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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740837

MELVIN G. LACEY,

Appellant.

v.

JOHN L. CARDWELL,
LILLIAN M. CARDWELL,
ANNIE CARDWELL GOSNEY,

Appellees.

APPENDIX

CHARLES E. CARTER
804 Masonic Building
Danville, Virginia

Counsel of Appellant

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PETITION FOR ATTACHMENT
Filed July 27, 1973

Your petitioner respectfully represents as follows:

1. That the above named principal defendants are justly indebted to your petitioner in the sum of One Hundred Thousand ($100,000.00) Dollars, with interest thereon from the first day of July, 1973, by virtue of the following:

2. That on or about April 19, 1973, John L. Cardwell, Lillian M. Cardwell, and Annie Cardwell Gosney, acting by and through John L. Cardwell, her duly authorized attorney-in-fact, entered into an agreement with John R. Bendall & Co., of Danville, Virginia, authorizing the said John R. Bendall & Co. to sell the real estate which they owned on U. S. Highway No. 29 north of Danville, Virginia, at Blairs, Virginia, in Pittsylvania County, Virginia, known briefly as 284 acres, more or less, known as "Cardwell Farms," a copy of said agreement being appended hereto as Exhibit "A"; and,

3. That thereafter and on or about May 7, 1973, your petitioner, Melvin G. Lacey, entered into a contract with John R. Bendall & Co., the duly authorized agent of the defendants herein, to purchase said real property described in said contract of April 19, 1973, for the sum of Two Hundred Fifty Thousand ($250,000.00) Dollars, a copy of said contract being appended hereto as Exhibit "B"; and,

4. That at the time of the execution of said contract of May 7, 1973, your petitioner, Melvin G. Lacey, offered to pay cash for said property and delivered a good faith deposit therewith to the duly authorized agent of the defendants herein a $10,000.00 cashier's check to bind said contract, which check was accepted by the agent of the defendants herein; and,

5. That John L. Cardwell is the spouse of Lillian M. Cardwell, who only owns a contingent right of dower in said property, and duly authorized attorney-in-fact of Annie Cardwell Gosney; that he held himself out as having authority to act on behalf of the said Lillian M. Cardwell and Annie Cardwell Gosney, and was in fact at all times acting in the matter in controversy herein as the duly authorized agent of Lillian M. Cardwell and Annie Cardwell Gosney; and,

6. That subsequent to the execution of said contract of May 7, 1973, the said John L. Cardwell and Lillian M. Cardwell, and Annie Cardwell Gosney, acting by and through their duly authorized agent, John L. Cardwell, specifically accepted and ratified and confirmed said contract of May 7, 1973, and confirmed the sale of the property to your petitioner herein, and further authorized the said John R. Bendall & Co. to hold said $10,000.00 for their account pending a final closing of the transaction; and,

7. That thereafter John L. Cardwell, for his own convenience and the convenience of his said wife, Lillian M. Cardwell, and the said Annie Cardwell Gosney, requested, through his duly authorized agent, John R. Bendall & Co., your petitioner to agree to a modification of the terms of the payment for said property in order that he might receive a more favorable tax treatment on his gain by the various taxing authorities; and,

8. That several conversations ensued between the said John L. Cardwell and the said John R. Bendall & Co., as well as a member of the Danville Bar Association, regarding the desires of the said John L. Cardwell, and the desires of Lillian M. Cardwell and Annie Cardwell Gosney regarding the manner of the payment of said purchase price as it related to their tax problem; and,

9. That at all times there was a subsisting and continuing obligation on the part of your petitioner to buy said land and to pay cash therefor and the defendants herein to sell said land in accordance with said agreement of May 7, 1973, or to pay cash if desired by the defendants, which was, as set forth above, specifically ratified and confirmed by the said John L. Cardwell on his behalf and on behalf of the other principal defendants herein; and,

10. That by letter dated June 6, 1973, the said John L. Cardwell acknowledged in writing the validity of the sales contract and made certain suggestions for his own benefit and for the benefit of the defendants herein, regarding payment of the purchase price, which he desired the petitioner herein to agree to; and,

11. That your petitioner in fact agreed to make payment in accordance with the terms of the original contract of May 7, 1973, or to pay cash for said property, and was agreeable to modifying the terms of said contract to conform to the suggestions and requests of the said John L. Cardwell set forth in said letter with appendixes thereto of June 6, 1973, to accommodate the defendants tax-wise; and,

12. That thereafter the petitioner herein and the defendants, acting through said John L. Cardwell, specifically agreed the payment would and could be made in accordance with said letter of June 6, 1973, of John L. Cardwell, to which the petitioner herein agreed; and,

13. That on or about July 5, 1973, the defendants herein, acting by and through Francis B. Dillon, their duly authorized attorney at law, of Sacramento, California, indicated that the defendants herein intended to breach their contract to sell the property in question to your petitioner for the sum of $250,000.00; and,

14. That shortly after July 5, 1973, your petitioner was advised by letter dated July 5, 1973, addressed to Mr. Steve Bendall, John R. Bendall & Co., that the defendants herein, acting by and through their duly authorized attorney-in-fact, Francis B. Dillon, had received a cash offer of Three Hundred Thousand ($300,000.00) Dollars for the property, and that the defendants herein now wanted to auction the property, accepting no offer less than $300,000.00; and,

15. That your petitioner, having a valid and subsisting contract to purchase said property, declined to engage in any such auction and thereafter received from John R. Bendall & Co. a letter dated July 19, 1973, advising him that the property had been sold to other parties in breach of the contract for Three Hundred Thousand ($300,000.00) Dollars, cash, and enclosing the $10,000.00 purchase deposit given by your petitioner to defendants' agent on May 7, 1973; and,

16. That said $10,000.00 deposit was made on or about May 7, 1973, in reliance upon defendants' representations, both written and as confirmed orally, that the property would be sold to him for the sum of $250,000.00, either cash or on terms desired by the defendants, and was held by the defendants through their agent to his detriment in light of defendants' subsequent breach of said contract; and,

17. That your petitioner believes and is so advised that said property has a current market value of $350,000.00 and hence claims he has been damaged the extent of $100,000.00 by virtue of defendants' breach of contract as aforesaid; and,

18. Petitioner further alleges that the principal defendants are non-residents of the State of Virginia and have real property in Pittsylvania County, Virginia, and being nonresidents of the State of Virginia your petitioner is entitled to the benefits of a lien on said real property in Pittsylvania County, Virginia; and,

WHEREFORE, your petitioner asks for an attachment against the estate, real and personal, of said principal defendants in the State of Virginia, and more particular against all real property of the defendants lying and being in Pittsylvania County, Virginia, and specifically being all of the property devised by Sallie B. Cardwell by her last will and testament of record in Pittsylvania County, Virginia, in Will Book 15, at page 561, to Annie C. Gosney, one and the same person as Annie Cardwell Gosney, and John Leland Cardwell, one and the same person as John L. Cardwell, and being more particularly described as a 173.3 acre tract of land, more or less, fronting on the eastern margin of U. S. Route No. 29, to the north of its intersection with Virginia Secondary Route No. 719, and on Virginia Secondary Route No. 719, and a certain 111.03 acre tract of land fronting on the western margin of said U. S. Route No. 29 to the north of said Virginia Secondary Route No. 719, and fronting on said Virginia Secondary Route No. 719, all as shown on Plat of Survey of the Sallie B. Cardwell Est. for John L. Cardwell, made March 21, 1973, revised April 10, 1973, by Shanks & Wilmarth, Engineers-Surveyors, Danville, Virginia, a copy of said plat of survey being appended hereto as Exhibit "C", it being specifically intended to include in this description the property designated thereon as "Gosney" fronting 594.93 feet on the eastern margin of said Route No. 29; that the said real and personal property, or so much thereof as may be necessary to satisfy the claim of your petitioner, be sold by order of this Court and applied in satisfaction thereof, and that your petitioner may have all such other and further relief as the nature of his case may require;

WHEREFORE, your petitioner prays that an order of publication issue and that this attachment be returnable to the day succeeding term of Court, not to be less than ten (10) days from the date of service as provided in Section 8-527 of the 1950 Virginia Code, as amended.

BILL OF PARTICULARS
Filed October 26, 1973

Your plaintiff for an answer to a certain Bill of Particulars verbally requested in the above captioned matter says:

1. That subsequent to the execution of said contract of May 7, 1973, the said defendants, acting by and through John L. Cardwell, their duly authorized agent, made it clear through telephone calls between the said John L. Cardwell and John R. Bendall and Company that they were accepting and confirming the offer of the said Melvin G. Lacey to purchase said

property previously accepted and confirmed by their agent for the sum of $250,000.00, but did desire to verbally modify the manner of payment for the tax advantage of the said defendants.

2. That by letter dated June 6, 1973, the said John L. Cardwell in a letter to Mr. Steve Bendall acknowledged the sales contract (between the plaintiff herein and the defendants) and included suggestions from his attorney regarding modification as to payment.

3. That thereafter in a telephone conversation between the said John L. Cardwell and William E. Anderson, attorney for the said Melvin G. Lacey, the said John L. Cardwell reacknowledged the agreement pertaining to the exact terms of payment which said terms were expressly accepted and ratified by the said William E. Anderson, acting as duly authorized agent and attorney for the said Melvin G. Lacey;

4. That notwithstanding any claim by the defendants that the statute of frauds might be applicable that equity will at all times lend its aid to defeat a fraud, and the Court will relax the operation of the statute as to verbal aspects of a contract for the sale of land where there is clear and convincing proof, and such relaxation will act to prevent a fraud whether such fraud be civil or otherwise;

5. That there was a complete meeting of the minds between the parties following the execution of said contract of sale, dated May 7, 1973;

6. That the said Steve Bendall had the authority to accept an offer of $250,000.00 for the entire property;

7. That the said Steve Bendall did, in fact, accept said offer on behalf of said defendants, and that the said John L. Cardwell, individually and on behalf of the other defendants, did, in fact, ratify and confirm said contract of sale and by novation all parties agreed to the terms of payment as set forth in the appendices to the said letter of John L. Cardwell, dated June 6, 1973.

MOTION FOR SUMMARY JUDGMENT
Filed January 2, 1974

Now comes the defendants and move the Court for Summary Judgment on behalf of the defendants since all documents which the plaintiff intends to rely have been filed

herein and made a part of the record and it clearly appears from said documents no contract in writing has ever been entered into and that no memorandum has been signed by the party to be charged thereby.

OPINION LETTER OF TRIAL JUDGE
April 16, 1974

Mr. Charles R. Warren, Jr.
Warren, Parker and Williams
Attorneys at Law
Masonic Building
Danville, Virginia 24541

Mr. Charles E. Carter
Attorney at Law
804 Masonic Building
Danville, Virginia 24541

RE: Melvin G. Lacey v. John L. Cardwell et al

Gentlemen:

I have extensively reviewed your memorandums which you prepared at my request as the result of the filing of the Motion for Summary Judgment by the defendants after I was requested to hear this case by Judge Thompson.

Both counsel have agreed that all exhibits filed, whether by way of Discovery Depositions or otherwise, were to be considered by the Court in ruling on the Motion.

The Court recognizes the fact that it is not necessary that the entire contract of sale be in writing and that other writings and memos may, in the proper case, satisfy the Statute of Frauds.

In reviewing and considering all of the exhibits, I am of the opinion that John L. Cardwell did not, in his dealings with Steve Bendall and Melvin G. Lacey, go beyond the negotiation stage. The only actual contract signed by Cardwell is that dated April 19, 1973, between the defendants and John R. Bendall and Company, and it carries the provision that "any or all parcels will be offered subject to Seller's Right of Confirmation." I am of the opinion that the several writings filed as exhibits do not show that the defendants entered into or confirmed a contract of sale with the plaintiff of the real estate in question. The Statute of Frauds is not satisfied by writings, which may acknowledge the receipt

of an offer but do not accept the offer or make reference to the contract to be enforced. Browder v. Mitchell 187 Va. 781 (1948). The often referred to letter of June 6, 1973 from Cardwell to Bendall, with enclosures, does not satisfy the Statute of Frauds. Even if it can be said that the plaintiff's offer was the one under consideration, this letter states, "here are the suggestions for the sales contract as recommended by my attorney." (Emphasis added)

Further, Steve Bendall and/or John R. Bendall and Company were not general agents for the defendants. They were special agents and as such compelled to act within the scope of their employment. Mason v. Hodgson, 193 Va. 337 (1952). In virtually all of Bendall's correspondence, he acknowledged his limited authority by asking for the defendants approval and advice during the period of negotiation.

The defendants Motion for Summary Judgment is granted and an Order may be drawn accordingly setting forth the plaintiff's objections and exceptions.

Very truly yours,

/s/ B. A. Davis, III

BADIII:ja

cc: Samuel Swanson
Clerk
Pittsylvania County Circuit Court
Chatham, Virginia

ORDER
Entered May 2, 1974

This cause came on again to be heard on Motion for Summary Judgment filed by the defendants herein; said Motion being based upon the allegation on the part of the defendant that all of the documents now made a part of the record do not either severally or jointly constitute a writing sufficient to remove this matter from the Statute of Frauds.

The Motion was argued by counsel and memorandums of law were filed on behalf of both the plaintiff and defendants. It was stipulated by counsel that all of the writings relevant to the issue raised by the Motion for Summary Judgment were now a part of the record and that no

additional writings would be filed in regard to the alleged agreement for the sale of real estate as described in the Petition for Attachment filed herein.

Whereupon, the Court, having considered all the exhibits introduced by stipulation or by depositions but not the depositions, the memorandums of law and argument of counsel is of the opinion that the defendants did not in their dealings with the real estate agent, John R. Bendall and Company and the plaintiff, Melvin G. Lacey go beyond the negotiation stage. The Court is of the opinion that the several writings signed as exhibits do not show that the defendants entered into or confirmed a contract of sale with the plaintiff for the real estate in question. The Court is of the further opinion that the Statute of Frauds is not satisfied by the writings now made a part of the record. It is, therefore, ORDERED that the Motion for Summary Judgment be sustained and that the action filed herein by the plaintiff be and the same hereby is accordingly dismissed to all of which the plaintiff duly accepts (sic). Plaintiff having indicated an intention to appeal bond is accordingly fixed at $500.00.

Whereupon, counsel for the plaintiff and defendant moved the Court to sever a certain cross-claim filed herein by the defendant and the Court being of the opinion that it is proper to do so, doth ORDER that said cross-claim be severed from this action and proceed as a separate action and this Order shall constitute the final order herein.

ENTER 5 / 2 / 74

_____
JUDGE

SEEN:

_____
Charles R. Warren, Jr.
Counsel for Defendants

_____
Charles E. Carter
Counsel for Plaintiff

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
Filed May 24, 1974

Notice is hereby given that the complainant, Melvin G. Lacey, appeals from a final judgment rendered by this Court on the 2nd day of May, 1974, and announces his intention to apply for a Writ of Error and Supersedeas to the Supreme Court of Appeals of Virginia.

ASSIGNMENTS OF ERROR

1. That the trial court erred in granting the defendants' Motion for Summary Judgment on the grounds that the several writings signed and filed as exhibits do not show that the defendants entered into or confirmed a contract of sale with the complainant for the real estate in question.

2. That the trial court erred in granting defendants' Motion for Summary Judgment by finding that the Statute of Frauds was not satisfied by the writings made a part of the record.

3. That the trial court erred in granting defendants' Motion for Summary Judgment by failing to consider any oral evidence bearing on the issue as to whether or not a valid oral contract was made, the Statute of Frauds being satisfied merely by showing that the oral contract was evinced by some memorandum or note thereof signed by the party to be charged or his agent.

The plaintiff reserves the right to file supplemental assignments of error.

