a lot of money of my own, and I borrowed enough of him to pay the expenses, whatever it was; I can't remember what it was.

Q. I see. Now there was no understanding or agreement between you that you was to sell your land at that time, was there? A. Oh, no, no.

Q. Now, was there any further conversation with you and Mr. Colby, between yourself and Mr. Colby or Mr. Emory, before you made your final proof?

A. No.

Q. Then, what conversation did you have in regard to the claim, after you made your final proof?

A. I didn't have no conversation much; I just told Mr. Colby I would sell him the claim, and he said all right.

Q. Did you tell him what you would sell it to him for? A. Yes.

Q. How much? [652—322]

A. I told him if he would give me \$100.00 and pay me what it cost to prove up, he could have the claim.

Q. That was the first talk you had with either Mr. Colby or Mr. Emory regarding the sale of your claim?

A. Yes, sir.

Q. You had then proved up and had your final receipt, had you? A. Yes.

Q. Then, your affidavit that you made at the time you filed your sworn statement, in substance, "That I have made no other application under said acts;

(Testimony of Charles Dent.)

that 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," that statement was true, was it? A. Yes, sir.

Q. And it was true at the time you made your final proof? A. Yes, sir.

Q. And it is still true? A. Yes.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all, Mr. Dent. [653—323]

**[Testimony of Mrs. Edna P. Kester, for
Complainant.]**

Mrs. EDNA P. KESTER, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Edna P. Kester? A. Yes, sir.

Q. And the wife of Mr. George H. Kester, one of the defendants? A. Yes, sir.

Q. You are also a sister of Mrs. Mamie P. White? A. Yes, sir.

Q. Are you in any way related to Mr. William F. Kettenbach? A. No, sir.

Q. Mrs. Kester, you took up a claim under the

(Testimony of Mrs. Edna P. Kester.)

timber and stone act April 25, 1904, did you not?

A. It was in April, 1904; I don't remember the date.

Q. I show you timber and stone land sworn statement, dated April 25, 1904, signed Edna P. Kester, and ask you if you signed and filed that paper in the land office about the date it bears?

A. I did. That is my signature. I don't remember the date.

Q. I show you nonmineral affidavit of the same date, signed Edna P. Kester. A. Yes, sir.

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

Q. I show you the testimony of Edna P. Kester given on final proof, dated July 13, 1904, and ask you if you signed that paper? A. Yes, sir.

Q. And the cross-examination given at the same time. You signed that? A. Yes, sir.

Q. Mrs. Kester, who located you on that claim?

A. Mr. Dwyer.

Q. How long before you located did he take you over the claim? [654—324]

A. How long before I was located?

Q. I mean before you filed, did he take you over the claim?

A. It was in October that we went up into the timber.

Q. And who were of the party that went into the timber with you?

A. My sister, Mrs. White, and her husband, and my husband, Mr. Kester, and Mrs. Elizabeth White

(Testimony of Mrs. Edna P. Kester.)

and Mrs. Elizabeth Kettenbach, and Mrs. Hallett; I believe that was all,—and Mr. Dwyer and myself.

Q. Is it Mrs. Hallett?

A. Mrs. M. E. Hallett, yes.

Q. Mrs. Martha—?

A. Martha E. Hallett, yes, sir.

Q. Is she in any way related to the Kester family?

A. No, she is not related.

Q. Was she employed in the Kester family at that time?

A. No. Mr. Kester and I were boarding with her at that time. She is a dear friend of the Kester family, and we were boarding with her at that time.

Q. I assume your husband paid the expenses of your excursion to the timber, didn't he?

A. Yes, I made all arrangements with Mr. Kester. He didn't want me to take it up at first, but I persuaded him and asked him to give me the money, and he did.

Q. Did you pay a location fee, or didn't you have any location fee?

A. I don't remember as to the location fee.

Q. Were you in the lineup at the land office?

A. I was there the day we filed.

Q. Do you remember that there was a crowd of people at the land office that day?

A. I believe there was. All of our crowd were there that went up together.

Q. Did you have anyone to hold a position in the line for you?

A. Well, no, but I did I believe when I was not

(Testimony of Mrs. Edna P. Kester.)

well; I don't remember which date that was though. It wasn't when I filed though, [655—325] because I went there myself. No, I didn't have anyone to hold a place for me, because I was there when I filed myself.

Q. But was there someone held your place in line and you took that place the morning you filed?

A. No.

Q. Well, were there any persons ahead of you at the land office, and you had to wait a little while?

A. I don't remember as to that.

Q. You went right into the land office and filed when you got there? A. Yes, sir.

Q. Do you remember the time of day you made your filing?

A. I am quite sure it was in the morning, before noon.

Q. It was before twelve o'clock?

A. I think so.

Q. And the others of the party you have named that went to view the timber with you were there at the same time?

A. They were there, yes; they were there at the land office.

Q. Do you remember the time of making your final proof, that is, paying for the land? A. Yes.

Q. Do you remember how much you paid on that occasion?

A. It was something over \$400.00.

Q. And your husband gave you that? A. Yes.

Q. The morning you made your proof?

(Testimony of Mrs. Edna P. Kester.)

A. Yes, sir.

Q. Have you sold your claim, Mrs. Kester?

A. No, sir.

Q. Have you ever offered to sell it to anyone?

A. No, sir.

Q. You still have it?

A. I still have it. [656—326]

Q. Have you ever authorized your husband to sell your claim for you? A. No, sir.

Q. Or anyone else? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated April 25, 1904, of Edna P. Kester, the nonmineral affidavit, the notice of publication, of the same date, the testimony of Edna P. Kester taken at final proof, the cross-examination thereof, all of which have been identified by the witness, the testimony of the witnesses at final proof and the cross-examination of them, the other land office papers in the files in this case, the receiver's receipt and the register's certificate, dated July 13, 1904, certified copy of the patent issued to Edna P. Kester, dated December 31, 1904, all relating to the entry of the north half of the northeast quarter and the north half of the northwest quarter of section 14, township 38 north of range 5 east, Boise meridian.

Said above mentioned documents were thereupon marked by the reporter as Exhibits 16, 16A, 16B, 16C, 16D, 16E, 16F, 16G, 16H, 16I, 16J, 16K, 16L, and 16M.

Mr. TANNAHILL.—The defendants severally

(Testimony of Mrs. Edna P. Kester.)

object to each and all of the papers offered in so far as they relate to bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry of the witness not being involved in these two particular actions. And the defendants severally object to the final proof papers in so far as they relate to any of the actions pending, upon the ground that they are incompetent, irrelevant and immaterial, the final proof papers being described as the testimony of claimant Edna P. Kester, and the cross-examination of the claimant Edna P. Kester, the proof of publication, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, the testimony of the witness Edwin Bliss, and the cross-examination of the witness Edwin Bliss, upon the ground that they are incompetent, irrelevant and immaterial. We also object to the affidavit of Edna P. Kester made upon final proof, upon the ground [657—327] that it is irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Kester, as I understand you, at the time you filed your sworn statement you had no agreement with anyone to sell your land to them?

A. No, sir, I had not.

Q. You did not take it up for the benefit of your husband? A. No, sir.

Q. Or anyone else? A. No, sir.

Q. And the affidavit that you made at the time you filed your sworn statement, "That I have made no

(Testimony of Mrs. Edna P. Kester.)

other application under said acts; that 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," that was true at the time you made it, was it? A. Yes, sir.

Q. And it was true at the time you made your final proof? A. Yes, sir.

Q. And it is still true? A. Yes, sir.

Q. And the affidavit that you made at the time you made your final proof: "That she purposes to purchase said land with her own money in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, [658—328] directly or indirectly, in or from a former entry made by any person or association of persons," that affidavit was true at the time you made it, was it?

A. Yes, sir.

Q. And it is still true? A. It is still true.

Q. And you have never sold your land?

A. No, sir.

(Testimony of Mrs. Edna P. Kester.)

Q. And never contracted for the sale of it to anyone? A. No, sir.

Q. And your husband gave you the money that you made your final proof with? A. Yes, sir.

Q. And you purchased the land? A. Yes, sir.

At this time a recess was taken until two o'clock.
[659—329]

At two o'clock P. M. the hearing was resumed.

**[Testimony of Mrs. Elizabeth White, for
Complainant.]**

Mrs. ELIZABETH WHITE, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Elizabeth White?

A. Yes, sir.

Q. Where do you reside, Mrs. White?

A. In Lewiston.

Q. How long have you resided in Lewiston?

A. In Lewiston?

Q. Yes.

A. Well, I have resided here the biggest part of my life,—since '71, I think, around Lewiston and in Lewiston.

Q. Are you married?

A. Well, I am a widow; I am not married.

Q. Are you related to Mr. William J. White?

A. Yes, William J. White is my son.

Q. And Mr. William F. Kettenbach married a daughter of yours?

(Testimony of Mrs. Elizabeth White.)