Given under my hand this 23rd day of May, 1974.

MELVIN G. LACEY

By Counsel

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

203 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

December 8, 1972

Dr. Leeland Cardwell
3750 Randon Lane
Sacramento, California 95825

Dear Dr. Cardwell:

Enclosed please find a copy of my real estate auction contract which would be used should you authorize me to offer your property here at public auction. Please read over the contract carefully and call me collect, 792-1013, if you have any questions regarding same.

In reference to our conversation, I recommended to you that the property be offered subject to your confirmation as to the sale price. You would have the right to accept or reject any or all bids.

The only cost to you for advertising of this property would be $300.00 which is quite a minimum sum to invest with the possibility of making from $25,000.00 to $50,000.00. Should you not be able to be here personally to attend the sale, I can reserve sufficient time for me to contact you to report the results for your acceptance or rejection.

I would like also that you not make any verbal or written commitment to anyone in this area regarding the property since you are not aware as to recent developments involving the property at this time.

Hoping that you will agree to allow me the privilege of offering this property for you at public auction, I am

Very truly yours,

JOHN R. BENDALL AND COMPANY

Steve Bendall

Steve Bendall, Auctioneer

SB/db

Encl.

STIPULATION EXHIBIT NO. 2

This Agreement, Made and entered into this 19 day of April, 19 73,

between John L. Cardwell and Lillian M. Cardwell

and Annie Cardwell Gosney

PARTIES of the first part, hereinafter referred to as Landowner, and JOHN R. BENDALL & CO of Danville, Va., party of the second part, referred to as Sales Agent.

WITNESSETH: That whereas, the said Landowner owns or controls the fee simple title to certain real estate located U. S. 29 North of Danville, Va. at Blains, Va. Described as follows:

284 acres more or less known as "Cardwell Farm".

which said Landowner is desirous of having sold, in lots or otherwise, by said Sales Agent.

NOW, THEREFORE, the parties hereto enter into the following agreement:

FIRST: Said Landowner has this day employed the said Sales Agent exclusively during the life of this contract to dispose of said premises or so much thereof as they may be able to sell in lots or parcels, at private or public sale, either or both as may be necessary.

SECOND: The property shall be immediately sub-divided and mapped, streets shall be scraped and opened up, and the premises put into presentable shape for sale by the said Landowner, at his own expense.

THIRD: Sales Agent shall take full charge of the sale and shall furnish and distribute all advertising matter deemed necessary by him to properly advertise the sale of the said property, which he shall conduct and manage; he shall provide such means of entertainment, and award such gifts and prizes as he considers necessary, secure the services of a competent auctioneer, and employ such salesmen and other assistants as he may need, defraying hotel and traveling expenses, and make all other proper arrangements for conducting such public sale.

FOURTH: Landowner shall furnish such contracts or deeds as purchasers may be entitled to receive, providing for unencumbered fee simple title with covenants of general warranty.

FIFTH: Sales Agent shall conduct a public auction sale of any unsold lots or parcels on or about the 30 of June 19 73, and should inclement weather or unfavorable conditions render the sale inadvisable at this time, Sales Agent shall have the right to postpone same to a more favorable time.

SIXTH: Terms of sale on said premises shall be as follows: Not less than CASH ON CLOSING cash in hand as an initial payment, and the residue in installments, not exceeding years with % interest, but terms of sale may be varied by mutual consent to meet existing conditions. Purchasers paying cash shall be allowed a discount of %.

SEVENTH: In full payment of his expenses incurred in carrying out the provisions of Section Third, said Sales Agent shall receive from the Landowner the sum of $ 300.00, and for his services under this contract, the Sales Agent shall receive from the Landowner a commission of [redacted] % upon the gross sales made hereunder.

Any or all parcels will be offered subject to Seller's Right of Confirmation.

EIGHTH: A settlement in full shall be made between the parties hereto after public sale is completed. In case of a private sale or continuous contract, settlements shall be made as often as requested by Landowner. The agency of said Sales Agent hereunder shall terminate 30 days after date of sale as stated in paragraph 5 above.

Sales Agent is authorized under this contract to offer the entire property for the sum of $250,000.00 until June 15, 1973

As to the obligation of this contract the Landowners waive all statutory exemptions.

Witness the following signatures and seals, and executed in triplicate the day and year first above written by the undersigned persons, duly authorized to act on behalf of the parties as set forth below, at Danville, Va. and Sacramento, California

JOHN R. BENDALL & CO.

Steve Bendall (SEAL) — Steve Bendall, Auctioneer

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

John L. Cardwell (SEAL) — x John L. Cardwell

Lillian M. Cardwell (SEAL) — x Lillian M. Cardwell

Annie Cardwell Gosney (SEAL) — x Annie Cardwell Gosney

By John L. Cardwell (SEAL) — Power of Attorney

John L. Cardwell (SEAL)

Not necessary to have witness for signatures.

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

208 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

April 15, 1973

Dr. John L. Cardwell
3750 Random Lane
Sacramento, California 95825

Dear Dr. Cardwell:

Enclosed please find map designating the various parcels as I would recommend in offering the "Cardwell Farm" at auction.

I have attempted to divide the property so as to give both small and large buyers the opportunity to express their interest in any or all of the parcels. Even though the various parcels would be offered, I would reserve for you the right to group any or all parcels in your best interest.

My second recommendation would be to offer only two tracts. One parcel on each side of the road as shown in the 173.38 acres and the other of 111.03 acres. This plan would eliminate the small prospects from being interested and small investors are needed to force the larger buyers to become active.

In my opinion, I can secure $750.00 to $950.00 per acre on gross sale by selling with my subdivision plan which gross sale would exceed the highest offer you have at present which seems to be based on $650.00 per acre.

It is my recommendation that June 30th be established as an auction sale date which would give me ample time to have the additional survey work completed and make any necessary arrangements for the tobacco allotment, etc.

Total advertising cost would not exceed $450.00 which is a very small amount to spend in order to have the possibility of making $20,000.00 to $30,000.00. This cost could be taken out of the sale proceeds if you so requested.

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

208 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

(2)

In regard to a private offering. I suggest that you authorize me to offer the entire property for the sum of $250,000.00 to any interested party who may inquire before the first auction ad appears in the paper. If such a contract was received the auction would be cancelled. No private offers would be accepted after advertising began. My commission on either a private or auction sale would be 2% of the gross sale and I would be responsible for all final closings.

My auction schedule is now full for May; however, the date of June 30 is completely satisfactory and a good time for selling.

Hoping that my sales plan and date will meet with your approval, I am,

Very truly yours,

Steve Bendall

Steve Bendall

STIPULATION EXHIBIT NO. 4

JOHN L. CARDWELL, M.D.
3750 RANDOM LANE
SACRAMENTO, CALIFORNIA 95825

489-7243

April 23, 1973

Mr. Steve Bendall
208 Masonic Temple
Danville, Va. 24541

Dear Mr. Bendall:

Your subdivision plan seems to me to be a logical one. I agree to selling at auction on June 30, 1973, and also authorize you to offer the entire property for $250,000. to any interested party. May I reserve the right to refuse a private offer if I so desire?

Regarding the $650.00 an acre offer, I have had two parties discuss the terms of a $200,000. price so it seems that it would not be difficult to obtain more than $200,000.

As to the subdivision markers, I would like to have a fixed price from Shanks & Wilmarth before authorizing that work. A local Engineer and Surveying Company here (friends of mine) informed me that $1,000.00 would have been an adequate charge for the farm survey. As I see it, only fifteen or sixteen points will have to be established. Regarding advertising costs, you suggested $300.00 in your letter and sample contract (copy attached) for the auction sale. Therefore, let us start with that figure.

I hope to have the number of the telephone in our apartment in Honolulu before leaving home and will forward it to you.

Yours very truly,

John L. Cardwell

John L. Cardwell, M. D.

jlc/m
att.

VIRGINIA ASSOCIATION OF REALTORS

REAL ESTATE PURCHASE CONTRACT

(This is a legally binding contract; if not understood, seek competent advice)

This CONTRACT OF PURCHASE made in triplicate as of May 7, 19 73, among Melvin G. Lacey (herein called "Purchaser"), and Dr. John L. Cardwell (herein called "Seller"), and ~~John R. Bendell & Co.~~ (herein called "Realtor"), provides that Purchaser agrees to buy through Realtor, as agent for Seller, and Seller agrees to sell the following described real estate, and all improvements thereon, located in the County or ~~City~~ of ~~Pittsylvania~~, Virginia (all herein called "the property"):

~~A tract of land consisting of 284.41 acres more or less located on US HWY. 29 North of Danville, Va. at Blairs, Va. and better known as the Sallie B. Cardwell Estate. Tobacco allotment of 11,000 included under this contract.~~

and more commonly known as (street address).

1. The purchase price of the property is Two Hundred Fifty Thousand Dollars ($ 250,000.00), and such purchase price shall be paid as follows:

~~Ten Thousand ($10,000.00) Dollars paid down on signing of this contract $40,000.00 paid on delivery of deed and remaining balance of $200,000.00 @ 6% interest to be paid annually commencing June 30, 1974.~~

~~Purchasher reserves the right of anticipation to pay on any aniversary payment date.~~

2. If either F.H.A. or V.A. financing is involved in this transaction, one of the paragraphs on the reverse hereof shall be a part of this Contract of Purchase if such paragraph has been executed by both Purchaser and Seller.

3. Purchaser has made a deposit of Ten Thousand Dollars ($ 10,000.00) with Realtor, receipt of which is hereby acknowledged, and such deposit shall be held by Realtor in escrow until the date of settlement and then applied to the purchase price, or returned to Purchaser if the title to the property is not marketable.

4. Seller agrees to convey the property to Purchaser by General Warranty Deed with the usual English covenants of title and free and clear from all encumbrances, tenancies, liens (for taxes or otherwise), except as may be otherwise provided above, but subject to applicable restrictive covenants of record. Seller further agrees to deliver possession of the property to Purchaser on the date of settlement and to pay the expense of preparing the deed of bargain and sale and the recordation tax applicable to grantors.

5. Settlement shall be made at the offices of Realtor or at other designated place on or before June 30, 19 73, or as soon thereafter as title can be examined and necessary documents prepared, with allowance of a reasonable time for Seller to correct any defects reported by the title examiner.

6. All taxes, interest, rent, and F.H.A. or similar escrow deposits, if any, shall be prorated as of the date of settlement.

7. All risk of loss or damage to the property by fire, windstorm, casualty, or other cause is assumed by Seller until the date of settlement.

8. Purchaser and Seller agree that Realtor was the sole procuring cause of this Contract of Purchase, and Seller agrees to pay Realtor for services rendered a cash fee of as per written option per cent of the purchase price. If either Purchaser or Seller defaults under this Contract of Sale, such defaulting party shall be liable for the cash fee of Realtor and any expenses incurred by the non-defaulting party, including attorneys' fees, in connection with this transaction and the enforcement of such Contract.

Seller warrants that he will furnish release deeds regarding 20% of total land area.

9. Purchaser represents that an inspection satisfactory to Purchaser has been made of the property, and Purchaser agrees to accept the property in its present condition except as may be otherwise provided in the description of the property above.

10. This Contract of Purchase constitutes the entire agreement among the parties and may not be modified or changed except by written instrument executed by all of the parties, including Realtor.

11. This Contract of Purchase shall be construed, interpreted, and applied according to the law of the State of Virginia and shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

WITNESS the following signatures and seals:

Dr. John L. Cardwell	(SEAL) Seller	Melvin G. Lacey	(SEAL) Purchaser
Steve Bendell	(SEAL) Seller		(SEAL) Purchaser
	(SEAL) Realtor		

Deposit Rec'd $ 10,000.00

Check x Cash

Sales Agent: RSB/JRB Co.

The foregoing form may only be used by members in good standing of the Virginia Association of Realtors. Expressly prohibited are the duplication or reproduction of such form, or the use of the name "Virginia Association of Realtors" in connection with any written form, without the written consent of the Virginia Association of Realtors.

THIS CONTRACT OF SALE, made this 10th day of May, 1973, by and between JOHN L. CARDWELL and LILLIAN M. CARDWELL, his wife, and ANNIE CARDWELL GOSNEY, widow, acting by and through her duly authorized attorney-in-fact, John L. Cardwell, hereinafter referred to as Sellers; MELVIN G. LACEY, hereinafter referred to as Purchaser; and JOHN R. BENDALL & CO., of Danville, Virginia, hereinafter referred to as Realtor;

WITNESSETH

THAT subject to the terms and conditions hereinafter set forth, the Sellers have contracted to sell to Purchaser and Purchaser has contracted to purchase from Sellers all those certain tracts or parcels of land, together with improvements thereon and appurtenances thereunto belonging, situate in the Blairs Magisterial District of Fittsylvania County, Virginia, located on U. S. Highway No. 29 North, approximately 4-1/2 miles north of the City Limits of Danville, known as the Sallie B. Cardwell Estate, and more particularly described as follows:

Being all of that certain tract of land containing 111.03 acres, all of that certain tract of land containing 173.38 acres and all of that certain rectangular tract of land fronting 594.93 on the eastern side of U. S. Highway No. 29 designated as "Gosney", all as shown on Plat of Survey of the Sallie B. Cardwell Estate, for Dr. John L. Cardwell, dated March 21, 1973, revised April 10, 1973, made by Shanks & Wilmarth, Engineers-Surveyors, File C-855.

Specifically included with the sale of the above described property is the transfer of 11,000 pounds of tobacco allotment, or more, if so specified by the ASC Office in Chatham, Virginia.

The terms and conditions of this sale and purchase are as follows:

FIRST: The agreed purchase price for said premises is Two Hundred Fifty Thousand ($250,000.00) Dollars, of which Ten Thousand ($10,000.00) Dollars has been deposited with Realtor, receipt of which is hereby acknowledged,

such deposit to be held by Realtor in escrow until the date of settlement and then applied to the purchase price, or returned to Purchaser if the title to the property is not marketable. The balance of said purchase price shall be paid as follows: Forty Thousand ($40,000.00) Dollars cash, to be paid upon delivery of the deed conveying subject property from Sellers to Purchaser or whomsoever he may direct, and the remaining balance of Two Hundred Thousand ($200,000.00) Dollars to be paid in fifteen (15) annual installments (the first ten being in the amount of $13,333.33 each and the last five being in the amount of $13,333.34 each), all bearing interest thereon at the rate of six (6%) per cent per annum, said interest being payable annually commencing May 31, 1974. The deferred purchase money provided for hereunder shall be represented by the negotiable promissory notes of the Purchaser and shall be secured by deed of trust on the property hereinbefore described which shall accord to Purchaser the right to anticipate all or any part of the deferred purchase price on any aniversary payment date. Said deed of trust shall contain a provision requiring the holders of said notes upon written request of Purchaser at anytime after the execution of said deed of trust to release up to twenty (20%) per cent of the total land acreage which is the subject of this contract and upon written request of Purchaser at anytime after execution of said deed of trust to release any additional acreage upon payment by Purchaser to the noteholders of an amount to be negotiated between Purchaser and noteholders at such time, which payment shall be applied on the indebtedness secured by said deed of trust commencing with the note becoming last due as provided hereinabove.

SECOND: Sellers agree to convey the property hereinbefore described to Purchaser by General Warranty Deed with the usual English covenants of title and free and clear from all encumbrances, tenancies,

liens (for taxes or otherwise), but subject to applicable restrictive covenants of record. Sellers further agree to deliver possession of the property to Purchaser on the date of settlement and to pay the expense of preparing the Deed of Bargain and Sale and the Grantors' recording tax.

THIRD: Settlement shall be made at the offices of the Realtor or at such other designated place on or before May 31, 1973, or as soon thereafter as title can be examined and necessary documents prepared, with allowance of a reasonable time for Sellers to correct any defects reported by the examiner.