A. William Kettenbach married my daughter, yes, sir.

Q. Are you related in any way to Mr. George H. Kester?

A. No, sir, not any more—well, you know how my son is related to him, by marrying his wife's sister; so I don't consider that I am any relation to Mr. Kester.

Q. Do you remember taking up a claim under the timber and stone act in the spring of 1904?

Mr. TANNAHILL.—The defendants severally object to the introduction of any evidence relative to the taking up of the claim of the witness, in so far as it relates to bills and actions No. 388 and 407, upon the ground and for the reason that the entry of the witness is not involved in these particular actions.

The SPECIAL EXAMINER.—You may answer the question. [660—330]

The question was thereupon read by the reporter.

A. I remember of taking up a claim about seven years ago, I guess, now. I don't know whether it was in 1904 or 1905, and I don't know whether it was,—I didn't take it up in the spring; I think I took it up in the fall, at least that is when I made my trip into the mountains.

Q. Did you discuss with anyone the feasibility of taking up a claim?

A. No, sir, I never discussed it with anyone. I had in mind to take up one, as all my neighbors and friends were doing up there, and that was how I come

(Testimony of Mrs. Elizabeth White.)

to talk of taking up a timber claim.

Q. Who located you on a timber claim?

A. Well, I guess Mr. Dwyer did. There was several men in the mountains when I went there, and Mr. Dwyer was one of them, and I wasn't acquainted with any of the men at that time; I know Mr. Dwyer was with the other men. There was several; I don't know just how many.

Q. Did you go with a party? A. I did.

Q. Who composed the party?

A. My son and his wife, and Mr. Kester and his wife, and several others,—I believe Mrs. Kettenbach and Mrs. Hallett.

Q. What Mrs. Kettenbach? Mrs. Elizabeth Kettenbach?

A. Mrs. Elizabeth Kettenbach, yes. The reason I went with the party was simply because I was acquainted with them. I had in mind to take up a claim, and when I heard of those parties going in I thought now was my time to go, simply to have company; I was alone; I didn't have anybody to go with me.

Q. Did you make any arrangements to be located before you left Lewiston?

A. No, I did not, because when I left I didn't know whether I could get a claim or not. I just simply went because my son was going.

Q. Did you bargain with anyone to locate you?

A. Not at the time, not before I was located, I didn't.

Q. Did you afterwards? [661—331]

(Testimony of Mrs. Elizabeth White.)

A. Bargain with anyone to locate me?

Q. Yes.

A. Well, I asked the locator if he couldn't get me a claim, after I got up there, and he said he thought he could, that there was plenty of claims there that hadn't been filed on, and he thought he would be able to get me a claim.

Q. Was this talk with Mr. Dwyer?

A. Well, I couldn't say whether it was Mr. Dwyer or the other men. It has been so long ago that, as I say, I knew Mr. Dwyer was there, because I have seen him off and on since.

Q. Did you pay this man that located you a locating fee? A. I did.

Q. How much?

A. Well, I either paid him \$100.00 or \$200.00; whatever his locating fee was I paid him.

Q. You went into the timber in October, 1903, did you?

A. Well, I don't know whether it was 1903 or 1904, but I went in in October,—I don't know whether in October, but I went in about seven years ago, I believe it will be pretty soon. But I didn't make a minute of the date when I left here; I didn't think it was necessary.

Q. And then you, of course, returned to Lewiston and do you remember how long it was after you went to view the timber that you located?

A. After I went to view the timber?

Q. That you filed.

A. Well, I went up to see the timber, and then I

(Testimony of Mrs. Elizabeth White.)

filed some months later; I couldn't say as to that.

Q. Do you know the reason you didn't file immediately upon your return to Lewiston?

A. No, I do not.

Q. Were you told why you were not to file?

A. I really don't know that either, because I didn't know the rules, and I just went up thinking I could get a timber claim, and when [662—332] I came down I didn't know we had to rush in and file, and I just waited until the time came for me to file.

Q. It didn't occur to you that someone might file on the claim you had located on in the meantime?

A. No. As I say, I wasn't familiar with the rulings of the land office, and I really didn't give it very much thought. I thought if I got my claim it was all right, and if I didn't it would be all right.

Q. Did you pay this locating fee before you filed, or afterwards?

A. The locating fee before I filed or after? No, I didn't pay it before I filed; I wouldn't. I am pretty sure I didn't. I paid it when the time came to pay it.

Q. Do you know who notified you of the date you should file? A. Who notified me?

Q. Yes.

A. Well, my son was around in town. We were living,—well, I guess we were living in town across the Clearwater River, and my son came in and told me that we could file, and when I got over there everything seemed to be crowded with people, and I supposed they were all doing as I was,—going to

(Testimony of Mrs. Elizabeth White.)

file,—and that was all there was about it.

Q. Do you remember the day you went to the land office? A. No, sir, I do not.

Q. I mean, do you remember the occasion?

A. The occasion?

Q. Do you remember being there?

A. I went in, and, as I said, there was quite a number of people in the land office, and then I think it was several days before we could file. I don't know what was,—I don't know just how it was, but I think it was two or three days we had to go over there. That was it. We held our place, I think, in the land office with others.

Q. Did you employ someone to hold a place for you? A. No, sir, I did not.

Q. Do you know that anyone else did? [663—333]

A. I don't know about that; I wasn't acquainted with them.

Q. What time did you go to the land office the day you filed, what time of day?

A. What time of day?

Q. Yes.

A. Let's see: I think it was in the evening, I think.

Q. And did you have to wait any considerable length of time? A. Before I filed?

Q. Before you filed.

A. I think I had to wait several days. I am not positive, but—

Q. But you didn't wait at the land office that long, did you?

(Testimony of Mrs. Elizabeth White.)

A. No, I came home and got my meals and went back again.

Q. You didn't remain there at night any time, did you? A. At night?

Q. Yes.

A. No, I don't think I did. I am pretty sure. I didn't stay all night, anyway.

Q. Now, I understood you to say there was a crowd at the land office. Did you notice whether they were formed into a line, one after the other?

A. In a line?

Q. Yes.

A. Why, I don't know. I believe they were in line, I think, the morning I proved up.

Q. No, I am talking about when you filed, not when you made your proof.

A. Oh yes, when I filed. I really—I really couldn't tell you. I know there was a crowd in there, and some were standing and some were sitting.

Q. Well, did you form into line, become a part of the line?

A. Maybe I did now. I guess I did the last day, I think, but we were there,—as I said, there was some sitting and some standing, and I suppose I got just as near the door as I could, or the window, [664—334] or whatever it was (laughing), or wherever we had to be; I just went with the crowd.

Q. When you went there did you take a position at the end of the line, or did you get up in the middle of the line somewhere?

A. Oh, I just crowded in, got up as near as I could.

(Testimony of Mrs. Elizabeth White.)

Q. Was that the first day you went, or the last day?

A. Oh, I don't know. There was two or three days there that the people were coming and going, and I was there like the rest of them.

Q. Did you go alone, or did your son and daughter-in-law go with you?

A. Sometimes I went alone, and probably they came later, or maybe they were there when I got there.

Q. Do you remember who prepared your filing papers for you?

A. I don't know, but it might have been my lawyer; I had a lawyer to do business for me.

Q. Who was your lawyer at that time?

A. Well, I. N. Smith was my lawyer at that time. I couldn't say that he did that, but he was doing work for me at that time, and has since and before.

Q. I show you, Mrs. White, the timber and stone land sworn statement of Mrs. Elizabeth White, dated April 25, 1904, and ask you whether you signed that in duplicate, and filed it in the land office the date it bears.

A. Well, I guess I did. That is my signature. It looks like it. Of course I filed on my homestead.

Q. Is that your signature to the nonmineral affidavit, dated April 25, 1904?

A. Yes, sir, that is my signature.

Q. I show you the testimony of Elizabeth White, given on final proof, July 14, 1904, and ask you if that is your signature?

(Testimony of Mrs. Elizabeth White.)

A. I suppose it is. I haven't got my glasses. I suppose it is my signature. [665—335]

Q. Is that your signature to the cross-examination taken at the same time?

A. Yes, sir, it looks like it.

Q. The first paper I showed you, the sworn statement, have you any recollection as to where you received that paper? A. Where I received it?

Q. Yes.

A. Well, I don't know what the paper is. I just saw my signature there.

Q. It is the first paper you filed in the land office when you went there to initiate your entry.

A. Well, I don't know. I haven't any idea. I suppose if I signed any papers at all it was in the land office.

Q. Do you remember whether someone was attending to that part of the business for you?

A. No, I don't think so. As I say, I always had help with tending to my business. Any little thing I didn't know I would inquire. Sometimes I went to my lawyer.

Q. You knew Mr. George H. Kester, did you?

A. Oh, yes, I have known him always.

Q. Do you remember whether he tended to that matter for you?

A. Well, I don't remember. I really don't know about George Kester. Of course, he never did very much business for me, very many things, although anything I would ask him to do he would generally do.

(Testimony of Mrs. Elizabeth White.)

Q. Do you remember whether or not he had that paper prepared for you?

A. I don't know what that paper is. I see my signature, but I can't read the balance of it. I haven't my glasses with me.

Q. It is the first paper you filed in the land office.

A. Well, I know, but it has been so long ago that it is almost a dream to me now.

Q. You wouldn't say he didn't prepare it for you, would you? [666—336]

A. I wouldn't say he didn't or that he did; I really don't know.

Q. Do you remember whether or not you talked with Mr. William F. Kettenbach about it?

A. I did, yes; I told him I was going, and I told him my son was going. I was living at their house at the time, and I said "I am going up tomorrow with a party that is going to take up timber claims." And he says, "I wouldn't advise you to go, the trip is too rough for you." And I said, "Well, others went, and I guess I can stand what others can," and so I went.

Q. Do you remember what expenses or fees you paid at the land office the day you made your entry?

A. The day I made my entry?

Q. Yes.

A. I don't remember the amount, but I paid whatever it was.

Q. Have you any idea what the amount was?

A. I haven't any idea at all what it was, but I know whatever it was I paid it with my own money. I

(Testimony of Mrs. Elizabeth White.)

generally had a little money by all the time that I could use when I needed it.

Q. Do you remember whether you gave them the names of the witnesses that would be used at final proof? A. That I did?

Q. Yes.

A. Well, if I did, I suppose you have it there.

Q. I say do you remember of giving them the names?

A. I guess I did. I suppose the parties that was with me.

Q. Do you remember being in Mr. I. N. Smith's office the day that you filed?

A. No, I don't think I was there the day I filed. I really don't know. I went to his office so often that I wouldn't be positive as to that.

Q. Did you know a Mr. Edwin Bliss?

A. I met a Mr. Edwin Bliss, yes, in the mountains.

[667—337]

Q. Did you know Mr. Lee Stansbury?

A. I don't remember. I may have met him there; there were several parties up there.

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

Mr. TANNAHILL.—We object to any evidence in relation to the final proof, as irrelevant and immaterial.

Mr. GORDON.—Please answer the question.

The EXAMINER.—Answer the question.

A. Do I remember making it?

Mr. GORDON.—Yes.

(Testimony of Mrs. Elizabeth White.)

A. Yes, I made final proof.

Q. Do you remember who went to the land office with you, if anyone?

A. I think I went alone. I mean, there was others in company with me, but nobody took me there.

Q. Do you remember how much money you paid in the land office when you made your proof?

A. Well, whatever it was. I thought it was over \$500.00.

Q. How much?

A. I really don't know. I paid them whatever it was, I know (laughing).

Q. Have you any idea how much it was?

A. (Laughing.) Well, I know it was \$400.00 or \$500.00,—\$500.00 and some cents, twenty cents, or nineteen cents, or eighteen cents.

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

A. Let me see. I think I had the cash; I am not sure.

Q. Well, do you remember whether you drew it from the bank or not that day? A. What?

Q. Whether you drew that amount of money from your bank that day or not? [668—338]

A. Well, I guess I did, because I didn't carry that amount around with me very long.

Q. Where did you bank?

A. I banked at the Lewiston National, always banked there, or have been banking there for fifteen or sixteen years.

Q. Did you borrow that money from anyone?

(Testimony of Mrs. Elizabeth White.)

A. No, sir, I did not.

Q. Have you still got that timber claim, Mrs. White? A. I have.

Q. Have you ever tried to sell it?

A. No, sir, I have not.

Q. Never offered it for sale?

A. No, never offered it for sale, though I would like to sell it if I could.

Q. Have you ever given it into the hands of anyone to sell for you? A. No, sir, I haven't.

Q. You never authorized anyone to sell it for you?

A. Never authorized anyone to sell it.

Q. Have you more than the one timber claim?

A. Yes, sir.

Q. You purchased them?

A. Purchased them and paid for them.

Q. Whose claims did you purchase?

A. Well, I purchased my son's claim and his wife's. They wanted to sell it and I bought it, and their homestead, and several other claims.

Q. How is that?

A. And several other claims, I say, and—

Q. Will you tell me the names of the entrymen you bought from? Will you tell me the names of the other entrymen whose claims you bought? [669—

339] A. I don't know what you call an entryman.

Q. A person who did the same as you did, went and took up a claim.

A. You mean just bought it of him when he had a deed to it, or before he had a deed to it, or what?

Q. Name them.

(Testimony of Mrs. Elizabeth White.)

A. Well, I bought my son's claim and his wife's.

Q. And what others?

A. And a claim he had out on Brown's Creek, if you know where that is.

Q. What other claims?

A. I think that is all I have. I have some other timber claims on the Lolo, but I haven't any,—are those the ones you have reference to, those parties?

Q. Yes.

A. I have several timber claims,—I have some over on—

Q. Now, who did you purchase that from?

A. Well, I think it was Robnett. I really couldn't say, but he borrowed money of me, and I couldn't tell you about those claims because I don't know enough about them. I really never thought very much about it. I had to take them, didn't want them, but—

Q. What did you pay for your son's claim?

A. Well, I paid him \$4,000.00 apiece for his claims.

Q. Did you pay him in cash?

A. Well, I guess it was cash. He was owing me a little money and I consider that cash.

Q. You took it in payment of some money he owed you?

A. Oh, just a little he owed me, and then he wanted to sell his claims. He wanted to go in business, and his wife wanted to sell her's, and he wanted to get as much as he could for them, and he couldn't, and I really paid him a bigger price than he could get of anybody else; I simply did it because he was my son.

Q. Do you know how much actual money you paid

(Testimony of Mrs. Elizabeth White.)

for those two claims? [670—340]

A. What two claims?

Q. Your son's claim and his wife's claim.

A. I gave her \$4,000.00 for her timber claim, and I gave \$4,000.00 for his.

Q. That makes \$8,000.00?

A. That makes \$8,000.00.

Q. Now, did you give him a check for \$8,000.00, or how much did you pay him?

A. Well, I couldn't tell you. I gave—I paid Mrs. White for her money, and I paid him for his money. Now, I have got that much money in those claims,—\$12,000.00,—for his homestead.

Q. When did you purchase Mrs. White's claim?

A. I purchased it,—well, I think it was,—no, not last January,—a year ago, I think.

Q. In January a year ago?

A. I think that was it. I have a deed to it, yes. I own those claims; those are my claims.

Q. I know, but—

A. I own them just as much as I own anything I have, and I have a deed to it, and I have it recorded. I didn't come up and look at the recording, whether it was done or not, but I was going away at the time,—I went down to California to be gone several months, three or four months,—and I fixed this up before I went away, and I left it with my son and Mr. Kettenbach; he tended to my business ever since my husband died.

Q. Which Mr. Kettenbach? Your son-in-law?

A. My son-in-law. He has always helped me and

(Testimony of Mrs. Elizabeth White.)

was willing to assist me in anything I didn't understand; and I left it with my son to fix it up when I went away. So they are my claims, and I am going to keep them if you don't take them away from me, you or the fire. I don't know which is the worst.

Mr. GORDON,—Well, I hope I am not as bad as the fire. [671—341]

WITNESS.—Well, I don't know. The fire doesn't know any better.

Q. Now, did you pay for this claim of your daughter-in-law in cash?

A. Well, if I would give her my note, would that be cash?

Q. I guess so.

A. I have always found my note was as good.

Q. Did you give her your note?

A. I gave her my note, and I paid her the money as she needed it.

Q. When did you give her the note?

A. When I bought the claim.

Q. You gave her a note for \$4,000.00?

A. Well, maybe I did or maybe I didn't, but that is what I paid her for the claim.

Q. Well, now, will you tell me whether you gave her a note for \$4,000.00?

A. Well, I might have given it to her for \$4,000.00. Maybe I gave her some cash and maybe I gave her the balance, and when she needed this money I gave it to her. My checks will show it.

Q. Where is that note now?

A. What note? That I gave her?

(Testimony of Mrs. Elizabeth White.)

Q. Yes.

A. Well, when I bought it I had to borrow a little money, and I have been paying it off ever since.

Q. Where did you borrow the money?

A. The bank I did my business with.

Q. How much did you borrow?

A. I don't know. I borrowed about \$3,000.00 or \$4,000.00. I really don't know, Mr. Gordon (laughing), but as I said, I paid them \$4,000.00 apiece for their claims.

Q. Did you go to the bank to borrow that money, or did you talk it over at home with Mr. Kettenbach?

A. No, I didn't have anything to say to Mr. Kettenbach. I was [672—342] talking with my son, because he was anxious to sell his claims, and he went out on the outside to different parties and he couldn't get what he felt they were worth, and he came to me and says, "My claims are worth this much, and I ought to have it, but I can't get it," or something, and I said, "Now I will tell you: I will give you \$4,000.00 for your claims, \$4,000.00 apiece, if that will satisfy you," and he said it would. I was afraid he would sell it to somebody else and he wouldn't do as well, and I thought I could hold them and get what I could out of them.