FOURTH: All taxes shall be prorated as of the date of settlement.

FIFTH: All risk of loss or damage to the property by fire, windstorm, casualty, or other cause is assumed by Sellers until the date of settlement.

SIXTH: Purchaser and Sellers agree that Realtor was the sole procuring cause of this Contract of Sale, and Sellers agree to pay to Realtor for services rendered a cash fee in the amount set forth in an Agreement dated April 19, 1973, between the parties of the first part and Realtor which granted to the Realtor the option to sell the hereinbefore described property privately prior to June 30, 1973 and publicly on June 30, 1973. If either Purchaser or Sellers default under this Contract of Sale, such defaulting party shall be liable for the cash fee of Realtor and any expenses incurred by the non-defaulting party, including attorney's fees, in connection with this transaction and the enforcement of such Contract.

SEVENTH: During the period between execution of this Contract of Sale and settlement the Purchaser shall have the right to go upon subject property for the purpose of making any and all surveys he may wish to make, test borings and other investigations on said property.

EIGHTH: Purchaser represents that an inspection satisfactory to Purchaser has been made of the property, and Purchaser agrees to accept

LAW OFFICES
ANDERSON & ANDERSON
SUITE 500 - MASONIC BUILDING
DANVILLE, VIRGINIA 24541

the property in its present condition except as may be otherwise provided in the description of the property hereinbefore described.

NINTH: This Contract of Sale constitutes the entire agreement among the parties and may not be modified or changed except by written instrument executed by all of the parties hereto, including Realtor.

TENTH: This Contract of Sale shall be construed, interpreted, and applied according to the law of the State of Virginia and shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

WITNESS the following signatures and seals:

_____ (SEAL)
John L. Cardwell (Seller)

_____ (SEAL)
Lillian M. Cardwell (Seller)

_____ (SEAL)
Annie Cardwell Gosney (Seller)

By _____
John L. Cardwell, Attorney-in-Fact

_____ (SEAL)
Melvin G. Lacey (Purchaser)

JOHN R. BENDALL & CO.

By _____
Title:
(Realtor)

STATE OF _____

CITY/COUNTY OF _____, to wit:

ANDERSON & ANDERSON
SUITE 600 MASONIC BUILDING
DANVILLE, VIRGINIA 24541

I, _____, a Notary Public in and for the City/County and State aforesaid, do hereby certify that JOHN L. CARDWELL and LILLIAN M. CARDWELL, his wife, whose names are signed to the foregoing writing bearing date on the 10th day of May, 1973, have personally appeared before me in my City/County and State aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, 1973.

My commission expires _____.

(NOTARY SEAL)

_____
Notary Public

STATE OF _____

CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County and State aforesaid, do hereby certify that JOHN L. CARDWELL, whose name is signed to the foregoing writing bearing date on the 10th day of May, 1973, as Attorney-in-Fact for ANNIE CARDWELL GOSNEY, and who executed the foregoing writing in her behalf, has personally appeared before me in my City/County and State aforesaid and acknowledged the same

Given under my hand this ____ day of _____, 1973

My commission expires _____.

(NOTARY SEAL)

_____
Notary Public

STATE OF VIRGINIA
ANDERSON & ANDERSON
SUITE 800 - MASONIC BUILDING
DANVILLE, VIRGINIA 24541

CITY OF DANVILLE, to-wit:

I, _____, a Notary Public in and for the City of Danville, in the State of Virginia, do hereby certify that MELVIN G. LACEY, whose name is signed to the foregoing writing bearing date on the 10th day of May, 1973, has personally appeared before me in my City and State aforesaid and acknowledged the same.

Given under my hand this 10th day of May, 1973.

My commission expires _____.

(NOTARY SEAL) _____
Notary Public

STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

I, _____, a Notary Public in and for the City of Danville, in the State of Virginia, do hereby certify that STEVE BENDALL whose name is signed to the foregoing writing bearing date on the 10th day of May, 1973, on behalf of JOHN R. BENDALL & CO., has personally appeared before me in my City and State aforesaid and acknowledged the same.

Given under my hand this 10th day of May, 1973.

My commission expires _____.

_____
Notary Public

(NOTARY SEAL)

ANDERSON & ANDERSON
DANVILLE, VIRGINIA

THIS AGREEMENT, made this 10th day of May, 1973, by and between JOHN R. BENDALL & CO., of Danville, Virginia, party of the first part; and MELVIN G. LACEY, party of the second part;

WHEREAS, the party of the first part did enter into an agreement dated April 19, 1973 with John L. Cardwell and Lillian M. Cardwell, his wife, and Annie Cardwell Gosney, acting by and through her duly authorized attorney-in-fact, John L. Cardwell, whereby the party of the first part was given the option to sell certain property located in Blairs Magisterial District, Pittsylvania County, Virginia, known as the Sally B. Cardwell Estate, of which John L. Cardwell, et ux, and Annie Cardwell Gosney are the owners; and

WHEREAS, the said party of the second part, as Purchaser, has executed an agreement dated May 10, 1973, by and between said party of the second part and John L. Cardwell and Lillian M. Cardwell, his wife, and Annie Cardwell Gosney, acting by and through her duly authorized attorney-in-fact, John L. Cardwell, as Sellers, and John R. Bendall & Co., as Realtor, for the purchase of the hereinbefore referred to property; said agreement having also been executed by John R. Bendall & Co., Realtor, and having been forwarded to John L Cardwell, et al, Sellers, for review and execution; and

WHEREAS, should the terms of the aforementioned agreement dated May 10, 1973, not be acceptable to the Sellers in said agreement and they refuse to execute same, then the party of the second part hereof desires the privilege of renegotiating the terms and conditions of said contract with the Sellers, prior to said property being sold to another party, now therefore

W I T N E S S E T H

THAT for and in consideration of the premises the said party of the first part hereby covenants with said party of the second part, that should the terms of the aforementioned agreement dated May 10, 1973 not be acceptable to the Seller in said agreement, that he will not exercise his option to sell the property which is the subject thereof to another party without first giving the party of the second part an opportunity to renegotiate the terms and conditions of said contract with the Sellers.

WITNESS the following signatures and seals:

JOHN R. BENDALL & CO.

By _____

Title:

_____ (SEAL)

Melvin G. Lacey

STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

I, _____, a Notary Public in and for the City of Danville, in the State of Virginia, do hereby certify that STEVE BENDALL whose name is signed to the foregoing agreement bearing date on the 10th day of May, 1973, on behalf of JOHN R. BENDALL & CO., has personally appeared before me in my City and State aforesaid and acknowledged the same.

Given under my hand this 21st day of _____, 1973.

My commission expires _____.

_____

Notary Public

LAW OFFICES
ANDERSON & ANDERSON
SUITE 500 - MASONIC BUILDING
DANVILLE, VIRGINIA 24541

STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

I, [illegible], a Notary Public in and for the City of Danville, in the State of Virginia, do hereby certify that MELVIN G. LACEY, whose name is signed to the foregoing writing bearing date on the 10th day of May, 1973, has personally appeared before me in my City and State aforesaid and acknowledged the same.

Given under my hand this 21st day of [illegible], 1973.

My commission expires [illegible].

[illegible]
Notary Public

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

208 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

May 11, 1973

Dr. John L. Cardwell
c/o Sans Souci, Inc.
2877 Kalakaua Avenue, Apt. 1001
Honolulu, Hawaii 96815

Dear Dr. Cardwell:

Enclosed please find a Real Estate Purchase Contract regarding the Cardwell farm at Blairs, Virginia.

This contract is based on the $250,000.00 figure which I was authorized to quote prior to the auction announcement on June 15. Since no definite terms regarding a private sale were discussed, I have suggested to Mr. Lacey terms which I thought would meet with your general approval.

Due to the terms involved in the contract, I thought it in your best interest to have an attorney to assist me with the contract preparation. I therefore, engaged Attorney William E. Anderson, a respected and knowledgeable local attorney to prepare the contract for me. Mr. Lacey has given me a $10,000.00 cashier's check which I shall hold in escrow until you have had time to review his contract. A photostatic copy of the check is enclosed. I have no reservation regarding Mr. Lacey's financial ability to purchase the property and fulfill the terms set forth in his contract.

Since this contract has been received, I am postponing our auction plans since I do not believe an auction would produce a price higher than that presently received.

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

208 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

Dr. John L. Cardwell -2- May 11, 1973

Trusting the enclosed contract will meet with your approval and will be accepted and returned to me at your earliest convenience, I am

Very truly yours,

JOHN R. BENDALL AND COMPANY

Steve Bendall

Steve Bendall, Broker-Auctioneer

SB/db

Encls.

cc: Attorney William E. Anderson

REGISTERED NO. 4258		POSTMARK OF
Value $ .00	Special Delivery $ 60	
Reg. Fee $ 95	Return Receipt $	
Handling Charge $	Restricted Delivery $	
Postage $ 45	☐ AIRMAIL	
POSTMASTER (By) E		MAILING OFFICE

FROM
Steve Bendall
208 Masonic Temple
Danville Va

TO
Dr. John L. Cardwell
2877 Kalakaua Ave Apt 100
Honolulu - Hawaii

☆ G.P.O.: 1970—406-950

STIPULATION EXHIBIT NO. 9

JOHN L. CARDWELL, M.D.
3750 RANDOM LANE
SACRAMENTO, CALIFORNIA 95825

489-7243

June 6, 1973

Mr. Steve Bandall,
208 Masonic Temple,
Danville, Virginia, 24541

Dear Steve:

Here are the suggestions for the sales contract for the farm as recommended by my attorney. They seem correct to me. I would appreciate your giving me your evaluation of the tobacco allotments. Please feel free to contact my attorney if you care to do so.

I am enclosing a couple of clippings from the Honolulu newspaper that illustrate how far inflation has proceeded in the islands. Reminds me of Miami in the late twenties.

Kindest personal regards,

Sincerely,

jlc/m
att.

I would recommend, therefore, that the following information be given the Realtor:

a. Total purchase price $250,000.00

b. A sum up to but not exceeding $75,000.00 cash down. This figure may vary downward to meet the requirements of the buyer and your satisfaction but in no event can it be greater than the 30%.

c. Balance of $175,000.00 to bear interest at the rate of 8% per annum and to be evidenced by a promissory note to the seller's order. There shall be no prepayment privilege of principal during the calendar years 1973 nor shall interest payments commence until January 2, 1974. Interest accrued to January 1, 1974 shall be payable on that date and thereafter interest is to be paid quarterly in each year. The interest shall be paid in addition to principal payments.

The principal shall be paid in 8 equal and semi-annual installments with the first installment of $21,875.00 falling due on the 2nd day of January, 1974. After the first day of January, 1976, the maker of the note is to have the privilege of paying the obligation in full concurrently with any principal or interest installment due date.

d. The promissory note is to be secured by a purchase money deed of trust which shall contain in addition to the usual standard provisions, the following acceleration clause:

> "If the trustor shall sell, convey or alienate said property or any part thereof or any interest therein or shall be divested of his title in any manner or way whether voluntary or involuntary, the indebtedness or obligation secured hereby irrespective of the maturity dates expressed in any note evidencing the same, at the option of the holder thereof and without demand or notice, shall immediately become due and payable."

e. Taxes and insurance, if any, are to be prorated as of the date of closing.

f. Closing is to occur within 15 days after acceptance of offer by the seller.

g. If there are improvements on the property, fire insurance policy shall be furnished at the expense of the buyer.

In addition to the above I would recommend that you clarify the evaluation of the tobacco allotments with the Realtor as we discussed.

If there are any questions at all concerning the above, please do not hesitate to call. I will be most pleased to discuss and review with you documents which will now be coming forward from Virginia.

Very truly yours

DILLON & CAVANAUGH

By

FBD:mtm

926 Jay Building,
Sacramento, California, 95814
Tel. 443-1955
Area Code 916

Dillon & Cavanaugh
Attorneys at Law
926 Jay Building
Sacramento, California 95814

Francis B. Dillon
Bartley W. Cavanaugh, Jr.

TELEPHONE 443-1955
AREA CODE 916

June 26, 1973

John R. Bendall & Co.
208 Masonic Temple
Danville, Virginia

Attention: Steve Bendall
Broker-Auctioneer

Re: Cardwell parcel - Blairs, Virginia

Gentlemen:

This note will confirm our telephone conversation of this date wherein we advised you that this office has been retained by Dr. Cardwell and his sister for all purposes in matters concerning the above-captioned real property.

It will further confirm our notice to you previously orally given by Dr. Cardwell that neither the offer of Lacey or White, et al were acceptable to Dr. Cardwell and the rejection thereof is hereby confirmed.

It will further confirm our notice to you that your authority to negotiate at $250,000.00 terminated on June 15, 1973.

It will further confirm our statement to you that Dr. Cardwell and his sister would be willing to sell the property at $300,000.00 cash. Since the auction contemplated the subdivision and mapping and the opening of streets, etc. and since these acts have not occurred then obviously the auction heretofore set for June 30 could not possibly be undertaken. If you feel that an auction sale would be most beneficial for our clients with no bids being accepted for less than $300,000.00 cash, please advise.

Very truly yours,

DILLON & CAVANAUGH

By Francis B. Dillon

FBD:kr

cc: Leland Cardwell, M.D.

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

208 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

June 27, 1973

John L. Cardwell, M.D.
3750 Random Lane
Sacramento, California 95825

Dear Dr. Cardwell:

Yesterday, I received a telephone call from Attorney F. B. Dillon who advised me that he was not recommending that you accept either of the two contracts regarding property here designated as the Cardwell Farm.

Attorney Dillon advised me that the property was now to be offered for $300,000.00. After receiving this call, I notified parties to both contracts of the message received and also that Attorney Dillon told me that he would forward a memo regarding our conversation. The following is a resume of events relating to the contracts of purchase.

On Friday, May 4, 1973, I was contacted by Mr. Melvin G. Lacey who had heard that the property was going to be offered for sale at public auction. I advised Mr. Lacey that the property was scheduled for auction on Saturday, June 30, 1973. He then asked me if the property could be purchased prior to the sale date. I told him I was authorized to quote a price of $250,000.00 prior to June 15, 1973. Mr. Lacey advised me that he would get in touch with me later if he so wished to give a contract to purchase the property for the above stated figure.

On Monday, May 7, 1973, Mr. Lacey contacted me and requested that I draw up a contract for $250,000.00 to purchase the property. I told him that I would; however, I recommended that an Attorney be employed to prepare the contract since I did not want to have any misunderstanding on anyone's part. Attorney William E. Anderson was decided upon to be the Attorney to draw up the contract which he did on May 10, 1973. A copy of which was immediately forwarded to you. Mr. Lacey asked me if I thought terms would be more acceptable to you, taking into consideration your income tax status. I advised Mr. Lacey and Attorney Anderson to prepare a contract setting forth the terms which I considered in your best interest and subject to your approval. Since I did not have a Power of Attorney for you, I could not legally accept or reject his contract proposal.

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

208 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

It would be up to you as to whether or not you wanted to accept $250,000.00, cash, or other mutually agreed terms.

On the same day, May 10, 1973, Messrs; Jamerson C. White and Charles M. Hawker approached me and inquired about the possible purchase of the property. I advised Messrs; White and Hawker that a contract had been received in the amount of $250,000.00 and that I considered the property "SOLD" subject to your approval of a previous contract. I did not reveal the identity of Mr. Lacey since this would have been unethical, in my opinion.

Mr. White informed me that he was going to instruct his Attorney, T. Ryland Dodson, to prepare a contract and submit the same to you for your approval, which was done.