Q. Did you give him a note for his claim too?

A. I paid him the money, and he was owing me a little money at the time; he had borrowed a little money of the estate, and he wanted to pay that off, and he said he felt that he couldn't hold his timber claims any longer, so that is the way it stands. But I have those claims, Mr. Gordon. They are just as

(Testimony of Mrs. Elizabeth White.)

much mine as if I owned anything at all. I own those claims and you want to pin me down to every dollar, where I got it, and how I substituted and—

Q. No, I just want to know how the transaction was conducted.

A. Well, it was transacted right on the square, Mr. Gordon (laughing). I am really not a business man, and, as I said, when my husband died I was perfectly helpless and dependent, and I had to rely on Mr. Kettenbach; he was the only man we had in the family, and he always looked after my business and helped me out, and he always did what was right with me, and I had no fault to find with him.

The SPECIAL EXAMINER.—What Mr. Gordon wants, Mrs. White, is to know how you paid for those two claims, whether you paid in money, and how much.

A. Yes, it was all money.

Mr. GORDON.—Q. Now, you say you borrowed between \$3,000.00 and \$4,000.00, as I understood you, from the Lewiston National Bank?

A. Yes, sir. [673—343]

Q. Did you give a note for that?

A. Yes, sir.

Q. When was that?

A. That was when I bought those claims.

Q. Have you paid that note yet?

A. I have paid it all but \$1,000.00.

Q. You have paid all but \$1,000.00?

A. Yes, sir.

Q. Where is that note now?

(Testimony of Mrs. Elizabeth White.)

A. That note is down in the Lewiston National Bank.

Q. How many timber claims have you altogether?

A. Altogether?

Q. Yes. A. I don't know (laughing).

Q. Well, have you four or a dozen?

A. I have my own, and three, four,—I have four, and then I have some over on the Lolo; I don't know how many I have there.

Q. Who did you purchase the others from, besides those that you have mentioned?

A. Well, now, you ask me who I purchased them of. Mr. Kettenbach would loan money at times—

Q. What is that?

A. They came from Clarence Robnett. He had borrowed money of me, and those claims came from him. I don't know much about those claims.

Q. Did you conduct your business with Mr. Robnett, or through somebody else?

A. I said Mr. Kettenbach always helped me out in my business, and he had loaned, I supposed,—I didn't think much about it,—I suppose he loaned the money. I don't know how much it was. I think I have the notes down in the bank, but I am not sure, the old notes that I paid off.

Q. How many claims were there of that kind?

A. I don't know how many claims there were.

[674—344]

Q. Were there two?

A. I don't know how many claims there were over there. There are probably,—I know I pay taxes on

(Testimony of Mrs. Elizabeth White.)

them, and I don't know how many claims there are.

Q. Do you still pay taxes on them?

A. Yes, sir, I do.

Q. Do you know how much the taxes are a year on all the timber claims you have?

A. I don't know (laughing). I know it amounts to a good deal.

Q. How much?

WITNESS.—Mr. Dwyer, you ought to know what taxes you pay on timber claims. I know my taxes amount to a good deal in the year.

Mr. GORDON.—Q. Is it \$1,000.00 a year that you pay in taxes on your timber claims?

A. I have got the tax receipts, but I think at one time it was \$40.00 a claim. I don't know,—I won't say, but I know I pay taxes on them.

Q. How many claims do you pay taxes on?

A. I just got through telling you that I didn't know.

Q. You don't know?

A. I know those claims that I bought, my son's claim and his wife's—

Q. I am not speaking of the three claims, the one you located on and your son and daughter-in-law, I am not talking about them now. I am talking about the others.

A. I don't know how many claims there are there; there are several, but I don't know the number.

Q. Is the title to those other claims in your own name?

A. Yes, sir. I never saw the deed, but I never saw

(Testimony of Mrs. Elizabeth White.)

the deed to any of my claims, but I know they are assessed to me and I pay the taxes on them.

[675—345]

Q. Do you pay these taxes yourself, or does somebody else tend to that business for you?

A. Well, my son paid them last January.

Q. Haven't you any idea how much the amount was?

A. No, I wouldn't say. It was a good deal, I know. It was as much as I wanted to pay.

Q. What do you call a good deal?

A. Oh, dear me, I don't know, Mr. Gordon (laughing); I wouldn't swear to anything I don't know.

Q. Well, was it \$300.00 or \$400.00?

A. I suppose I could get the amount by going down to the recorder's office,—to the assessor's office.

Q. Now, how much did you pay for these other claims that you have, besides the three we have eliminated for the time being?

A. Well, I have had these claims some time, you know.

Q. When did you get them?

A. I don't know the year, but I had them before I got the others.

Q. You had them before you got the others?

A. Yes. I don't know how many thousand dollars I have in them.

Q. How long before you got the others did you get them? A. I don't know how long.

Q. Was your husband living at that time?

A. Oh, no.

(Testimony of Mrs. Elizabeth White.)

Q. Did you ever mortgage those other claims or borrow any money on them?

A. I never borrowed any money on them that I know of, or ever mortgaged them.

Q. Have you any idea of the value of those claims?

A. The value of them?

Q. Yes.

A. Not only the way timber is selling, and other people, what they get for their claims.

Q. Have you ever tried to sell any of those other claims? [676—346]

A. No, I have never tried to sell them.

Q. Have you ever given them to anybody else to sell for you?

A. What claims? You mean the Lolo claims?

Q. The ones you referred to as getting from Mr. Robnett.

A. I don't know that I ever did. I think there was some parties called my son up once or twice and wanted to know if they were for sale. Now, I don't know whether,—I don't know about that. I remember my son coming home and telling me that this man, some man, wanted to buy the claims, or something.

Q. Did you ever ask Mr. Will Kettenbach to sell those claims for you?

A. No, I never did ask him to sell those claims for me.

Q. Nor Mr. George Kester?

A. Nor Mr. George Kester.

Q. Did you ever give them the authority to sell them?

A. No, sir, I never gave them any authority.

(Testimony of Mrs. Elizabeth White.)

Q. Now, can you give us some idea as to what those claims cost you?

A. Well, I think I answered that question. I don't know what claims you have reference to.

Q. The ones you got through Robnett, the ones you referred to as the Robnett claims, that Robnett was connected with.

A. I don't know whether they cost \$5,000.00 or \$7,000.00 or \$10,000.00.

Q. Do you know whether they cost \$1,000.00 or \$2,000.00 or \$3,000.00?

A. I think they cost more than that, I am pretty sure. It seems to me I know they cost,—I really couldn't say, but it was \$5,000.00 or \$7,000.00 or \$8,000.00 or \$10,000.00. I don't know.

Q. State how you happened to buy those claims.

A. I couldn't say, because, as I say, he borrowed the money.

Q. Who borrowed the money?

A. Well, Robnett, because my notes show he borrowed the money. [677—347]

Q. From whom?

A. I suppose he did from Mr. Kettenbach. Mr. Kettenbach always made loans for me when I had the money; he always looked out and made loans whenever he would see a good one.

Q. Is the Mr. Robnett you refer to Mr. Clarence W. Robnett that used to be down at the bank?

A. Yes.

Q. And this money was loaned Robnett of yours through Mr. Kettenbach, as I understand it?

(Testimony of Mrs. Elizabeth White.)

A. Yes. I had money there and I suppose he loaned it to Mr. Robnett.

Q. Have you those notes of Mr. Robnett's?

A. Well, I guess they must be around somewhere in the bank among other papers,—I don't know. I really forgot about it.

Q. Now, how long did this transaction take place before you entered on your timber claim?

A. I don't know.

Q. Did you take these claims in settlement of this money that was loaned of yours?

A. Did I take these Robnett claims?

Q. Yes.

A. I suppose I did. I have the claims and he borrowed the money and he turned the claims over; I guess that was the way.

Q. And did that square Mr. Robnett with you?

A. I don't know whether that particular transaction squared us or not (laughing).

Q. Well, you didn't tend to any of the business with reference to those claims yourself, did you?

A. No, not those, I didn't.

Q. It was all attended to for you by Mr. Will. Kettenbach?

A. Yes, it was all attended to, I suppose it was, because I gave him authority to do those things.

Q. Were the deeds ever delivered to you?
[678—348]

A. I suppose they were delivered to me. I know they are my claims. I never read over the deeds. I really haven't read over the deeds to any of my

(Testimony of Mrs. Elizabeth White.)

property that I know of.

Q. Did you record those deeds? Do you remember of ever seeing the deeds?

A. Well, I have never seen the deeds to any of my property, any property that I have.

Q. Who does see the deeds to the property that you own, and have acquired?

A. Well, I haven't made any inquiry into it at all, but I know they are my claims, and I was paying taxes on them, and that is all that I thought of.

Q. Have you ever sold a timber claim that was in your name?

A. Have I ever sold a timber claim that was in my name?

Q. Yes. A. Any particular timber claim?

Q. Any one.

A. Well, I don't know. I might have had a timber claim and it was sold and I wouldn't say that I didn't.

Q. Have you ever sold any property since your husband died? A. Any property? Yes.

Q. Any timber claims?

A. Not that I know of. I may have, too.

Q. Did you ever sell any property to the Clearwater Timber Company?

A. Well, that,—I guess that was,—let me see,—this timber,—I didn't sell it myself, I don't think. I know I didn't sell it myself, my name,— I guess was a third party, wasn't it, and I don't know anything about that.