Today, Attorney Anderson called Attorney Dillon to verify the conversation I had with Attorney Dillon yesterday. Attorney Dillon asked Attorney Anderson why I submitted two contracts on the property, etc. My reasons for submitting both contracts is specified under "Business Practices", Section 2, Paragraph 3, regarding Offers to Purchase in accordance with Virginia Real Estate Regulations. I am required to submit all written offers to my seller unless I should have the Power of Attorney to accept or reject any offers which I did not have in this instance.

As your Agent, I do not have the authority and cannot take the responsibility to act as a negotiator between the parties to the contracts or the attorney representing them; however, as your Agent, I will do whatever is reasonable to assist Attorney Dillon if he so request.

Hoping this sale can be successfully concluded in the near future, I am

Very truly yours,

JOHN R. BENDALL AND COMPANY

Steve Bendall

Steve Bendall, Auctioneer

SB/db

cc: Attorney F.B. Dillon

STIPULATION EXHIBIT NO. 12

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

208 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

July 2, 1973

Attorney Francis B. Dillon
926 Jay Building
Sacramento, California 95814

Dear Mr. Dillon:

Enclosed please find the original contract of purchase given me by Mr. Melvin G. Lacey on May 7, 1973, regarding the Cardwell Farm. {see Mr. Dillon's

It was Mr. Lacey's intention to pay $250,000.00 cash with $10,000.00 down or $50,000.00 down and balance of $200,000.00 on terms.

As per our conversation today, I will be grateful if you will forward to me your recommendations or terms that would be acceptable to Dr. Cardwell.

Thanking you for your assistance in this matter, I am

Very truly yours,

JOHN R. BENDALL AND COMPANY

Steve Bendall

Steve Bendall, Auctioneer

SB/db

Encl.

STIPULATION EXHIBIT NO.

Dillon & Cavanaugh
Attorneys at Law
926 Jay Building
Sacramento, California 95814

Francis B. Dillon
Bartley W. Cavanaugh, Jr.

TELEPHONE 443-1935
AREA CODE 916

July 5, 1973

William E. Anderson, Esq.
Anderson & Anderson
Suite 600, Masonic Building
Danville, Virginia 24541

Dear Mr. Anderson:

This morning when I returned from court, I returned your call at approximately 10:30 A.M. PCT.* Mr. Steve Bendall answered your telephone indicating that he was in your office and you and he had been working on the form of contract to forward for my review. Mr. Bendall advised me that Dr. Cardwell had in turn authorized him to conclude a sale at a total purchase price of $250,000.00 to your client, Mr. Lacey, upon terms generally set forth in my memo to Dr. Cardwell of June 5, 1973, a portion of which, I understand, was forwarded to Mr. Bendall by Dr. Cardwell.

You then came on the line and, based upon my understanding and Dr. Cardwell's authority to Bendall, we discussed generally the terms of the sale.

Immediately thereafter I contacted Dr. Cardwell, who advised that Mr. Bendall's statements were incorrect, that the total extent of the Doctor's conversation with Mr. Bendall was to advise him that he had relegated all matters of negotiation to this office and any proposal should be submitted through me.

Immediately after talking to Dr. Cardwell, I received my second mail delivery, including among which were two items:

(a) A letter from Bendall enclosing what he refers to as the "....the original contract of purchase given me by Mr. Melvin G. Lacey on May 7, 1973, regarding the Cardwell Farm." This document was forwarded to me as a result of my specific request made upon him and you last week wherein there had been some assertion that the enclosure he refers to would be binding upon Dr. Cardwell.

* Pacific Daylight Time

I think that the document itself places that problem at rest. It is a tri-partite arrangement calling for the signature of "purchaser", "seller", and "Realtor". The only signatures appearing thereon are those of Bendall and Lacey. Under no circumstances would Dr. Cardwell be bound thereby.

(b) A second and more disturbing document was received, to wit, copy of a letter directed to John R. Bendall & Co. by T. Ryland Dodson, counsel representing White et al, purporting to be an acceptance of a purported verbal offer by Steve Bendall to sell the Cardwell property for $300,000.00 in cash and referring to a memo which I directed to Bendall, dated June 26, 1973. Obviously, the memorandum to the agent could in no way be construed as an authority to sell. There was a statement that the figure would be acceptable which all parties knew, but immediately thereafter and in context was a request as to whether or not it would be most beneficial for the Cardwells to sell at auction with no bids being accepted for less than $300,000.00

When I telephoned you later in the day to advise you of my discussions with Dr. Cardwell and for you to cancel any work you were doing on the proposed agreement, you indicated you were not aware of whether or not Mr. Bendall had received the Dodson note. The memo from Bendall, dated July 2nd, was postmarked July 2nd and received here this morning. The memo from Dodson was postmarked July 3rd and received here this morning.

I am forwarding a copy of this note to Mr. Bendall together with other advice. He will no doubt be contacting you in the near future.

Very truly yours

DILLON & CAVANAUGH

By

FBD:mtm

cc: John L. Cardwell, M.D.
Steve Bendall

JOHN R. BENDALL & CO.

AUCTIONEERS

AUCTION AND PRIVATE SALES - RENTS - REAL ESTATE

208 MASONIC TEMPLE PHONE 792-1013

DANVILLE, VIRGINIA 24541

July 19, 1973

Messrs Melvin G. Lacey
William E. Anderson, Attorney
600 Masonic Temple
Danville, Virginia 24541

Dear Messrs Lacey and Anderson:

This is to advise that I have today received written instructions from Mr. Francis B. Dillon, Attorney for John L. Cardwell, advising me that the $300,000.00 cash offer from Messrs Hawker and White has been accepted by Dr. Cardwell.

As per Attorney Dillon's instructions, I have requested Attorney Ryland Dodson to prepare the necessary documents which will be forwarded to Attorney Dillon for Dr. Cardwell's signature.

As required by Virginia Real Estate Law, I am herewith enclosing the $10,000.00 purchase deposit given me by Mr. Lacey on May 7, 1973.

Please feel free to call me if I may be of further service.

Very truly yours,

JOHN R. BENDALL AND COMPANY

Steve Bendall

Steve Bendall, Broker

SB/db

Encl.

cc's: Attorney Francis B. Dillon
Attorney T. Ryland Dodson
John L. Cardwell, M. D.

Dillon & Cavanaugh
Attorneys at Law
926 Jay Building
Sacramento, California 95814

Francis B. Dillon
Bentley W. Cavanaugh, Jr.

TELEPHONE 443-1959
AREA CODE 916

June 5, 1973

Leland Cardwell, M.D.
3750 Random Lane
Sacramento, California 95825

RE: Sale - Virginia Real Property

Dear Dr. Cardwell:

This note will supplement our office conference of June 4, 1973 during which time we discussed generally the sale of the Virginia acreage owned by you and your sister and reviewed generally the proposals heretofore submitted to you by the Realtor.

The purpose of this memo now is to assist you in your conferences with the Realtor to the end of obtaining the best possible terms of sale for you.

I will not concern myself either with the price, $250,000.00; the interest rate, 8%; nor the brokerage fees, 2%; since I, of course, have no information whatsoever upon which to base an opinion as to the reasonableness of any of the items in the Virginia jurisdiction. As an aside, 8% is the high side of the interest rate obtained by sellers in this community, 2% is about 1/3 of the ordinary commission, and 1/5 of the ordinary commission for the sale of land only in this community.

We have agreed that by far the best manner for you to sell the property would be under the installment sales method. The installment method permits you as a taxpayer to include in your income (capital gain by the way as to capital reduction) only that portion of each collection which constitutes profit. (Of course, the interest portion of any installment would be treated as ordinary income). The installment method is available to a taxpayer with respect to a sale of real property where the buyer agrees to pay to the seller a part of the sales price in one or more years after the year of sale. The sale may be reported on the installment basis if the payments received in the year of the sale (and this means

Defts Depn Exhibit A
11/8/74

calendar year not 12 month period) do not exceed 30% of the selling price. The Treasury Department has ruled and the tax court has held that the sale of real property qualifies for installment reporting only if it requires two or more payments in two or more calendar years, although there is no requirement that the payment be made in any particular year or years.

A purchase money mortgage given by the buyer to the seller, although it and the note have a face value, is excluded from payments received in the year of sale as "evidences of indebtedness of the purchaser".

Thus, for tax purposes the plan which is hereinafter outlined would appear to fit your needs beautifully. The amount of your tax paid per year would depend upon the proportion of purchase price (interest excluded) received by you during the taxable year.

Your carrying back a purchase money mortgage/deed of trust as outlined affords you ample security since if the payments are not made, you will be able to foreclose and retake possession of the property and retain the down payment and any other payments received thereafter.

I do not wish to dilute your security, however, or have you engage as a "joint venturer, so to speak, with your purchaser by allowing him to release portions of the land from the lien of the deed of trust upon principal reductions. When the loan is paid in full, he will be obtaining a deed of full reconveyance and until it is paid in full, you shall retain your lien on all of the acreage.

I am also suggesting the inclusion of a "due on sale clause". You have advised that the property is in a state of flux insofar as values are concerned. I do not want your buyer to have the opportunity to take advantage of your interest rate, turn around and sell the entire acreage for $350,000.00 for a smaller cash down payment, have his $100,000.00 bearing interest at the rate of 10%, or even worse, have him sell the whole property for $350,000.00 at 10% per annum and the buyer pay him 10% on that sum and then have him pay you the 8% on your balance. If such a bargain is available, he would have two options:

1. Pay you in full or

2. Approach you with the idea of authorizing such a sale but with the resultant participation by you in the increased interest.

The other general terms of the form of deed of trust used in Virginia can be reviewed with you prior to your approval of any such document.

I would recommend, therefore, that the following information be given the Realtor:

a. Total purchase price $250,000.00

b. A sum up to but not exceeding $75,000.00 cash down. This figure may vary downward to meet the requirements of the buyer and your satisfaction but in no event can it be greater than the 30%.

c. Balance of $175,000.00 to bear interest at the rate of 8% per annum and to be evidenced by a promissory note to the seller's order. There shall be no prepayment privilege of principal during the calendar year 1973 nor shall interest payments commence until January 2, 1974. Interest accrued to January 1, 1974 shall be payable on that date and thereafter interest is to be paid quarterly in each year. The interest shall be paid in addition to principal payments.

The principal shall be paid in 8 equal and semi-annual installments with the first installment of $21,875.00 falling due on the 2nd day of January, 1974. After the first day of January, 1974, the maker of the note is to have the privilege of paying the obligation in full concurrently with any principal or interest installment due date.

d. The promissory note is to be secured by a purchase money deed of trust which shall contain in addition to the usual standard provisions, the following acceleration clause:

> "If the trustor shall sell, convey or alienate said property or any part thereof or any interest therein or shall be divested of his title in any manner or way whether voluntary or involuntary, the indebtedness or obligation secured hereby irrespective of the maturity dates expressed in any note evidencing the same, at the option of the holder thereof and without demand or notice, shall immediately become due and payable."

e. Taxes and insurance, if any, are to be prorated as of the date of closing.

f. Closing is to occur within 15 days after acceptance of offer by the seller.

g. If there are improvements on the property, fire insurance policy shall be furnished at the expense of the buyer.

In addition to the above I would recommend that you clarify the evaluation of the tobacco allotments with the Realtor as we discussed.

If there are any questions at all concerning the above, please do not hesitate to call. I will be most pleased to discuss and review with you documents which will now be coming forward from Virginia.

Very truly yours

DILLON & CAVANAUGH

By

FBD:mtm

App. 41 CARDWELL DEPOSITION EXHIBIT NO.

JOHN L. CARDWELL, M.D.
3750 RANDOM LANE
SACRAMENTO, CALIFORNIA 95825

489-7243

April 28, 1973

Mr. Steve Bendall
208 Masonic Temple
Danville, Va. 24541

Dear Mr. Bendall:

Confirming our telephone conversation, enclosed is signed auction contract regarding the "Cardwell Farm".

The 1973 tobacco allotment of 11,010 lbs. was transferred from my Farm Serial No. 4657-F to Farm Serial No.2956-B in the name of W. H. Evans.

For the month of May my mailing address will be:

Sans Souci, Inc.,
2877 Kalakaua Avenue, Apt. 1001
Honolulu, Hawaii, 96815

At the present time I do not know what my apartment telephone number will be, but if you feel a call is necessary you may leave a message with the apartment manager whose telephone number is 1-808-923-8009. Otherwise, I believe communication by mail would be more satisfactory.

Yours very truly,

John L. Cardwell
John L. Cardwell, M.D.

jlc/m
att.

Depo. Exhibit #4
11-8-74
PW

BENDALL DEPOSITION EXHIBIT B

JOHN L. CARDWELL, M.D.
3750 RANDOM LANE
SACRAMENTO, CALIFORNIA 95825

489-7243

April 23, 1973

Mr. Steve Bendall
208 Masonic Temple
Danville, Va. 24541

Dear Mr. Bendall:

Your subdivision plan seems to me to be a logical one. I agree to selling at auction on June 30, 1973, and also authorize you to offer the entire property for $250,000. to any interested party. May I reserve the right to refuse a private offer if I so desire?

Regarding the $650.00 an acre offer, I have had two parties discuss the terms of a $200,000. price so it seems that it would not be difficult to obtain more than $200.000.

As to the subdivision markers, I would like to have a fixed price from Shanks & Wilmarth before authorizing that work. A local Engineer and Surveying Company here (friends of mine) informed me that $1,000.00 would have been an adequate charge for the farm survey. As I see it, only fifteen or sixteen points will have to be established. Regarding advertising costs, you suggested $300.00 in your letter and sample contract (copy attached) for the auction sale. Therefore, let us start with that figure.

I hope to have the number of the telephone in our apartment in Honolulu before leaving home and will forward it to you.

Yours very truly,

John L. Cardwell

John L.Cardwell, M. D.

jlc/m
att.

DEPOSITION EXHIBIT NO. 5

THIS CONTRACT, made this 10th day of May, 1973, by and between JOHN L. CARDWELL and LILLIAN M. CARDWELL, his wife, and ANNIE CARDWELL GOSNEY, acting by and through John L. Cardwell, her Attorney-in-Fact, parties of the first part, and JAMERSON C. WHITE and C. M. HAWKER, parties of the second part,

--WITNESSETH--

THAT for and in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do agree as follows:

1. The parties of the first part do hereby sell and the parties of the second part do hereby purchase that certain tract or parcel of land located in Blairs, Virginia on both sides of U. S. Highway No. 29, containing 284.41 acres, more or less, as shown on Plat of Survey of the Sallie B. Cardwell Estate for Dr. John L. Cardwell, made March 21, 1973 and revised April 10, 1973, by Shanks & Wilmarth, Engineers-Surveyors.

2. The purchase price is Two Hundred and Fifty Thousand Dollars ($250,000.00), of which $12,500.00 is made herewith and delivered to John R. Bendall & Co., Agents for the parties of the first part, and the balance is to be paid in any manner requested by the parties of the first part, provided the interest on any deferred payment if requested shall not be more than eight per cent per annum on any unpaid balance, and provided further that the parties of the second part shall have the right of anticipation.

3. It is understood and agreed that the parties of the second part shall have a reasonable time to have the title to said property examined and the parties of the first part shall have a reasonable time to clear encumbrance or defect if such is disclosed in said title examination.

4. It is understood and agreed that this transaction is being handled by John R. Bendall & Co., real estate agents, and that the closing dates will be on or before May 30, 1973 at the office of said John R. Bendall

HYLAND DODSON
LAW OFFICES
STAUNTON, VIRGINIA

& Co. in the City of Danville, Virginia.

5. It is further understood and agreed that all crop allotments will be transferred along with the title to the real estate.

WITNESS the following signatures and seals:

_____(SEAL)
John L. Cardwell

_____(SEAL)
Lillian M. Cardwell

_____(SEAL)
Annie Cardwell Gosney

By_____
John L. Cardwell, Attorney-in-Fact for
Annie Cardwell Gosney

_____(SEAL)
Jamerson C. White

_____(SEAL)
C. M. Hawker

_____ OF_____

_____ OF_____, to-wit:

I, _____, a Notary Public in and for the _____ of _____, in the State of _____, do hereby certify that John L. Cardwell, Lillian M. Cardwell, his wife, and John L. Cardwell, acting as Attorney-in-Fact for Annie Cardwell Gosney, whose names are signed to the foregoing deed bearing date on the 10th day of May, 1973, have each this day acknowledged the same before me in my _____ and State aforesaid.

Given under my hand this _____ day of May, 1973.

My commission expires _____

_____
Notary Public

ND GODSON
PRINTS
RICHMOND

CARDWELL DEPOSITION EXHI

Tuesday
May 15th

Dear Steve

I received the Lacy bid yesterday and it does not appeal to me at all. The White-Hawker bid seems better in many respects.

As I mentioned in our last phone discussion I am very reluctant to make a decision without legal advice and my regular attorney is in France and will return about June 1.

I have an appointment with a local attorney this Thursday but I do not know whether this will be satisfactory. I may have to request a delay in the deadline for a few days

Best regards
J J Cardwell

EXCERPTS FROM DEPOSITIONS TAKEN
FEBRUARY 21, 1974

[3]

The witness, RICHARD STEVENS BENDALL, after being first duly sworn, deposed and stated as follows:

EXAMINATION BY MR. CARTER

Q State your name, please.

A Richard Stevens Bendall.

* * * *

[5]

Q Now, Mr. Bendall, I believe you have just examined a letter dated December 8, 1972, which we will identify as Stipulation Exhibit 1? Mr. Warren, is that agreeable?

MR. WARREN: Yes, sir. That's all right.

Q And a letter dated April 18, 1973, which is the same as Stipulation Exhibit 3. Now if you will take the letter dated April 18, 1973, and read it and refresh your memory, and tell us very briefly--the letter is already a matter of record, so we can all know what it says, but very briefly what you were conveying by that letter.

A The letter dated April 18, 1973, to Dr. Cardwell is my recommendations as to how I would offer the property for sale, referring to the different parcels as to

which the property would be subdivided.

[6]

Q Well, briefly, I think we can say that that was the forwarding letter with which you forwarded to him the proposed contract which you desired for him to sign appointing you as agent for the sale. Is that the vehicle you used?

A Prior to the contract, as I recall.

Q I believe you sent the proposed contract forward, did you not, with that letter?

MR. WARREN: May I ask which proposed contract you are referring to?

MR. CARTER: The April 19, 1973--.

A As I recall that was the letter to answer Dr. Cardwell's recommendations for a proposed auction, as to how I would sell the property.

Q Okay. Now I hand you a photocopy of an executed contract which has previously been identified for purposes of the record as Stipulation Exhibit 2. Do you recognize that?

* * * *

[7]

A Yes, sir.

Q I believe this is the original of a contract which you forwarded to Dr. Cardwell for his execution

sometime during the month of April?

* * * *

[8]

Q Now, Mr. Bendall, I hand you a copy of a letter which has been previously identified as Stipulation Exhibit 4. Do you recall receiving the original of that letter?

A Yes, sir.

Q All right, sir. Did you receive this before or after you sent the proposed contract dated April 19, 1973, which you have just identified?

A After, sir.

Q Had you received that contract back executed, in executed form, before you received this letter?

A I don't recall.

* * * *

[10]

MR. WARREN: I believe that is Stipulation Exhibit 7a.

Q All right, sir. This has previously been identified as Stipulation Exhibit 7a. Correct. All right, sir. Now, when did you talk with Dr. Cardwell on the telephone, or when was the first time you talked to him on the telephone from the time you received his letter of April 23? When was the next time you talked to him on the telephone that you recall? That's the letter in which he wrote you about your plan for the subdivision being a logical one. This letter right here.

I believe that you have already testified that you wrote him on May 11 a letter when you transmitted to him the matters described therein.

A As I recall I did not talk to him personally. I was in Attorney William E. Anderson's office when Attorney Anderson talked to him.

Q Was that the first communication after the letter of April 23 from Dr. Cardwell and returned by him with this contract appointing you as his agent?

[11]

A As I recall, yes, sir.

Q You were in Attorney Anderson's office and the two of you telephone him?

A Mr. Anderson telephoned him with my permission.

Q With your permission. And where did he telephone him?

A In Hawaii, sir.

Q In Hawaii. You have identified, or it has been previously identified as Stipulation Exhibit 7a, the letter to Dr. John Cardwell, and I will hand you a copy of it for your examination. All right, in this letter of May 11 you make reference there to enclosing a contract. "Enclosed please find a real estate purchase contract regarding the Cardwell farm at Blairs, Virginia." Now, what contract do you have reference to there?

A The contract prepared for Mr. Lacey by Attorney William E. Anderson.

Q All right, sir. And that's dated May 10, 1973, and I will hand you a copy of that which has been previously identified as Stipulation Exhibit 6. Is that the contract you have reference to?

A Yes, sir.

Q You forwarded with that letter. I believe that about the same time you had received a contract or offer from another group?

[12]

A No, sir.

Q When was the next offer after this May 11 thing, which you say was prepared by Attorney Anderson for Mr. Lacey, when was the next time you received a contract or offer for a contract pertaining to the Cardwell farm?

A That would be the contract that Ryland drew on the following Thursday, which would have been the twelfth, thirteenth.

Q I hand you from the Cardwell deposition, Deposition Exhibit 5. Is that the contract you have reference to?

A What was the date on that other contract there, the first one that Anderson prepared?

Q May 10, 1973.

A What was the question?

(Reporter reads the question.)

MR. CARTER: I will correct my--this was an error on my

part, Mr. Bendall, I meant the contract dated May 10 transmitted with your letter of May 11, 1973.

A It was several days after I had received the contract from Mr. Anderson.

Q How did you transmit that contract, or who transmitted that contract to Dr. Cardwell?

A I did, sir, by registered mail.

[13]

Q Did you write a letter regarding the so-called Hawker-White contract?

A As I recall, I did.

Q You state you sent it by registered mail. Do you have the registration receipt evidence?

A Not at my disposal right at this time.

Q You state you don't find a forwarding letter. Did you write a forwarding letter?

A As I recall, I did.

Q Can you state under oath whether or not if this so-called Hawker-White contract was or was not in the same envelope with the so-called Melvin Lacey contract of May 10?

A No, sir, they were under separate envelopes.

Q Do you know how many days separated their mailing?

[14]

A Approximately two days, as I recall.

* * * *

[15]

Q Now, did Attorney Anderson represent Mr. Lacey or Dr. Cardwell or you?

A Mr. Lacey, sir.

Q Did you show or disclose to either White or Hawker, or any representative of theirs, the terms of the so-called Lacey contract?

A Definitely not, sir.

Q Now, you have made reference to the fact that Mr. Lacey's contract originated Monday, May 7, at about 8:45 p.m. Now what contract do you make reference to there and would it help you if I showed you alleged contract marked Stipulation Exhibit 5?

[16]

A This instrument was drawn by me on May 7, 1973, at Mr. Lacey's request and authorization after several attempts had been made to contact Attorney Anderson that night to prepare the contract.

Q All right, sir, now - .

A It was drawn with the mutual understanding that Attorney Anderson would prepare a more formal contract the next day, if he could be reached.

Q Why the urgency of drawing this contract? Why was it signed this night when ya'll could not reach Mr. Anderson?

A Mr. Lacey requested strongly that he have some type

of written agreement from me that he had intended to purchase the property through me from Dr. Cardwell and others.

Q All right, sir. Now let's go back--when was your first contact with Mr. Lacey regarding a purchase of this farm and tell us what happened?

A On Friday, May 4, at approximately 12:30, I was leaving my office going to lunch when I met Mr. Lacey in the hallway of the Masonic Temple, and he asked to speak to me a few minutes. We returned to my office and he wanted to know about the Cardwell property. I told him that I had been authorized by Dr. Cardwell to have the property surveyed, subdivided and offered at public auction the latter part

[17]

of June. Mr. Lacey asked me if I could price the property to him prior to the auction. I advised him that I could offer the property to him in its entirety for the sum of $250,000.00 prior to the time the first auction ad appeared in the Danville newspapers. Mr. Lacey asked me if I could hold the property for him until the first part of the week. I informed him that I did not think that this would be in the best interest of my principal, Dr. Cardwell, that I would be glad to discuss the matter with him further the first part of the week

at his convenience. He advised me that he would contact me late Monday afternoon, which he did and we established a meeting in my office that night, Monday, May 7, at Mr. Lacey's request. Mr. Lacey asked me if I would consider a contract of $225,000.00. I told him that my authorization called for $250,000.00, with the auction to continue as planned. He then asked me regarding the terms of such a contract, and I informed him that my contract called for cash, or other terms that would be acceptable to Dr. Cardwell. Mr. Lacey then informed me that he would like an attorney to prepare a contract for him showing $250,000.00 consideration, with a $10,000.00 purchase deposit. At his suggestion,

[18]

Attorney William E. Anderson was selected to prepare the contract. I made several attempts to contact Attorney Anderson that night. However, I did not reach him. Mr. Lacey then requested that I prepare some type of agreement by which he could be assured that he had something in writing toward the purchase of the property until Attorney Anderosn could be reached and draw the contract which was to be forwarded to Dr. Cardwell. The following morning, Tuesday, May 8th, I met with Mr. Lacey in Attorney Anderson's office, advised Mr. Anderson of the auction contract

which I had from Dr. Cardwell, and then Mr. Lacey requested him to prepare a contract to be forwarded to Dr. Cardwell, which he did within the next several days.

Q Now, when Mr. Lacey came there on May 7, I believe you have already testified that he wanted something in writing to show that he either, as you put it, intended to buy the property or had bought the property. Is that correct?

A He wanted to show something of his intention to buy the property.

Q And he didn't care whether it was cash or terms?

A No, he made the statement that terms would help him out, if they would be satisfactory to Dr. Cardwell.

[19]

Q But he was willing to pay either, cash or terms?

A Yes, sir.

Q And I believe you suggested that Dr. Cardwell because of tax implications had indicated that he didn't want cash, that he would prefer terms?

A Yes, sir.

Q Now, when were you first contacted after this instrument that you and Mr. Lacey signed May 7, which I believe you said you prepared?

A Yes, sir.

Q When were you first contacted by either Hawker or White?

A The following Thursday, at approximately 2:30 or 3:00 o'clock.

Q That would have been what day?

A May 10.

Q May 10. At that time had Mr. Anderson completed this other contract that we have already described earlier between Lacey and Cardwell?

A As I recall he had completed it that day or later the afternoon prior to that--May 9.

Q Where were you contacted by Hawker and White?

A In my office by telephone.

Q And what did you tell them with reference to the Cardwell property?

[20]

A The call came to me from Mr. White inquiring about the Cardwell property. I advised Mr. White that I was authorized by Dr. Cardwell to offer the property for the sum of $250,000.00; however, another party had instructed his attorney to prepare a contract for that amount to be forwarded to Dr. Cardwell. Mr. White asked me what action he could take to purchase the property. I advised him to consult his attorney, which I commonly knew as Attorney T. Ryland Dodson, and that I would be glad to meet with Attorney Dodson and relay the facts that had previously taken place regarding the first contract, not revealing the

purchase, and I am referring here to Mr. Lacey, not the terms of Mr. Lacey's contract, except the consideration of $250,000.00. At Attorney Dodson's request - .

Q When did this request come from Dodson?

A May 10.

Q The same day?

A The same day. I met in Attorney Dodson's office at approximately 4:30 and Misters Hawker and White instructed Attorney Dodson to prepare a contract, for cash, to be forwarded to Dr. Cardwell the next day.

Q All right, sir. Now, this was on the tenth. Now when did you pick up at Mr. Anderson's office the Lacey-Cardwell contract dated May 10 and transmitted

[21]

by you under letter dated May 11?

A As I recall, it was on May 10th.

Q Before or after you met with Mr. Dodson?

A Before, sir.

Q When, if ever, did you first advise Mr. Lacey, or Attorney Anderson, that you were accepting an offer from Hawker and White, and also transmitting that?

A I don't recall any specific time, but I did not advise anyone that I was accepting contracts for Dr. Cardwell. I was only taking them in hand as his agent and forwarding them to him.

Q Of course, this is the legal conclusion that you are making and we will let the court make that, but what I am asking you is did you ever advise Mr. Lacey or Attorney Anderson that you were taking an offer, or call it anything you like, from Hawker and White?

A Yes, sir. Yes, sir.

Q When?

A I would say that it was probably the next day, which would have been May 11.

Q Why did you transmit the two offers or contracts, or whatever they were, under separate letters.

A This was done at the request of the respective attorneys.

[22]

Q Was Mr. Anderson aware of the fact that you had an offer from Hawker and White when you sent forward the Lacey contract, or Lacey offer, if you like to call it that?

A Not that I recall. Both of them had been mailed before Mr. Anderson knew that.

Q Mr. Lacey had initially made a cash offer, is that correct?

A Yes, sir.

Q Now, I believe you said in Mr. Dodson's office on May 10, that Hawker and White instructed, while you were there, Mr. Dodson to make a cash offer, but

actually the contract as it emerged was not a cash offer, was it?

A I would have to refer to that contract.

MR. CARTER: I will simply withdraw that question. The answer is in the contract.

Q Now, Mr. Bendall, I hand you an instrument which has previously been identified as Stipulation Exhibit 7, a contract between John R. Bendall and Melvin G. Lacey, dated May 10, 1973. Do you remember that instrument?

A Yes, sir.

Q When was that prepared, signed and delivered to you?

A At approximately the same time that Mr. Anderson prepared the contract for Mr. Lacey.

[23]

Q Simultaneous with the so-called Cardwell-Lacey contract of May 10?

A Yes, sir.

MR. WARREN: Which was that, Exhibit what?

MR. CARTER: Seven.

Q Had that agreement between Lacey and Bendall Company been discussed prior to the May 10 meeting?

A Not that I recall.

Q When did you accept the first deposit from Mr. Lacey?

A Monday, May 7, when the agreement which I drew with Mr. Lacey that night with the understanding that he would bring me a $10,000.00 cashier's check

the following day.

Q And did he do that?

A Mr. Anderson gave me the $10,000.00 check the following day, yes, sir.

Q The following day?

A Yes, sir.

Q Which was a cashier's check drawn on The First National Bank of Danville?

A As I recall.

Q And what did you do with the check?

A Deposited it to John R. Bendall and Company escrow account at Virginia Bank and Trust Company.

Q Do you recall roughly when you returned it?

A When I returned it?

[24]

Q Yes, sir. When you returned the $10,000.00 to Mr. Lacey? Or to Mr. Anderson?

A (No response.)

Q Refreshing your memory, I realize that you don't have all your letters before you, was it sometime in July?

A It was several months later after - .

MR. WARREN: It was July 19, Charlie, Stipulation Exhibit 2.

MR. BENDALL: It was after the time that Dr. Cardwell had accepted the Hawker-White contract.

Q I hand you Stipulation Exhibit 2, a photographic copy of a letter dated July 19, 1973. Was that the vehicle

and the approximate date that the $10,000.00 was returned?

A Yes, sir.

Q Now, how many times did you talk to Dr. Cardwell while he was in Hawaii?

A I did not personally talk to him.

Q Were you in the office on the telephone when Mr. Anderson talked to him?

A Yes, sir.

Q Both times?

A On one occasion. I don't think on the second occasion.

Q What was the nature of that conversation?