Q. Who tended to that for you?

(Testimony of Mrs. Elizabeth White.)

A. I don't know. I don't know anything about that piece of property at all.

Q. Did you ever sell any other piece of property since your [679—349] husband's death?

A. Yes, I have sold a good deal.

Q. Any timber claims?

A. No (laughing), not that I know of, Mr. Gordon.

Q. Now, Mrs. White, you don't know very much about these timber claims, do you?

A. Well, what I do know I know, and other things I don't know very much about.

Q. What is there about these timber claims that you know to a certainty?

Mr. TANNAHILL.—We object to that.

WITNESS.—What timber claims?

Mr. GORDON.—Any of them.

WITNESS.—I know I took up a timber claim, and I paid for it, and I have it and am paying taxes on it. And I bought my son's claim and his wife's claim, and his homestead, and another claim, and I am paying taxes on that, and I am paying the Clearwater Fire Association to take care of it for me; I know I have them and pay taxes on them.

Q. Have you any idea how many others you have?

A. No, sir; I don't think I have (laughing).

Q. No idea? A. Outside of those, I don't know.

Q. Do you know how much money you invested in those other timber claims?

A. No, sir; as I said.

Q. Well, who did the investing for you in those other timber claims?

(Testimony of Mrs. Elizabeth White.)

A. Well, I guess it was taken on a debt, these timber claims were turned over.

Q. Mrs. White, you didn't have to give a note then to purchase these claims, did you?

A. You say I didn't have to give a note?

Q. I asked you if you did have to give a note.
[680—350]

A. If I purchased the claims and gave them my note?

Q. No, I don't mean the three claims you have referred to. I mean the others.

A. No. I told you this man had borrowed money of me at certain different times, I think, and these claims were given in payment for this loan.

Q. Do you know how much cash money you had that you were lending that way?

A. No, I don't know the amount of cash.

Q. Did you keep all the cash you had approximately at the Lewiston National Bank?

A. Yes, sir; that is where I did business.

Q. You don't know how much cash was expended in them?

A. I don't know. That has been a long time ago, and I really never gave business very much thought, while I try to do what is right.

Q. Now, you said something about a third party in the Clearwater Timber Company claim. Do you know who that third party was?

A. What have you reference to?

Q. I say are you the third party in what you call the Clearwater Timber Company transaction?

(Testimony of Mrs. Elizabeth White.)

A. Oh, I don't know anything about that, Mr. Gordon. I know there was a claim—

Q. Was that the claim?

A. From what I saw in the paper you served on me, that claim, and I don't know much about it.

Q. Was that claim put in your name as a third party? A. I don't really know that.

Q. Mrs. White, did you buy Mrs. Hallett's claim?

A. No, sir; I did not; not that I know of. I never heard of it; I don't know anything about her claim.

Q. When your son purchased his claim, did he get his money from you to purchase it? [681—351]

A. No, sir.

Q. The money he owed you was for other transactions? A. Oh, for other things, yes.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Elizabeth White, dated April 25, 1904, the nonmineral affidavit of Elizabeth White of the same date, the notice of publication of the same date, the testimony of Elizabeth White given on final proof, and the cross-examination of Elizabeth White at final proof, all of which papers have been identified by the witness, the testimony of the witnesses given at final proof, and the cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated July 14, 1904, certified copy of patent issued to Elizabeth White, dated December 31, 1904, all relating to the entry of the south half of the northwest quarter and the south half of the northeast quarter of section 23, township 38 north of range 5 east, Boise meridian.

(Testimony of Mrs. Elizabeth White.)

Said above mentioned documents were thereupon marked by the reporter as Exhibits 17, 17A, 17B, 17C, 17D, 17E, 17F, 17G, 17H, 17I, 17J, 17K, 17L, and 17M.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the introduction of any of the papers in evidence in support of bill and action No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in these two particular actions. And the defendants severally object to the introduction of all of the final proof papers in evidence in support of any of the actions, and especially the testimony of the claimant Elizabeth White, the cross-examination of the claimant Elizabeth White, the testimony of the witness Edwin Bliss, and the cross-examination of the witness Edwin Bliss, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, upon the ground that it relates to matters occurring at the final proof, long after the filing of the sworn statement, and is irrelevant and immaterial. [682—352]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. White, I believe you said you still held your timber claim? A. Yes, sir.

Q. You have never made any contract or agreement with anyone for the sale of it? A. No, sir.

Q. Before you made your final proof? A. No.

Q. Then, your affidavit that you made when you

(Testimony of Mrs. Elizabeth White.)

filed your sworn statement, "That I have made no other application under said acts; that 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," that affidavit was true, was it?

A. That affidavit was true.

Q. And it was true at the time you made your final proof?

A. Yes, it was at the time I made my final proof.

Q. And it is still true? A. And it is still true.

Q. And you had no contract or agreement with your son William J. White or his wife Mamie P. White that you would purchase their land, before they made final proof, did you?

A. No, sir, not until a few days before I did purchase it.

Q. And you had no contract or agreement with Mr. Robnett? A. No, sir.

Q. Or with any of the entrymen, in so far as you know the entrymen that you did purchase the timber claims designated by you as on the Lolo, prior to the time final proof was made? [683—353]

A. No, sir, I did not.

Q. And you paid your own money for the claims you purchased from your son and his wife?

(Testimony of Mrs. Elizabeth White.)

A. I paid my own money.

Q. And it was your own money that was paid for the claims you say are located on the Lolo?

A. Yes, sir, it was my own money.

Q. And you still have the claims?

A. I still have them.

Redirect Examination.

(By Mr. GORDON.)

Q. You say you didn't purchase any until final proof was made. Have you any recollection of whether you did purchase them at final proof, or when you did purchase them? A. Any of them?

Q. Those on what you call the Lolo.

A. No, I have not.

Q. You don't know anything about it, do you?

A. No. I don't know who took them up. I don't really know the entrymen, only I know I loaned the money.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. White, Mr. Gordon asked you concerning the claim of Mrs. Hallett. A. Yes.

Q. You never had any agreement with Mrs. Hallett to purchase her claim, did you?

A. No, sir, I don't know anything about her claim.

[684—354]

[Testimony of Van V. Robertson, for Complainant.]

VAN V. ROBERTSON, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mr. Van V. Robertson?

A. Yes, sir.

Q. Where do you reside, Mr. Robertson?

A. I reside in Moscow at present.

Q. How long have you resided at Moscow?

A. About two months and a half.

Q. Well, where did you reside in February, 1903?

A. Lewiston.

Q. And how long had you lived at Lewiston then?

A. I think about 18 months.

Q. And what was your occupation?

A. I was in the cigar-store part of the time, and part of the time in the saloon business.

Q. Whose cigar-store were you in?

A. In the Thiessen building—Miller & Robertson at the time I was in there.

Q. You were employed by them, were you?

A. No—I had a half interest in the store.

Q. Then how long were you in the business?

A. Oh, I don't remember—three or four months; something like that.

Q. And how long were you in the saloon business here?

A. Possibly eight months—eight or ten—less than a year.

(Testimony of Van V. Robertson.)

Q. Do you know any of the defendants, Kettenbach, Dwyer, or Kester? A. I know Mr. Kester.

Q. Do you know Mr. Dwyer?

A. I know him by sight. [685—355]

Q. Do you know Mr. Robnett? A. Yes, sir.

Q. Did you ever do any business with either of them?

A. Yes; I done a banking business there while I was in this town at the time I was in business.

Q. Had you done any banking business with them before you entered the timber claim?

A. How is that?

Q. Had you done any banking business with them before you entered the timber claim? A. Yes, sir.

Q. Now, will you state how you happened to take up a timber claim.

Mr. TANNAHILL.—We object to any evidence relative to the witness' timber claim, in so far as it relates to bill No. 388 and 407, on the ground that the entry of the witness is not involved in these two particular actions, and it is irrelevant and immaterial.

The SPECIAL EXAMINER.—Now, Mr. Robertson, you should speak out pretty good and loud, so we can hear just what you say, and so the Stenographer can get the answer down. Now, read the question, please, Mr. Stenographer, and answer in a good loud voice so that we can hear you.

The Stenographer thereupon repeated the last question.

(Testimony of Van V. Robertson.)

Mr. GORDON.—Answer that, please, Mr. Robertson.

A. Why, I suppose I took it up like anyone else would take up a timber claim, or the same as any man would—to make money out of it, of course.

Q. Now, who did you discuss taking up a timber claim with?

A. Well, I think the first man that—oh, I have talked the timber claim business many times; but while in the cigar-store business I found out through my partner (Mr. Miller) that there was a party going out; and I think that is the first time that I discussed this particular [686—356] business, that I have any recollection of.

Q. Well, then, what happened after that?

A. Well, I got acquainted with Mr. Knight, and made arrangements to be located.

Q. Who introduced you to Mr. Knight?

A. Well, I don't remember.

Q. Mr. Robnett? A. No.

Q. Which Mr. Knight is this?

A. Well, sir, I don't know what his given name was. He was a locator—represented as a locator to me. I never met him until a few days before we went on this trip. I think they called him Ed. It seems to me like that is what they called him; I wouldn't be positive, though.

Q. Now, did Mr. Knight tell you what you could do with this timber claim?

A. No, I don't know that he did. It seemed to be understood that if a man got a deed to timber claims

(Testimony of Van V. Robertson.)

that they was going to come in and he would have a chance to sell them in a short time. It seems they were going up in this Coeur d'Alene country pretty good, and they said different ones in common conversation. It was talked over.

Q. Did Mr. Knight tell you that there was a syndicate that was ready to buy this land?

A. I don't think so.

Q. Did Mr. Miller tell you that?

A. I don't know as he did. But it was generally understood that there would be buyers here the same as there had been other places. I don't know who told me that, or anything of the kind; but it seemed to be the common talk around here, that it was a good proposition to get a hold of some timber lands, the same as it would be to go into any other land proposition.

Q. Well, did either of those gentlemen tell you that a syndicate [687—357] was ready to buy this land as soon as it was taken up?

A. I don't think so.

Q. And when they could get a big bunch of it together, and that you could make something out of it?

A. Well, later—I don't know as that would be an answer to the question—but later I know that there was talk—that Robnett told me that he would like to handle the land, and to go ahead and prove up on it, and I asked him in what way, and he said that he would handle it on a commission, the same as a real estate man; that they would have opportunities to sell them that anybody else wouldn't have, because

(Testimony of Van V. Robertson.)

they would have a body of it together, or try to have.

Q. Did you have at that time the money with which to purchase a timber claim?

A. I did when I filed on it.

Q. You did? A. Yes, sir.

Q. Did you have it in bank? A. Yes, sir.

Q. How much?

A. Oh, I don't remember how much I had. I know I had when I came there.

Q. How much did you have when you came there?

A. I transferred \$2,850.00 from the Camas Prairie Bank to the Lewiston National Bank.

Q. And when was that?

A. I came here sometime in December—late in December.

Q. That was the December before you entered in February?

A. When I moved I transferred this in January. I wouldn't be positive exactly about the dates.

Q. And how did you transfer it—in what form?

A. Why, to do my banking business here instead of doing it in Grangeville. I moved here. [688—358]

Q. Do you mean you drew a check and transferred it here? A. Yes, sir.

Q. You didn't take a certificate of deposit?

A. I think I just drew a check.

Q. And opened up an account with the Lewiston National Bank? A. Yes, sir.

Q. And that was the latter part of 1902 or the first of 1903?

(Testimony of Van V. Robertson.)

A. Well, yes, it might have been in January, because I came very late in the year. It was the latter part of December that I came here, and it might have been the first of the year that I transferred it; I am not positive.

Q. Now, had you ever met Mr. Robnett before you came here? A. No, sir.

Q. And how long after you came here did you have this conversation with him that you have just related?

A. Oh, that was—I don't know that I ever met Mr. Robnett only possibly seeing him in the bank or something.

Q. Well, did he make that suggestion that you have just stated, or did you bring about the conversation yourself?

A. I think I brought it up myself, that I didn't think that I would prove up on the land; that my family was sick, and I was tied up in my business in such a way that I didn't know that I would have the money to do it with.

Q. And what did Robnett tell you?

A. Well, he said it would be too bad to throw it up; he said there was a chance to make some money out of it, and he believed the timber claims was a good proposition, and he said possibly he could make arrangements in the bank to furnish the money to prove up on the land—take a mortgage on the land.

Q. Was this conversation at the bank?

A. I don't know whether it was or not. I don't remember positively. [689—359]

(Testimony of Van V. Robertson.)

Q. What is your best recollection?

A. Well, I wouldn't like to say as to that, because it is something a man drops from his mind and never gives it another thought; and if I would tell you where it was I wouldn't be telling what was absolutely true, because I don't know. I don't remember as to that.

Q. You say you brought this matter up yourself?

A. I think so.

Q. Now, what was your purpose in telling Mr. Robnett this? Had he had anything to do with your claim prior to that time?

A. No. I don't think so. I think I had been talking to other parties about it—Miller—and Miller said he was going to get the money, and I think that is the way it came up. Of course, I don't remember exactly.

Q. What did Mr. Miller say? What did I understand you to say Mr. Miller said?

A. I think I might have been talking to Mr. Miller. We were in business together, and he told me he was going to get the money from the bank to prove up on his claim. Possibly that is the way I got the idea, but I am not positive how that part came up.

Q. Now, do you know whether or not, before filing, you talked with Mr. Robnett about taking up this claim? A. I have no recollection of it.

Q. And that Robnett told you that he had a large bunch of claims that he was going to sell, and that if you would take up one you could put it in, and that you would be satisfied with \$400.00 for your share of

(Testimony of Van V. Robertson.)

what you got out of your claim?

A. No, I never had no such conversation; no, sir.

Q. Now, who located you on that claim?

A. Knight.

Q. Did you pay him for locating you?

A. Yes, sir.

Q. How much? [690—360] A. \$100.00.

Q. And when did you pay that—before you went to file or afterwards?

A. Oh, I guess I paid him when I came back from the trip; if I remember right the same day that we got into town.

Q. And where did you go from here to view that claim? A. I went up the North Fork.

Q. Sir?

A. I went up on the train as far as Ahsahka, and then on the North Fork.

Q. And who went with you?

A. Well, I don't know all the parties. A man by the name of Nelson, and Miller, were two of the parties.

Q. Was the Miller the same Miller—

A. —that was in partnership with me in the cigar store; yes, sir.

Q. And did he tell you that he was going to get his money from the bank to make his proof?

A. He told me this afterwards. I don't think he told me that then.

Q. Miller is dead, isn't he? A. Yes, sir.

Q. And do you remember anyone else that went along?

(Testimony of Van V. Robertson.)

A. Well, there was two other men in the party, but I don't remember their names. It seems to me like Varney or some such a name was one man. I wouldn't be positive, though. It seems like that was the name, some such a name. Anyway, I would know the fellow if I would see him, but I wouldn't be positive about his name. The other party, I don't remember his name if I ever knew it. Either one of them I wasn't personally acquainted with them.

Q. Do you know how much timber was on this claim?

A. Well, all I know about it was the estimate I got.
[691—361]

Q. How much was that?

A. Something like a million and a half, I think.

Q. And were you told how much it was worth per thousand?

A. Yes; I think they told me at the least calculation that a man ought to be able to get four bits or a dollar a thousand for it.

Q. And then, do you remember who prepared your filing papers and your sworn statement that you filed in the land office?

A. No, I don't remember.

Q. Did you pay a fee for that service?

A. Yes; I paid all the expenses.

Q. Well, I mean do you know whether any was charged for preparing that paper?

A. I don't think so. I think I paid just the filing fee was all.

Q. How much was the filing fee?

(Testimony of Van V. Robertson.)

A. I don't remember—something like \$8.00 or \$10.00—I don't remember—something like that.

Q. You are not related in any way to any of the defendants that I spoke to you about?

A. No, sir.

Q. Now, after you filed, do you remember whether you gave the people at the Land Office the names of the witnesses that you would have for final proof?

A. I wouldn't be positive who the witnesses was, but it seems like it was some party that was out with me. I believe it was. I wouldn't be positive, though.

Q. Now,—

A. I have never given it a thought since.

Q. Now, state the first conversation that you can remember of having with Mr. Robnett about this claim.

A. Well, I think the first conversation I had was in regard to proving up; that I didn't think I would prove up unless I could raise [692—362] the money elsewhere; that I wouldn't have the money to spare, I didn't think; that my family was sick, and that I was going to be cramped in my business, and that I didn't think I would go through with it unless I could borrow the money.

Q. And what did he say?

A. He said he might make arrangements, and he said he would hate to see me throw it up, because he thought it would be throwing away a good chance.

Q. Was it at that time that he said he would like to handle it for you?

(Testimony of Van V. Robertson.)

A. I wouldn't be positive about that?

Q. Well, now, what was that conversation, and as near as you can recollect when was it, with reference to the final proof?

A. Oh, I think that was after I proved up that he wanted to handle it; said that he would if they got a chance to sell. I told him that I didn't want to lose this property through a mortgage, and he said he thought there would be ample chances to sell; and he said they would have quite a little body of timber, and I asked him what he would charge me, and he said he would charge me a real estate man's commission—four or five per cent.

Q. And do you think that that was after you made proof that you had this arrangement with Robnett to sell? A. I think so.

Q. Well, didn't you sell to Kester and Kettenbach the very day that you made proof?

A. Well, not intentionally I didn't. I supposed I gave a mortgage. I know afterwards I made them a deed, and so if I had sold to them I wouldn't certainly have made that, would I?