MR. WARREN: I think he would have to confine himself to what he heard Mr. Anderson say, unless he was

[25]

listening on the call himself. If you were, of course, then you can go ahead.

MR. CARTER: Were you listening on the call?

A No, sir. I was sitting across the desk from Mr. Anderson.

Q You only heard Mr. Anderson's end of the call?

A Yes, sir.

Q When did you next talk to Dr. Cardwell yourself on the telephone? Or, refreshing your memory, did he ever call you from Hawaii?

A I don't recall Dr. Cardwell ever calling me from Hawaii.

Q Did you ever call him in Hawaii?

A No, sir.

* * * *

Q Now, did you have an occasion to talk to Dr. Cardwell on the telephone on or about July 3, 1973?

[26]

A I recall receiving a call on the night of July 4, approximately 10:10.

Q Eastern Standard or Eastern Daylight--Eastern time?

MR. WARREN: Our time, anyhow?

A Yes.

Q Who was that call from?

A Dr. Cardwell.

Q What, if any, instructions did he give you with reference to the sale of the so-called Cardwell farm?

A Dr. Cardwell informed me that he had made up his mind to accept the original contract from Mr. Lacey for the sum of $250,000.00, as set forth in the terms that Mr. Anderson had recommended, provided that Mr. Lacey was willing to meet the eight per cent interest on the unpaid balance, which Mr. Hawker and Mr. White were willing to do as set forth in their contract. Dr. Cardwell requested that I get in touch with Attorney Anderson and have him

contact him regarding the preparation of the contract. I contacted Mr. Anderson that night, July the fourth, at approximately 11:15, and relayed Dr. Cardwell's conversation. The next day, July 5, Attorney Anderson called Dr. Cardwell in Sacramento, in my presence, and verified the conversation of the previous night, and informed Dr. Cardwell

[27]

that he would prepare a bargain and sale contract as specified by Dr. Cardwell and would send it to him for his attorney, Francis B. Dillon's approval. This contract was based on recommendations previously given to Dr. Cardwell by Attorney Dillon.

Q Those were recommendations regarding the method of payment for maximum tax advantages to Dr. Cardwell?

A Yes, sir.

Q As recommended by his attorney, Dillon?

A Yes, sir.

Q I believe Dr. Cardwell had sent you a photographic portion of a copy of Attorney Dillon's letter setting forth these recommendations?

A Yes, sir.

Q And I also believe that following receipt of a photographic copy of this letter regarding the recommendations to the contract, that you showed or gave a copy of this to Mr. Anderson and that these terms were agreed to along with the eight per cent

interest?

A Yes, sir.

Q Did Mr. Anderson agree, in your presence, with Dr. Cardwell to pay the eight per cent interest and meet the terms in that letter?

A Yes, sir.

[28]

Q When did you next hear from either Dr. Cardwell or his attorney, Mr. Dillon?

A After the 'phone call from Attorney Anderson to Dr. Cardwell, Mr. Anderson invited me to go to lunch with him, which I did. Upon returning from lunch Mr. Anderson came to my office and advised that Attorney Dillon had called him and refuted the information which Dr. Cardwell had given him that morning on the basis that he had received a letter from Attorney Dodson, as I recall, quoting a $300,000.00 figure.

Q After the telephone call in Attorney Anderson's office on the morning of July 5th before you all went to lunch, was it your understanding on the basis of the telephone call you had received from Dr. Cardwell, that telephone call and the representations made to you by Attorney Anderson, that you all were in complete agreement as to terms and purchase price?

A It was, sir. Based on the increase of eight per cent.

Q The eight per cent increase and making payment in accordance with the schedule set forth in Attorney Dillon's letter received, I believe, back early in June?

A Yes, sir.

Q That's all I have.

* * * *

[29]

CROSS-EXAMINATION BY MR. WARREN

Q Mr. Bendall, did you ever advise Mr. Lacey that-- or Mr. Anderson, or any of them, that you had no authority to bind Dr. Cardwell and that all these were subject to his acceptance?

A Yes, sir.

Q And I believe that the original contract gave Dr. Cardwell the right to - .

MR. CARTER: That's a conclusion. I object to the form of the question on basis that it is a conclusion-- you are calling on the witness to give a conclusion of law. It's a question for the court.

MR. WARREN: I believe that the contract dated April 19, which you entered into with Dr. Cardwell contained a provision "any or all parcels shall be offered subject to seller's right of confirmation." Is that correct?

MR. CARTER: Again, I think the contract speaks for itself

and its interpretation is a matter for the court.

MR. WARREN: Did at any time Dr. Cardwell change that portion of the contract which I just read in granting to you the authority to bind him?

A No, sir.

Q Now, Mr. Bendall, I believe you said when you talked to Lacey about the $250,000.00 contract, he said he wanted something in writing in regard to

[30]

that contract, and it was out of that statement of his that the contract dated May 7 was drawn, is that correct?

A Yes, sir.

Q And that contract was never signed by Dr. Cardwell although it was sent to him, is that correct?

A Yes, sir. To his attorney, yes, sir.

Q Now, a contract of sale drawn by Mr. Anderson indicating an intention to sell the property to Melvin Lacey was never signed by Dr. Cardwell or any of the parties he represented, was there?

A Not that I recall, sir.

Q Mr. Bendall, why was the contract dated May 10, 1973, between your concern and Melvin Lacey drawn?

A Why was the contract drawn?

Q Yes, sir.

A It was drawn--why was this contract between Melvin G. Lacey and John R. Bendall & Company drawn?

Q Yes, sir, why was that contract drawn?

A It was drawn on Attorney Anderson's recommendation to Mr. Lacey that should any contracts come in after this contract with Mr. Lacey, there being any substantial difference regarding the terms and so forth, that Mr. Lacey would have the option of submitting a contract to meet any other existing contracts, and I agreed to that agreement since I

[31]

in no way could see where it would be detrimental to Dr. Cardwell's interest.

Q I understand, but what I am asking you, Mr. Bendall, is was that contract drawn because the parties there, including you and they, understood that this agreement drawn by Mr. Anderson--what you all had already done--was not binding on Dr. Cardwell and this was giving him another chance to bid on it in case somebody else came in, is that correct?

A That was my understanding - .

Q Was that the purpose--was that the reason this contract - ?

MR. CARTER: He has given you what he--his understanding was, and as far as the law is concerned I don't think he is qualified to speak.

Q Was that the discussion that was had when the second contract was drawn, sir?

A Yes, sir.

Q Mr. Bendall, did you receive a letter from Mr. Dodson in regard to his $300,000.00 offer?

A You mean for them?

Q Yes, sir. I am referring particularly to a letter--that is the original of the letter sent - .

MR. CARTER: May I see that?

MR. WARREN: It is Stipulation Exhibit No. 13.

[32]

Q Do you recall receiving that letter?

A Yes, sir.

Q When did you receive it?

A As I recall, in the mail on July 5th.

Q You did not have that letter at the time that you had talked to Dr. Cardwell by telephone on July 4th?

A Not that I recall, sir.

Q Had you known prior to that time that they were prepared to offer $300,000.00?

A I don't recall whether this was the time when Hawker came into the office before or after that--after July 2nd.

Q Mr. Bendall, what I am asking you is this. Did Mr. Hawker come into the office stating that he had paid $300,000.00 for this property prior to the time you received this letter from Ryland Dodson?

A As I recall, he did, sir.

Q He did? Was that information given to Dr. Cardwell prior to your telephone conversation July 5th?

A Not by me, sir.

Q Why?

A My authorization called for $250,000.00, and I advised Mr. Hawker that he should contact--that I had in my opinion no authorization to accept the $300,000.00 offer, and suggested to him that he return to Attorney

[33]

Dodson and advise me in writing of his intention should he wish to pursue the $300,000.00 offer.

Q Mr. Bendall, why didn't you tell Dr. Cardwell of that offer when he was talking to you on the telephone on July 4th before accepting the offer for $250,000.00?

A I don't recall that conversation that I--in which I advised Dr. Cardwell of the $300,000.00 offer. I may have, but I do not recall any specific conversation with him about that.

Q If you had had the information that there was a $300,000.00 offer for this property, why didn't you relay it to Dr. Cardwell?

MR. CARTER: I think the question is argumentative, it calls for a conclusion.

MR. WARREN: I'm just asking him why he didn't.

MR. CARTER: I think the witness has fairly answered the question--he doesn't know.

MR. WARREN: Is that your answer?

A Yes, sir. I am not certain that it was not after

the July 4th telephone conversation that Mr. Hawker came to my office. I am vague on that point of time.

Q Are you positive that you told Mr. Hawker to get his attorney to relay this information to you in writing?

[34]

A Yes, sir.

Q And the letter from the attorney is dated July 2nd?

A Yes, sir.

Q Now we were referring to what you described as terms or satisfactory terms for the sale of this property as given to you--or sent to you--by Dr. Cardwell under date of June 6th with attachments of two pages as drawn by Attorney Francis Dillon in Sacramento. Do you have the letter - .

MR. CARTER: Described further as Stipulation Exhibit 9, correct?

MR. WARREN: Yes.

MR. BENDALL: Are you referring to the recommendations?

MR. WARREN: Yes. Do you have the letter that was attached to that dated June 6th, Mr. Bendall?

A Yes, sir.

Q Did either of those documents refer in any way to Lacey--on the basis of the letter--refer in any way to any particular contract with anybody?

A No, sir.

Q Those were general terms, is that correct?

A Yes, sir.

Q Were you ever given any written authorization by Dr. Cardwell prior to the time that you were authorized to complete a contract with Hawker and White, were you ever given written authority to bind Dr. Cardwell?

[35]

MR. CARTER: I object to that question. That calls for a conclusion of law, the file is replete with Stipulation Exhibits and Deposition Exhibits, and I think it calls for a conclusion of law as to what authority he had and he is not qualified to answer it, and I object to him answering it, and to any answer he may give.

MR. WARREN: Will you answer, Mr. Bendall. The court will have to rule on it later. Were you ever given any authority signed by Dr. Cardwell giving you the authority to bind him at any time on the sale of this land prior to the time you were given written authorization to close out the deal with White and Hawker?

A No, sir.

Q That's all.

* * * *

EXCERPTS FROM DEPOSITIONS TAKEN
FEBRUARY 8, 1974

[3]

The witness, WILLIAM E. ANDERSON, having been first duly sworn, deposed and stated as follows:

DIRECT EXAMINATION

BY MR. WARREN:

Q You are William E. Anderson, a practicing attorney in the City of Danville?

A That is correct.

Q Mr. Anderson, were you retained to assist anyone in regard to a possible sale of the real estate involved in this proceeding, that is the Cardwell Farm between Danville and Chatham on U. S. 29?

A Mr. Lacey and Mr. Bendall came to my office and asked me to draw a contract, that Mr. Lacey had bought a piece of real estate from Dr. Cardwell.

Q Mr. Anderson, if you don't mind, answer the questions as asked. I do not wish to go into hearsay information at this time.

MR. CARTER: He is entitled to explain his answer.

BY MR. WARREN:

Q Was this your first contact with them in regard to the sale of this land when Mr. Lacey and Mr. Bendall went to your office?

A Yes.

Q Were you ever paid for the services rendered in regard to this?

A No, sir. I have not been paid by anybody for anything. That is the reason why I didn't know how to answer your "retained" question. Not one penny has crossed my desk.

Q At that time were you presented with any kind of paper from which you were to draw the contract?

A Yes, sir. Mr. Bendall presented me with the contract that he and Lacey had signed a day or two before. I don't recall the exact dates. It was a recent contract they had signed.

Q Was that contract entered into only by Mr. Lacey and Mr. Bendall.

[4]

(Mr. Warren hands contract to Mr. Anderson for him to examine.)

A Yes, sir. It is the contract between Mr. Lacey and Mr. Bendall.

Q And I presume that it is the contract, it is a part of the contract dated May 10, 1973 drawn on your office stationery. It is the contract that you drew as a result of that conference?

A Yes, that looks like the contract.

MR. CARTER: Could we identify that as "Stipulation Exhibit . . .

BY MR. WARREN:

Q Mr. Anderson, we have just showed you "Stipulation

Exhibit No. 6" which is described as a contract between John L. Caldwell with Melvin Lacey. Did you ever make any effort to have this contract signed by anyone other than Melvin Lacey and Mr. Steve Bendall?

A No, I didn't make any effort. As well as I recall, I gave the contract to Steve Bendall.

Q Do you recall whether you drew the contract for Mr. Bendall or Mr. Lacey?

A They both came in, Mr. Warren, and asked that I draw the contract based on the contract they had. I don't know whether Mr. Lacey said, "Draw the contract for me," or Mr. Bendall said, "Draw it for me."

Q Did you at approximately the same time draw another contract or agreement between John R. Bendall Company and Mr. Lacey? I am referring to "Stipulation Exhibit No. 7" which is dated May 10, 1973?

A Yes, I did.

Q Was that contract signed by both parties?

A Yes, sir.

Q Do you recall at whose request that contract was signed or rather was drawn?

A Mr. Warren, I can't state who said, "Draw this contract for me." I would be afraid to say. They both apparently agreed more or less generally to the terms.

[5]

There was no question it was a business transaction.

Q All of you were there together?

A Yes, sir.

* * * *

[7]

Q Why did you draw the contract dated May 10th, the first contract you drew, Mr. Anderson?

A Mr. Lacey and Mr. Bendall came to my office and asked me to draw it.

Q Were you shown the other contract they had there?

A Yes.

Q Then that other contract was not signed by Dr. Cardwell?

A No.

* * * *

[8]

A I can't answer your question "obviously", what they told me, I can tell you what they said. They came to my office and told me, Steve told me he had sold the piece of property to Lacey and wanted a contract drawn up and Steve picked it up and mailed it out there to Dr. Cardwell.

Q You read the papers Mr. Bendall had?

A I didn't read it in the entirety, I read the meat. I didn't read the fine print.

Q Was the second contract, Mr. Anderson, drawn at your suggestion or at theirs?

A They came in and asked me to draw the contract.

Q Both?

A Yes, they were both together.

Q The content of the second contract which you drew, was that if the first contract was not satisfactory they would go back and deal again with Mr. Lacey?

A Yes, see this man was in Honolulu and there was some question about whether there would be cash or the terms or what it was and this was what they were going to work out.

Q So, why did you put into that contract that, "Bendall would renegotiate the terms and conditions of the said agreement with sellers prior to said property being sold to another party?"

A Well, because of the terms of the interest and anything he didn't like in there, they could work out. The real question was whether he wanted all the money at one time or not, being a doctor, $250,000.00 was a lot of money. It was whether he would take it in segments or some sort of lease agreement.

Q Then according to information furnished to you, there was no final agreement to the parties as to the way the money would be paid?

A No, they lead me to believe, and I sincerely believed that they had made an agreement, Mr. Bendall and Mr. Lacey made an agreement, they had sold the

[9]

property, the real estate. They walked in and said, "How about drawing a contract?" I drew it, Steve took it and mailed it to Dr. Cardwell.

Q So you drew the contract based on what they told you?

A Yes, sir.

Q Did you say in the contract that any and all proposals would be subject to seller's confirmation?

A Did I state in the contract that any and all proposals would be subject to seller's confirmation? I don't know that I did.

Q You never heard from Dr. Cardwell that this contract was agreeable to him, the one you drew or the one Mr. Bendall drew?

A In my conversations with Dr. Cardwell, he indicated he would be perfectly willing to sell to Mr. Lacey. The thing he was interested in doing, was to make arrangements for the money, the type of payment he had to make.

Q That is not my question. Did you ever receive any word from Dr. Cardwell confirming the contract in writing or orally?

A I would have to say in conversations with him, I assumed Mr. Lacey had bought the property.