Q. Excuse me—I was looking at a mortgage thinking it was a deed. Did you give a note the day that you got this money from Robnett?

A. Yes, sir. [693—363]

Q. How much did you get? A. \$400.00.

Q. And did he give it to you in cash?

A. Yes, sir.

Q. And where did you get it—at the bank?

A. Yes. No—I got it of Robnett. Well, I think

(Testimony of Van V. Robertson.)

I went into the bank, and I think he got the money and handed it to me and we made out the papers. I know I did the business through him—with him.

Q. Now, did you have any discussion with Mr. Robnett about where you should say you got that money when you went to the Land Office?

A. I don't think that I did.

Q. Did Mr. Robnett tell you that you would have to say that that was your own money, and that you had had it a certain length of time?

A. Well, I don't remember.

Q. Well, do you remember what you did say about it, when you went to the Land Office?

A. I think I claimed the money.

Q. And do you remember how long you said you had had that money in your actual possession?

A. No, I don't think so.

Q. Do you remember this question being asked you: "Question 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. The money I made from my business. Two years." Do you remember that question being asked you and that answer being made by you?

A. Well, I don't remember every little thing that was said or done. Possibly that's right. If it is a matter of record it is probably right. But I presume that I had that much money in the bank at that time.

Q. But not of that particular money that you carried up there, did you?

(Testimony of Van V. Robertson.)

A. No, sir; I got that of Robnett. [694—364]

Q. Now, did you go on this land before you made your filing, or wasn't it just before final proof that you went up there to look at this land?

A. No; I went up there before I made my filing.

Q. And you went at the same time that Nelson went?

A. I went at the same time that Nelson went. That is, I wouldn't say positively that I was on the land, but I went up in that country. I don't know no more about the land, possibly, than the way it was described to me, or showed. Maybe I was on it and maybe I wasn't. It was my first trip in that country that I ever made.

Q. Now, did I understand you to say that you deposited in the Lewiston National Bank about \$2,800.00, about January, nineteen hundred and—

A. Why, I think it was somewhere along there.

Q. Are you sure it was the Lewiston National Bank?

A. Why, I don't see how I could be mistaken in the bank I was doing business with.

Q. Well, couldn't you make a mistake and not have deposited \$2,800.00, or anything like that amount, in the Lewiston National Bank?

A. Why, let's see: I had that much in the Bank of Camas Prairie when I came here, and in making a deal for the cigar-store it might be possible that I gave a check on the Bank at Camas Prairie and transferred the rest of it. Now, it might be possible; but I had that much money in the Bank of

(Testimony of Van V. Robertson.)

Camas Prairie when I came to Lewiston the last of December, and I bought into the cigar-store that spring, early in the spring, I don't remember the time exactly, or early in the winter, I don't remember the date, but anyway I had this money, and if I didn't check it—make one check there before, why I transferred the entire amount; but it is possible that I made another check. The records would show. I have never given it a thought, particularly.

Q. Well, the reason I ask you is because my information is that you didn't have any account—that you never had any account in the [695—365] Lewiston National Bank when you made your original entry.

A. That I never had any account?

Q. No, sir. I say, that is my understanding, and I want to be sure.

A. Well, I am very sure I did, and I think the bank-books will show it. If they don't it is a very queer system. I think I have cancelled checks at home. Possibly in moving around I have destroyed them, but I usually keep those things quite a while. They are good receipts, and I done all my business—pretty near all my business—through that bank.

Q. How much money did you get from Robnett?

A. \$400.00.

Q. And did you give a mortgage the same day?

A. Yes, sir, I think so.

Q. To whom did you give the mortgage?—to Robnett?

(Testimony of Van V. Robertson.)

A. Well, I believe so. I am not really positive, but I believe it was to Robnett.

Q. Now, did you talk to anybody else in the bank about this money except Robnett? A. No.

Q. Now, how long after you made your proof at the Land Office did you sell this land?

A. I think that I moved to Grangeville in the spring of 1904; that is, the early summer, in June, some time the first to the 7th of June; and I think it was along in the early fall that I made the deed.

Q. Several months afterwards?

A. Yes; it was after I moved to Grangeville, the next season. It was over a year, because I know that I was pushed up on the notes—on the note, rather,—and had to make some kind of settlement.

Q. Now, with whom did you negotiate the sale?

A. George Kester.

Q. Will you state what the transaction was—how it came about? [696—366]

A. Well, he wrote to me and told me the mortgage was due and they wanted the money, and I wrote back to him that it was impossible to raise the money at the present time; that I would like to sell the land, and I understood they was buying land, and if they was mine was for sale; that I didn't have no money to pay out on the land, and I was tied up in business and was owing there. And he wrote back that they were land poor. I think the next letter I got was that he was land poor, and whether I made a proposition—I think he made me a proposition to take the land and cancel the note. Anyway, that is

(Testimony of Van V. Robertson.)

what I finally done—just cancelled the note.

Q. And do you know to whom you made the deed?

A. I don't know whether it was to the Lewiston National Bank or to George Kester.

Q. And you secured that note that you gave them by a mortgage on your timber claim, did you?

A. Yes, sir.

Q. And how long were you negotiating—what period did it cover—a week, or a month, or how long?

A. Oh, possibly two or three weeks—a couple of weeks, maybe. I am not positive about that.

Q. And you accepted his proposition and made the deed and the mortgage was cancelled; is that correct?

A. Yes, sir.

Q. Did you come down here from Grangeville to settle it up?

A. No, sir; he sent the deed up and I went and I and my wife signed it and had it acknowledged there and sent it back to him.

Q. And you didn't make anything out of the transaction?

A. Why, I lost my location fees, and the estimate on the timber, and expenses on the trip; that's how much I got out of it.

Q. I show you timber and stone lands sworn statement dated February 24th, 1903, signed by Van V. Robertson, and ask you whether you signed that statement? [697—367]

A. Do you want me to read that?

Q. No; I just want to know if you signed that and filed it in the land office the date it bears?

(Testimony of Van V. Robertson.)

A. Yes, sir.

Q. And you filed it in the land office? That is your sworn statement of the original filing papers?

A. Oh, I filed it.

Q. And there is a nonmineral affidavit, bearing the same date, and is that your signature to that?

A. Yes, sir.

Q. And you filed that at the same time, did you not? A. I think so.

Q. There is the testimony of Van V. Robertson, given May 20th, 1903. I will ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the cross-examination of Van V. Robertson, taken the same day, and I will ask you if that is your signature to that paper?

A. That is my signature.

Q. And that is to the paper that I have just referred to, is it?

A. Well, that is my signature that you have right in there. I know my own handwriting, but I haven't read the paper over; but that is my signature.

The SPECIAL EXAMINER.—Well, he presents that paper to you and asks you if that is your signature to that paper; and you answer it yes?

WITNESS.—Yes.

Mr. GORDON.—This account that you opened at the Lewiston National Bank was a checking account, was it,—an open account?

A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone lands sworn statement of Van V. Robertson, the

(Testimony of Van V. Robertson.)

nonmineral affidavit of Van V. Robertson [698—368] both of said papers dated February 24th, 1903, the notice for publication, the testimony of Van V. Robertson given on final proof, and the cross-examination thereof, all of which papers were identified by the witness, the testimony of the witnesses on final proof, and the cross-examination of the witnesses on final proof, the Receiver's Receipt and the Register's Certificate, dated May 20th, 1903, a certified copy of the patent, dated the 3d of August, 1904, issued to Van V. Robertson, all relating to the entry of the southwest quarter of section 10, township 39 north, of range 3 east, Boise meridian. Also, a certified copy of a mortgage made by Van V. Robertson, and Nettie B., his wife, to Clarence W. Robnett, to the property hereinbefore described to secure a promissory note of Van V. Robertson for \$500.00, of even date, to the order of Clarence W. Robnett, payable in one year, executed by Van V. Robertson and wife before John E. Nickerson, a notary public, May 20th, 1903, and recorded at the request of C. W. Robnett February 15th, 1904.

Mr. TANNAHILL.—The defendants severally object to all of the documents offered, in so far as they relate to bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in those proceedings. And the defendants further severally object to the introduction of all the final proof papers, and especially the testimony of the claimant, Van V. Robertson, and the cross-examination of the claimant, Van V. Rob-

(Testimony of Van V. Robertson.)

ertson, the testimony of the witness Edward L. Knight, and the cross-examination of the witness Edward L. Knight, the testimony of the witness William B. Benton, and the cross-examination of the witness William B. Benton; upon the ground that they relate to the final proof, and matters occurring long after the filing of the sworn statement, and they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 18, 18A, 18B, 18C, 18D, 18E, 18F, 18G, 18H, 18I, 18J, 18K, 18L, 18M, 18N, and 18-O. [699—369]

Mr. GORDON.—Q. Mr. Robertson, what is your employment now? A. I am a farm laborer.