Q Did Dr. Cardwell confirm it at anytime?

A I would consider it a confirmation.

Q When?

A When I talked to him on the telephone. Can I look back

in here and see when I talked to him?

Q Yes.

A I called him, Mr. Warren, in Honolulu on May 11, 1973 and May 15, 1973 and talked to him. I had two telephone conversations with him.

Q Then you talked to him at approximately the time you drew this contract?

A Yes, along about the same time. I think the contract is dated May 10th. I talked to him on the 11th and 15th.

[10]

Q I see. I believe you had in your file a letter dated May 15th to Mr. Bendall signed by Dr. Cardwell, that letter, I will read the first paragraph. "I received the Lacey bid yesterday and it does not appeal to me at all. The White-Hawker bid seems better in many respects." Is that in conflict with what Dr. Cardwell had told you on the 15th of May?

A That may be the reason I called on the 15th because I wanted to make sure how he wanted his money, the money was available.

Q But on the day that you called him, Mr. Anderson, he wrote the letter to Mr. Bendall saying he had received the Lacey bid yesterday - - -

MR. CARTER: I object a little bit to the form of the question. Mr. Warren is assuming that the date it was written was the date of the letter. We don't concede the letter was written on that date. There was no

available postmark, so I think that has to be taken into consideration that it is an assumption that the letter was written before or on the 15th, the date of the conference with Mr. Anderson.

BY MR. WARREN:

Q Mr. Anderson, I will ask you again, if the negotiations during this time were still in progress in_so_far as telephone calls to Dr. Cardwell?

A Yes.

Q Or as to conversations with Steve Bendall as to how to pay the money?

A Yes.

Q Mr. Bendall informed you constantly that he had no authority to bind Dr. Cardwell?

A I never raised the question.

Q Did you question the fact that Mr. Bendall had the authority to bind Dr. Cardwell?

A I didn't question his authority.

Q You never seen anything in writing giving Mr. Bendall authority to bind Dr. Cardwell or have you?

[11]

A I don't think I have seen anything. Mr. Bendall came to the office and said, "The deal is off."

Q Did you have any other telephone conversation with Dr. Cardwell?

A I don't think so, Mr. Warren. I really don't know. I talked to his lawyer and on occasions I talked to Dr.

Cardwell, I think twice.

Q Do you recall having another conversation or having a conversation with Mr. Dillon by telephone?

A Yes, I think I called.

Q What date was that?

A I can't say.

Q Could you approximate?

A No, it was long about the time all this transaction was going on, but I couldn't tell you what date.

Q What was the nature of the conversation you had with Mr. Dillon?

A We were talking about this transaction.

Q And?

A On one of them, I recall he told me, I asked if he was going to draw the deeds and he said, "You go ahead and draw the deeds, you know the Virginia law, send it out here and I will get it signed."

Q Do you recall when that was?

A I think that was July 5th.

Q Now, Mr. Anderson, were you delivered on July 2nd a copy of a letter written by T. Ryland Dodson written to Mr. John R. Bendall or were you delivered a copy?

* * * *

[12]

Q Were you aware when you talked to Dillon July 5th, according to your recollection, that an offer had been

made of $300,000.00 for this real estate?

A I don't know the date I heard it, Mr. Warren. I knew it sometime later on when negotiations was going on. Somebody told me Ryland Dodson had gone to Sacramento.

Q Did you know prior to your conversation with Mr. Dillon July 5th that an offer had been made?

A Mr. Warren, I can't say what date it was. Ryland Dodson had made a trip to California. I don't know when the amount came in.

Q Did you know that prior to the time you talked to Dillon on July 15th?

A I really don't know or say at what day somebody told me it was $300,000.00. I really can't sit here and say I got this knowledge on X day. I heard it from somebody. I don't know that I ever officially knew it took place.

Q Do you have any writing in your file at any point, at anytime giving anyone the authority to sell this land?

A The authority to sell it?

Q Yes.

A No.

Q Or the authority to close the transaction without Dr. Cardwell's consent?

A Would you restate the question?

* * * *

[15]

Q I am not questioning you concerning your conversations with Mr. Lacey. That part we should forget at this particular time, but I am questioning you, do you recall any additional conversations you had with Steve Bendall in regard to this matter which you have not related to us?

A Mr. Bendall stopped in my office on numerous occasions with reference to this matter. As I told you already, I was under the impression he had sold the property to Mr. Lacey and that it was a matter of how to pay the money. My conversations with the doctor were with reference to the way the money would be paid. I still thought the transaction was completed. Perhaps you would like to know this. Somewhere along the line Mr. Bendall talked to Dr. Cardwell and I think the date would be along about July 4th, because it was a holiday and he called me at home

[16]

with reference to the matter. He called me that night and said he had just had a lengthy conversation with Dr. Cardwell and everything was worked out and, "We will call Mr. Dillon tomorrow and get the final papers and stuff set up," and that is the conversation I had with Mr. Dillon and was told to draw the papers according to Virginia law.

Q Did you ever draw the deed?

A I did the title examination. I gave the information to the secretary to start, but don't believe it was ever typed.

Q Did you receive a telephone call from Mr. Dillon later on that day?

A Yes.

Q It was at that time, I believe, he said to hold things up, he wanted to talk to Mr. Bendall?

* * * *

[18]

The witness, MELVIN G. LACEY, having been first duly sworn, deposed and stated as follows:

DIRECT EXAMINATION

BY MR. WARREN:

Q What is your name, please?

A Melvin G. Lacey.

Q Mr. Lacey, you are the plaintiff involved in this proceeding? Mr. Lacey, were you acting in your own behalf throughout this transaction in buying the property?

A Yes.

Q No one else had anything to do with it other than you?

A No.

Q I am specifically referring to Mr. Fred Leggett and Mr. Larry Miller?

A No.

[19]

Q You had not discussed the purchase of this property with them?

A I discussed it with them.

Q What was the nature of your discussions?

A They had agreed to buy some from me as soon as I bought it.

Q Do you have available to you $250,000.00, Mr. Lacey, for the purpose of paying the purchase price of this land?

MR. CARTER: I think this question is improper, I object. I object to that question. I think you will have to ask, if at the time he was in a position to purchase the property for cash?

BY MR. WARREN:

Q Were you in a position at that time purchase the property?

A Yes.

Q Where was the money coming from?

A I had made arrangements to borrow all except what I had sold.

Q With whom?

A I had pre-sold - - -

Q You had made arrangements with whom?

A I deal with First National Bank of Danville and First National Bank of Martinsville.

Q With whom had you made arrangements?

A It would have been the First National Bank of Danville and an individual at, do you want his name?

Q Yes.

A Gilmer Reynolds at Callands was financing my part.

Q You had made no arrangement to have this financed by Mr. Leggett or Mr. Miller, either one or both?

A The part that they were going to buy, they were going to pay cash.

Q What part were they going to buy?

[20]

A 173 acres on the right going toward Chatham.

* * * *

Q Have you anything in your file at any point signed by Dr. Cardwell addressed to you or anybody?

A I don't have a file. My attorney has one.

Q You heard Mr. Anderson just now go through his file. Did you ever give to Mr. Anderson anything that was signed by Dr. Cardwell or Mr. Dillon that he did not refer to?

A To my knowledge, I didn't.

* * * *

[21]

Q Who retained the services of Mr. Anderson?

A Steve Bendall.

Q Who was Mr. Anderson representing, you or Mr. Bendall?

A Mr. Bendall.

Q Mr. Anderson also happens to be counsel for Mr. Fred Leggett and Mr. Larry Miller?

A Yes, that is right.

* * * *

[22]

Q Could you pinpoint for us as close as you could the telephone call which you believe you had sometime during the month of May?

A No.

Q What was the nature of this last telephone call?

A The last call I made to him? I don't know what you mean "nature".

Q What did you talk about?

A We was talking about the land transaction.

Q Well, what was said?

A We just discussed, what more or less, who was buying it and why.

Q Who was what?

A We discussed why he wouldn't go along with the previous deal.

Q What deal is that?

A This is when I bought the property on Monday, May 7th.

Q Is that the contract we were talking about?

A Yes.

Q And you were talking about why he couldn't go through with it, is that correct?

A Yes.

Q What did he tell you, why he couldn't go through?

A He didn't seem to want to talk much about it.

[23]

Q And what did he say?

A I don't recall the conversation.

Q You don't recall anything at all about it, Mr. Lacey?

A Well, I told you what I recall.

Q What you told us is all you remember of the conversation?

A Yes, nothing further.

Q This was sometime during the month of May?

A According to the best of my recollection.

Q So, after May let's try to pin it down a little bit. Maybe I misunderstood you, Mr. Lacey. Approximately how close, if you can, within two or three weeks, tell us when the telephone call was. You said it wasn't in March or April, that is what I am trying to find out.

A I don't know the date.

Q I suggested possibly you try to pin it down within a two or three week period, the last of May, first of June or middle of June?

A Anything I would say, would be a guess.

Q You don't want to say whether it was May or June?

MR. CARTER: The witness has said May or June is possible. He doesn't want to tell you wrong, he would be guessing.

BY MR. WARREN:

Q All right, you just do not remember. In any conversation you ever had with Dr. Cardwell, did he agree to

sell you this property?

A Yes.

Q When?

A Could I refer back to my letters? It was approximately, this letter is dated April 18th. I would say it was approximately April 14th that I talked to Dr. Cardwell and that was after I had received his letter saying he would sell it for $200,000.00 and as soon as I received the letter I called him and I told him

[24]

that and talked to him and we had a nice conversation. I called him back, I asked him to give me two or three days to get the money.

Q This was about April 14th?

A Yes, about the middle of April I asked him to give me time to come up with the money. When I called him back that is when he told me he had turned it over to Mr. Bendall and he told me that night on the telephone.

Q So, this was sometime during the first two weeks of April?

A Yes.

Q But the contract signed with Mr. Bendall was not until May 25th, I understood?

A Yes.

Q At any other time, did he agree to sell you this property?

A Except for the fact that when I went to see Mr. Bendall and he said he had it in hand.

Q I said, did Dr. Cardwell ever agree to sell you this

property?

A No.

* * * *

EXCERPTS FROM DEPOSITIONS TAKEN
JANUARY 18, 1974

[4]

DEPOSITION OF

JOHN L. CARDWELL, defendant herein, called as a witness by the plaintiff, being first duly sworn by the Notary Public to tell the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION

By CHARLES E. CARTER, Esq., counsel on behalf of the plaintiff:

Q Would you state your full name, please, sir?

A John L. Cardwell.

Q Hold old are you?

A Sixty-nine.

Q What is your occupation or profession?

A Physician.

* * * *

[5]

Q Now, are you related to the Bendall family?

A In a Virginia sort of way, sort of second cousin.

Q Now, Doctor, I believe sometime during the latter part of 1972 Mr. Bendall of the real estate firm of John R. Bendall and Company contacted you with reference to the possible

sale of a farm that you own an interest in near Glass, Virginia; is that correct?

A Yes.

Q What is the approximate size of this farm, Doctor?

A I think it's about two hundred ninety acres or somewhere close to that.

Q Now, you have been served in this action with the legal papers. Is the farm substantially described correctly in the petition for attachment which was served upon you?

A I don't understand the terms.

Q All right, sir. Who owns the farm?

A I own it with my sister, a half interest with my sister.

Q What is your sister's name?

A Annie C. Gosney.

Q And I believe you hold the power of attorney authorizing her to act on it?

A Yes.

Q Authorizing you to act on her behalf?

A Yes.

Q In all of the negotiations and actions which you took

[6]

with reference to the property, were you at all times acting as attorney in fact for your sister as well as for yourself?

A I was.

* * * *

[7]

MR. CARTER: Q Doctor, this letter makes reference to a proposed trip to Hawaii. Did you make that trip?

A I did.

Q When were you in Hawaii?

A The month of May.

Q Do you recall your departure and your return date to

[8]

Sacramento, August 8th?

A May 1 departure and return the last day of May, I think. I can't be sure. One day or the other.

* * * *

[9]

Q I hand you Stipulation Exhibit 4, a copy of a letter from Cardwell to Bendall dated April 23, 1973. Did you write this letter?

A I did.

Q And I believe then that in that letter you tentatively agree to an auction?

A Yes.

Q And you authorize sale before auction for the sum of $250,000?

* * * *

[10]

THE WITNESS: With the right to refuse any private offer, I did.

MR. CARTER: Q What was the purpose of asking of Mr. Bendall whether you would have the right to refuse in the sentence "May I reserve the right to refuse a private offer if I so desire"?

A Mr. Warren, do I have to explain to him why? I mean, to Mr. Carter.

* * * *

THE WITNESS: I wanted to retain the right to select who I sold the farm to, and I also wanted to reserve more time to have time to consider whether this was a proper offer and a proper time to sell the farm.

* * * *

[12]

Q Now, Doctor, I hand you Stipulation Exhibit 5 which is an alleged contract dated May 7, 1973, between Melvin G. Lacey, Dr. John L. Cardwell and John R. Bendall and Company. And, Doctor, I will say for the record that though we may call this contract or offer, that I will at all times mean alleged contract so that please don't construe what I say as being in any manner to trap you, that we will take it that we are referring to it as an alleged contract at all times.

And would you examine that?

A I don't ever recall seeing this before.

Q Are you stating for the record that you have never seen that?

A I don't think so. I say to the best of my recollection I haven't.

Q To your best recollection have you ever had any knowledge [13]

of this instrument by telephone, orally or otherwise?

A This doesn't look like any contract that I have ever seen.

Q Now, I hand you Stipulation Exhibit 6, an alleged contract between Lacey and Cardwell dated May 10, 1973.

MR. WARREN: This is Stipulation Exhibit 6?

MR. CARTER: Exhibit 6.

THE WITNESS: This is the same, yes.

MR. CARTER: Q What was your first knowledge of the execution of this agreement by Lacey and Bendall?

A Oh, at sometime during the first part of May when I was in Honolulu I received two offers in the mail. I don't know the date. I would say in the first ten days probably or somewhere around there.

Q Did you receive the two offers in the same envelope or at different times?

A Same envelope.

Q Did you have any knowledge of the transmittal of this agreement before its receipt by you in Honolulu?

A No, not that I can recall.

Q Do you recall receiving a telephone call in Honolulu from Mr. William Anderson of Anderson and Anderson on or about May the 11th, 1973?

A I did.

Q What was the nature of that telephone call?

A It was very lengthy.

Q Well, what did Mr. Anderson say?

A Mr. Anderson asked me if I had received this contract

[14]

and I said I had. I had received this and I had also received the one from White and Hawker, and he said, "What is your reaction?" And I said, "I find this is rather insulting." And he said, "Well, if you don't accept our contract or don't give us a chance to meet the terms of the other contract, you are going to be subject to litigation."

Q Did he tell you at that time who his principals were?

A Yes.

Q And who did he say his principals were?

A He said that Mr. Lacey's name is on the contract, but not to be worried about his reputation, that the man in back of the deal was a multimillionaire in Danville. And he asked me if I had been to Danville lately and if I knew anything about it. And he said this man is worth fourteen million dollars and he owns the biggest store in Danville and he wants that farm.

Q Did he give you the name of this man?

A I think he said Leggett or Liggott or something of this sort.

Q Did the name mean anything to you?

A No, sir, it did not. I am only sure about it because he told me that he was the owner of a big store there and was extremely wealthy.

Q No, I hand you -- before we go on to that, what if anything did you tell Mr. Anderson with reference to meeting any offer from other people, specifically from Hawker and White?

[15]

A I told Mr. Anderson that I was totally inexperienced in any real estate deals and I was at a definite disadvantage. I had received two offers with a deadline on them. I was not in contact with my attorney. I was not in contact with my attorney where I could get any advice and I didn't, I was not going to make up my mind any time soon until I could have a little more time.