Q. A farm laborer? A. Yes, sir.

Q. When you entered this claim you were a married man, were you? A. Yes, sir.

Q. And of what did your family consist?

A. My wife and two daughters.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Robertson, who made out your sworn statement, or first papers? A. I don't remember.

Q. Do you remember that John E. Nickerson made them out? A. Johnny Nickerson?

Q. John E. Nickerson?

A. No; I don't remember as to that.

Q. As I understand you, Mr. Robertson, you had no agreement with Mr. Robnett, or anyone else, to sell him the land? A. No, sir.

Q. Prior to filing your sworn statement?

(Testimony of Van V. Robertson.)

A. No, sir.

Q. And you had no such agreement at the time you made your final proof?

A. No—nor no time afterwards.

Q. Then, your affidavit that you made at the time you filed your sworn statement, that “I have made no other application under said acts; that 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, [700—370] 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 affidavit was true at the time you made it, was it? A. Yes, sir.

Q. And it was true at the time you made your final proof? A. Yes, sir.

Q. And it is still true? A. Yes, sir.

Q. And did you have any talk with either Kester or Kettenbach or Dwyer regarding the sale of the land, before you filed your sworn statement?

A. I never did have a talk with Kettenbach, nor Dwyer. In fact, I never met Mr. Dwyer until to-day; I was introduced to him to-day at noon; that is the first time I ever met the gentleman, and I don't know that I was ever introduced to Mr. Kettenbach. I have done lots of business in the banking business with Mr. Kester, or Robnett, or some of them, but I don't think I ever met Mr. Kettenbach. I knew him

(Testimony of Van V. Robertson.)

by sight, but I don't remember of ever having any conversation with him at all.

Q. Then, your first negotiations regarding the sale of the land was the negotiations you made with Mr. Kester, something like a year after you made your final proof? A. Yes, sir—it was over a year.

Q. Over a year? A. Yes, sir.

Q. And you sold your land by reason of those negotiations?

A. Yes. We done all of our business by correspondence. I haven't seen the man for—well, not since I went to Grangeville, I don't think. I don't believe I have seen him in the last five or six years—five years, anyway. I haven't met him during that time.

Q. There wasn't anything wrong about your entry in any way that you know of? [701—371]

A. No, sir.

Q. Now, you say that in your conversation with Mr. Robnett he told you that he would endeavor to sell it for you on commission? A. Yes, sir.

Q. And he also told you that he had some other land that he was selling?

A. Yes, sir. I think he told me that him and his family and relatives had some 8 or 10 claims, and that the bank had a good many deeds, and he said that they would have opportunities to sell the land that I would never hear of, possibly, and he thought he could sell it for me.

Q. He never told you that he and Kester and Kettenbach were in any way interested together in land?

(Testimony of Van V. Robertson.)

A. Well, no, I don't think that he did. I have no recollection of him making any such a statement.

Redirect Examination.

(By Mr. GORDON.)

Q. Had you ever borrowed any money from either the Kettenbachs or Kester before? A. No, sir.

Q. Have you since?

A. I borrowed \$300.00 that same fall, and secured it with a \$300.00 note that I had.

Q. Who did you borrow that from?

A. George Kester, I believe.

Q. Have you ever done any work for any of them? Have you ever been employed by them?

A. No, sir.

Q. And you paid that note, did you?

A. Yes, sir.

Mr. GORDON.—That's all, Mr. Robertson.
[702—372]

[**Testimony of Frank J. Bonney, for Complainant.**]

FRANK J. BONNEY, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Frank J. Bonney? A. Yes, sir.

Q. Where do you live, Mr. Bonney?

A. Orofino.

Q. How long have you lived at Orofino?

A. About two years, I believe.

Q. Three years?

(Testimony of Frank J. Bonney.)

A. About two years, I believe—about a year and a half or two years.

Q. Where did you live before that time?

A. Close to Weippe.

Q. How far is that from Pierce?

A. About eight miles.

Q. And did you live at Pierce in June, 1906?

A. Why, I don't remember the date, but I was in Pierce.

Q. Were you married at that time? A. Yes, sir.

Q. And of what did your family consist?

A. My wife and three or four children.

Q. Well, how many—three or four?

A. In 1906?

Q. Yes—four years ago.

A. I guess I must have had about four then.

(Laughing.)

Q. How many have you now?

A. I have got six, I suppose. (Laughing.)

Q. Any dead? A. No, sir.

Q. How old are you? [703—373]

A. About 35—36, I believe.

Q. What is your occupation at the present time?

A. I am a carpenter at present.

Q. And what was your occupation in June, 1906?

A. Why, I have done a little of everything. I am a machinist by trade.

Q. Were you working as a machinist then?

A. Is that the time I took up the timber claim?

Q. Yes.

(Testimony of Frank J. Bonney.)

A. I believe I was helping put the machinery on the dredge then. No—I believe I was carpentering for Mr. Gaffney at the time.

Q. And what wages did you make at that time?

A. \$3.00 or \$3.50—I don't remember.

Q. Did you work all the year, or just part of the year?

A. Oh, I don't know. I was working most of the time, I think.

Q. Did you own your home? A. Yes, sir.

Q. And was it mortgaged? A. No, sir.

Q. And what was the value of it?

A. About \$400.00, I guess.

Q. That wasn't a homestead, was it?

A. Yes, sir.

Q. And at that time had you proved up and obtained a patent? A. No, sir, I don't believe I had.

Q. Now, you took up a claim under the timber and stone act, did you? A. Yes, sir.

Q. And what induced you to take up a timber claim?

Mr. TANNAHILL.—The defendants object to any evidence relative to the taking up of a timber claim, in so far as it relates to bills 388 and 406, on the ground that it is irrelevant and immaterial, the [704—374] entry not being involved in those two actions.

The Reporter thereupon repeated the last question.

WITNESS.—Well, I thought that I could make a little money out of it—a profit.

(Testimony of Frank J. Bonney.)

Q. Did you have a bank account at that time?

A. No, sir.

Q. Did you have the money with which to pay for a timber claim? A. I had part of it.

Q. When you first spoke to anyone about taking one up? A. Yes, sir, I think so.

Q. How much did you have?

A. I don't know. When I first talked about it I didn't have quite enough; in fact, I had—oh, a couple or three hundred dollars, I guess; I don't remember how much money I had; I know I had a little.

Q. Well, who located you on a timber claim?

A. Mr. Steffey.

Q. Mr. Harvey J. Steffey?

A. I guess that was the name—Harvey, anyway.

Q. Now, did you talk with him about taking up a timber claim before you went to view the land?

A. I believe I did.

Q. Well, don't you know?

A. I spoke to Mr. Steffey. I talked to him, and asked him if he knew of any good claims, and I spoke to him a time or two.

Q. And what did he say?

A. I believe the first time I spoke to him he didn't know of any, and later he did and showed them to me.

Q. Now, did he have an arrangement with you about paying a location fee?

A. No, sir, I don't believe he did.

Q. Did he charge you a location fee?

A. Well, I don't believe he did. I don't remember.

(Testimony of Frank J. Bonney.)

Q. You didn't agree to pay him one, anyhow, did you?

A. No, sir, I don't believe I did; I don't remember.

Q. Now, what was your arrangement with Steffey? What arrangement did you have with Steffey?

A. Well, I believe none, any more than that he told me that his claim wasn't much good, that they was nearly all gone, but if I took it up that he would sell it for—so that I could make a couple of hundred dollars, anyhow, maybe better.

Q. What was that?

A. I think so that I could make a couple of hundred dollars, or maybe better.

Q. You were not employed at that time, were you?

A. Yes, sir, I think I was; I believe I was building a house for Mr. Gaffney.

Q. Do you remember when you were up before the Grand Jury at Moscow last winter, and I asked you that question, and whether or not you told me that you were not employed at that time?

A. I don't remember, but I think I told you I was employed.

Q. Do you remember this question being asked you: "What was your business at that time?" "Answer. I was carpentering." "Question. Were you at work at that time?" "Answer. No, sir, not just at that time." Do you remember those questions and answers being asked and given?

A. I don't remember, but I believe I was at work at that time. That is a good while ago—

(Testimony of Frank J. Bonney.)

Q. Now, what was it that Steffey said to you?

A. Well, he told me that his claim wasn't very good, but he believed if I wanted to take it he could sell it for me for a couple of hundred dollars, so that I could make that much profit on it.

Q. Did he tell you that he would guarantee you that you would make that much?

A. Well, sir, I couldn't say—I don't know as he did—I believe [706—376] he did. I believe he told me that he was sure that he could get that much, and maybe more.

Q. Were you to advance any of the money at all to take up that claim?

A. No, sir; there wasn't nothing said about that, but I supposed that I was to put up the money.

Q. And he took you over the land, did he?

A. Yes, sir.

Q. And then you came down to Lewiston to file on the land, did you? A. Yes, sir.

Q. And who paid the expenses of your coming from your home down to Lewiston to file?

A. Well, I believe I did. I wouldn't say for sure whether I borrowed money—I got money of Steffey a time or two, and whether Steffey gave me money at that time or not I couldn't say.