Q All right. So now, Doctor, you received you say two contracts in the same envelope. I take it the other was one from Hawker and White?

A Yes.

Q That we will hereafter refer to just as Hawker, if that's agreeable to you.

A All right.

Q Did you receive a forwarding letter with these two contracts?

A I don't recall.

Q Do you have access to your file so that you could examine it and let us know whether or not you have a

forwarding letter?

A Well, I have been through this file very carefully many times in the last two, three weeks and I don't remember seeing any letter. Who would the letter be from?

Q Who did you receive the two contracts from, Doctor?

A I think they came from Bendall.

Q Well, you say they both came in the same envelope?

A Yes.

* * * *

[16]

Q Doctor, I hand you Stipulation Exhibit 7, an alleged contract between Bendall and Lacey dated May 10, 1973. When did that contract first come to your knowledge?

A I don't think I have ever seen this.

Q It's your best recollection then that you have never seen this agreement?

A No, I saw it today. I'm sorry. I mean I never received it.

Q Did you have knowledge of this agreement?

[17]

A No.

Q Through your conversation with Mr. Anderson on or about May 11, 1973 or thereafter?

A I did not.

* * * *

[21]

Q Do you remember the content?

A The only letter that I can remember writing to Bendall when I was in Honolulu was asking him to please call off everybody and let me alone and I was without legal counsel and I didn't want to be bothered any more until I got back to Sacramento when I could talk to my attorney. That's all. I didn't discuss any business.

Q Did you know or did you read these two contracts you received, the one, the alleged contract of May 10 between Lacey, Bendall and Cardwell and the alleged contract of May 10 between or offer, the Hawker and White? Did you read both of these when you received them?

A I did, yes.

Q Were you aware of the fact from reading them that Mr. Bendall was apparently holding $10,000 good faith deposit for Mr. Lacey?

A I was.

Q Now, the other contract I believe makes reference to a $12,500 good faith deposit delivered to John R. Bendall and Company by Hawker and White. Were you aware that he was apparently holding that $12,500?

A I was.

Q Was the fact that you had received an offer from Hawker and White communicated by you at any time while you were in Hawaii, either by you or through your agent, to your knowledge to Lacey or Lacey's attorney Mr. Anderson?

[22]

A Yes, I mentioned earlier when I talked, didn't I mention that when I talked to Anderson that I told him I had received two contracts?

Q You state you talked to Mr. Anderson. Going back in your memory now, I'm not trying to lead you into a trap, but Mr. Anderson's records indicate this telephone conversation took place May the 11th of 1973. And I take it at that time that the mail service would not have transmitted an instrument signed May 10th all the way to Hawaii.

A Well, I told you I wasn't sure about these dates. But the only thing I am sure of is I received both contracts the same time.

* * * *

[24]

Q I hand you Stipulation Exhibit Number 9, a letter with attachments dated June 6, 1973, from Cardwell to Bendall. Did you write this letter?

A I did.

Q And when you posted that letter, did it have appended to it the two pages which are my appended pages 3 and 4, the fourth page containing the signature of Francis Dillon

[25]

of Dillon and Cavanaugh?

A It did.

Q Was this letter written from Carlifornia or Hawaii?

A California.

Q Now, that makes reference to the sales contract for the farm. Now, the sales contract with who?

A With anyone.

* * * *

[30]

Q Then I take it you are denying under oath that you advised Mr. Bendall that you were accepting the terms of the Lacey offer as modified by the letter of June 6, 1973, with the enclosure appended thereto?

A I deny that I ever authorized the sale of the farm to Lacey at any time.

* * * *

[32]

MR. CARTER: Q I hand you Stipulation Exhibit Number 22, a letter from Bendall to Lacey dated July 19, 1973. Was this written as your agent and as agent for your sister and with your authority?

A Yes.

* * * *

[3]

DEPOSITION OF

FRANCIS B. DILLON, called as a witness by the defendants, being first duly sworn by the Norary Public to tell the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION

By CHARLES R. WARREN JR., Esq., counsel on behalf of the defendants:

Q Your name is Francis B. Dillon, and I believe you are an attorney practicing law in Sacramento, California, are you not?

A That is correct.

Q How old are you, Mr. Dillon?

A Fifty-two.

Q How long have you been engaged in the practice of law?

A Since 1951, January.

Q Do you have any specialty, special field in which you deal? Not necessarily to the exclusion of all other, but in which you work primarily?

A Yes.

Q What field is that?

A Real property.

* * * *

[4]

Q When was your first contact with Mr. Leland Cardwell in regard to this particular problem?

A June the 4th, 1973.

Q Where was that contact?

A With doctor personally in my office.

Q June the 4th. Without going into the nature of any particular conversations that you had with Dr. Cardwell, did you write him a letter dated June the 5th, 1973?

A I did.

* * * *

[5]

The entire letter would you please mark as Defendants' Deposition Exhibit A?

(Whereupon the document last above referred to was by the reporter marked as Defendants' Deposition Exhibit A for identification.)

MR. WARREN: Q I will ask you if that is the entire letter that you wrote to Dr. Cardwell, and what was the date of that letter that you wrote to Dr. Cardwell?

A This is the entire letter. It is a Xerox copy that does not have my signature on the last page. So it must have been an extra copy that I sent to Dr. Cardwell. But in any event, it was dictated and mailed on that date, June 5, 1973.

Q Mr. Dillon, I note that in the very first paragraph of this letter you state that this note will supplement office conference in regard to sale of acreage that you reviewed generally the proposals -- the word proposals is in the plural -- heretofore submitted to you by the realtor.

How many proposals were shown to you?

A Two.

* * * *

[7]

MR. WARREN: Q I believe the question, if I recall correctly, was do you recall the two contracts which you were shown at the time that you had the conference with Dr. Cardwell?

A Yes, I recall there were two proposals, correct.

Q Why was your letter written to Dr. Cardwell?

A As pointed out, to supplement an academic discussion that we had on the occasion of his visit to my office concerning not the two proposals which he had with him, but rather a discussion in the abstract as to how a willing seller should negotiate with a willing buyer. That was the

[8]

total function and purpose of Dr. Cardwell's visit to me. He had already conferred with his own counsel, Mr. Anderson, and had been referred to me by Mr. Anderson. Mr. Anderson arranged the meeting and, as I recall, he appeared on the same day if not the same afternoon that Anderson called me. I was accommodating him.

* * * *

Q I will ask you this question: Was your letter written through your conference with Dr. Cardwell to accept any offer that had been made by anyone for the purpose of land in Pittsylvania County, Virginia?

A Absolutely not.

* * * *

When were you first retained by Dr. Cardwell to handle

[9]

the legal end of this particular transaction for him here in California?

A I would estimate approximately two weeks after the first conversation.

Q Somewhere around the 20th of --

A June.

Q Of June.

A 20th, 21st, yes.

Q At any time during this period were you ever given the authority to speak for Dr. Cardwell to accept a sale of this land prior to the time that the contract with Hawker and White was accepted?

A Absolutely not. You mean prior to the actual retaining of my services on the 21st?

Q At any time were you given the authority to accept any contract or to authorize the acceptance of any contract of sale prior to the time that the contract of sale was executed with Hawker and White?

A None. No authority. As a matter of fact, I was never given any authority to bind Dr. Cardwell in any sense.

MR. WARREN: Your witness

EXAMINATION

By CHARLES E. CARTER, Esq., counsel on behalf of plaintiff:

Q You state that Dr. Cardwell employed you June 21st of 1973. What was the nature of that employment?

A Just as counsel mentioned in his questioning, from that point on I was retained to represent Dr. Cardwell in all matters concerning his Virginia property.

* * * *

[12]

Now, do you recall talking with Attorney William Anderson of Danville, Virginia, on the telephone on July the 5th of 1973?

A I recall talking to him on more than one occasion. I recall discussing the matter with him or having telephone conversations in that general area of time.

Q Well, would it help you to refresh your memory to refer to your letter of July 5, 1973, to Mr. Anderson?

A I'm sure it would. Yes.

Q All right, sir. Then July 5 was the date of your telephone conversation?

A Yes.

Q You talked not only with Mr. Anderson, but Mr. Steve Bendall who was the real estate agent that had been advising Dr. Cardwell in Danville?

A I don't recall who called me, whether it was Bendall called me or Anderson. But at the outset, one or the other, the person starting the call told me that the other one was on the line.

[13]

Q Now, do you recall Mr. Bendall advising or telling you that Dr. Cardwell had authorized him to conclude a sale, a total price of $250,000 on the terms set forth in your memo contained in your letter of July 5, 1973?

A No, I don't recall that specific. The generalities that I recall in that conversation was that he had talked to Dr. Cardwell and that an agreement had been reached, and then he was talking about some kind of a binding agreement that I referred to in that letter which later turned out to be nothing more than an offer. In any event, whatever he told me on that at that time was, Dr. Cardwell said, simply wasn't correct.

Q Yes, but regardless of what Dr. Cardwell said, how about reading line three out of the first paragraph of your letter of June 5 and tell us is that what Mr. Bendall told you?

A Line three of what paragraph?

Q Paragraph one.

A That starts "In your office."

Q Well, beginning with Mr. Bendall advised me.

A That would be line five: Mr. Bendall advised me that Dr. Cardwell had in turn authorized him to conclude a sale at a total price of $250,000 to your client, Mr. Lacey, upon terms generally set forth in my memo to Dr. Cardwell -- June 5th -- a portion of which I understand was forwarded to Mr. Bendall by Dr. Cardwell.

Q In that sentence do you accurately reflect your recollection of what Mr. Bendall told you?

[14]

A Yes.

Q Now, after you talked with Mr. Anderson, did you in fact authorize Mr. Anderson to proceed with a drafting of the deed and the instruments for Dr. Cardwell's signature?

A I was relying, in reliance upon the veracity of Bendall's statement and without discussing the matter with Dr. Cardwell, that would be correct, yes.

Q If Bendall was telling the truth, then you felt you had the authorization as his attorney to authorize Mr. Anderson to proceed with preparing the deed and the security instruments?

A With preparing documents for our review, that's correct.

Q Assuming that Mr. Bendall was telling the truth, you considered that an agreement had been reached?

A When we had the initial conversation, yes. But the sole purpose of writing the letter of July 5th was to clear the record of my misunderstanding based upon Bendall's affirmation to me that Cardwell had done that.

Q After you talked to Mr. Anderson?

A And Bendall.

Q And Mr. Bendall in Danville on July 5, you received Mr. T. Ryland Dodson's letter indicating that his client was willing, Hawker and White were willing to make an offer of $300,000?

A That must have been received after that date.

Q It was not after that date, but on the same day.

A I didn't receive it that same day, did I? I don't recall that.

[15]

Q Would it help you to refresh your memory by reading your letter of July 5th?

A Yes.

Q So chronologically on the morning of July 5, you received a letter from Mr. Bendall and Mr. Anderson in which Mr. Bendall stated in effect that Dr. Cardwell had accepted Lacey's offer?

A Uh-huh.

Q Number one. Then after that that same day you received a letter that was the offer of Mr. Lacey to purchase for $250,000, correct?

A Right.

Q After that, that same day, you received a letter from Mr. T. Ryland Dodson indicating that his clients Hawker and White would pay $300,000?

A That's the document I am referring to in my letter.

Q So that was step number two on July 5, correct?

A Correct.

Q And step number three, you called Mr. Anderson after finding out about this $300,000 offer and asked him to cancel any work he was doing?

A That's correct.

Q And step number four was to write this letter of July 5, 1973, saying in effect it was all a mistake, that there really hadn't been a meeting of the minds between Dr. Cardwell and Mr. Lacey and Mr. Anderson?

A You left out a step. And that was my call to Dr. Cardwell after I talked to Anderson and Bendall at which time Cardwell told me that he had not accepted such an offer. And I

[16]

believed Dr. Cardwell and I had the feeling, and I am still not entirely sure what happened, but I have the feeling that Bendall wanted to get this thing sold to whoever he was selling it at the $250,000 figure and called me to get us committed and without some confirmation from Dr. Cardwell knowing that a higher figure was coming in. Now, at a subsequent conversation with Bendall I made that clear to him that I wondered what in the heck was going on back there. If there were $300,000 offers floating around, why was he falsely telling me that Cardwell had accepted a $250,000 one.

Q Mr. Bendall was also telling you that he thought that he as Dr. Cardwell's agent had committed Dr. Cardwell to sell this property to Mr. Lacey at $250,000?

A He mentioned that. And when I asked him under what documentation we were discussing it, whether or not you had to have a written authority in Virginia -- I know you do in this state -- and he gave me something about a May agreement. The only two agreements that he had was one, a listing agreement we referred to here authorizing

him to offer it for sale and B, an offer to purchase signed by someone which was a three-party agreement I am talking about that had been signed by him as a real estate broker and by whoever the offeror was, and had contained provisions for the signature for Dr. and Mrs. Cardwell. And I told him I didn't want to berate him because he wasn't a lawyer, but with Anderson on the line I told him that his position was ludicrous.

Q So really there is another step, isn't there? You also [17]

received after this early morning conversation of July 5 with Mr. Anderson a copy of this agreement of May 7, 1973, which you interpreted as being not binding on Dr. Cardwell under Virginia law?

A Absolutely. It wasn't executed by him, but that was sent later than this.

Q July 5, 1973. Would it help you to refresh your memory to read the last paragraph on the first page with reference to that contract of May 7? Directing your attention to the last paragraph of the first page, Mr. Dillon.

A Oh, the first page, forgive me. That's right. That was the document he was talking about on the telephone, referring to on the telephone.

Q So your legal opinion and your decision that you should call Mr. Anderson back and tell him that it was all a mistake, that you believed Dr. Cardwell --

A Right.

Q -- came after what you concede was instructions to Mr. Anderson to proceed?

A No question of that.

Q All right, sir. And after that you received the alleged contract May 7 in the morning mail on July 5?

A Right.

Q And you received an offer from Hawker and White in the amount of $300,000 in the morning's mail on July 5?

A That's correct.

Q And you talked with Dr. Cardwell?

A Correct.

[18]

Q on the morning of July 5?

A Sometime at that time.

Q And after these three events, you then took steps to tell Mr. Anderson that it was all a mistake, there was no deal?

A Absolutely, because I thought then and I think now that I was duped by Bendall. I believe Dr. Cardwell and I still believe him.

* * * *

Q Now, during your first conversation with Mr. Anderson, you stated that you authorized the drawing of the supporting documents?

A When was this?

Q July 5, the first conversation on July 5?

[19]

A The telephone call to me was an announcement that Dr. Cardwell had agreed to sell.

Q In accordance with the June 5 memo which had been sent to Mr. Bendall by Dr. Cardwell with Dr. Cardwell's letter of June 6th?

A I don't recall that much refinement. I think I just said the two hundred fifty figure on terms.

Q You testified -- I don't believe you testified, I believe you stated in your letter of July 5, 1973, that those terms were generally set forth in your memo of June 5, 1973?

A Isn't that exactly just what I said?

Q I didn't think so. Perhaps it was.

A That's what I meant to say, that he didn't refer to the specific item. He referred to those that were generally set forth in my letter.

Q And it was that consideration or in accordance with the terms of that letter that you told him to proceed?

A Well, I told him to go ahead and draft the papers if that was the case and get them out here.

Q Did you review with him the letter of June 5?

A No, I don't think we went into it that deeply. Maybe we did, but I am not certain. My recollection is that we just discussed generally what the terms were.

Q Now, you were aware of the fact from your conversations both with Dr. Cardwell and Mr. Bendall that at least

Mr. Bendall thought that he was contractually committed to Lacey?

A That's true.

* * * *