due attention to the matter of the contract on the part of the tutor and tutrix. This testimony consists of the whole record of the case in which the fee is claimed to have been earned, and the statements of Mr. Benedict and Prof. Denis. One of these gentlemen fixes the amount of a reasonable fee for Mr. Semmes and Mr. Goldthwaite, each, at 5 per cent. of the recovery; the other, at 10 per cent. Mr. Benedict does not seem to have had his attention particularly called to the fact that the fee was necessarily contingent. There has therefore been no case made upon the proofs which would authorize a court of equity to look upon the amount of the contract compensation as inequitable. My conclusion, therefore, is that the complainant must have a decree for 10 per cent. of the amount recovered according to the terms of the contract, as the payment shall be made in money or bonds, with the lien upon the judgment as prayed for in the bill of complaint.

GOLDTHWAITE *v.* WHITNEY.

(*Circuit Court, E. D. Louisiana.* June 6, 1892.)

No. 12,019.

ATTORNEYS—VALIDITY OF CONTINGENT FEES.

A contract had been made between an attorney at law and the intestate for a fixed fee. Subsequently, and after the death of the intestate, the attorney made a new bargain with the representatives of the estate, by which there was substituted for the fixed fee a contingent fee of 10 per cent. of the amount recovered. *Held* that, for the reasons given in the foregoing case, the second agreement was valid.

In Equity. Suit by Alfred Goldthwaite against W. W. Whitney, administrator of the succession of Myra Clark Gaines, to enforce an attorney's lien. Decree for plaintiff.

Thos. J. Semmes, for complainant.

Rouse & Grant, for defendant.

BILLINGS, District Judge. The facts in this case are the same as in the preceding, (50 Fed. Rep. 666,) except that Mr. Goldthwaite had been employed during the lifetime of the intestate, and had a contract for an absolute sum, $50,000, for which the contingent fee of 10 per cent. was substituted by a contract made by him and the tutor and tutrix of the heirs after the death of Mrs. Gaines. I think the same rules of law govern the two cases as to the validity of the contract, and that there must be the same judgment in this as in the preceding case.

UNITED STATES v. BRADDOCK.

(Circuit Court, S. D. California. May 23, 1892.)

No. 210.

1. PUBLIC LANDS—TIMBER ENTRIES—REFUSAL OF CERTIFICATE.
In a suit by the government to restrain defendant from cutting timber from a quarter section of public land, defendant filed a cross bill alleging that he had made application to purchase the land in question under the stone and timber act, (20 St. p. 89,) and complied with all the statutory requirements in that respect; but upon tender of the purchase money the local land officers refused the tender, and declined to issue a certificate of entry and purchase. *Held*, that defendant had acquired no vested interest in the land, and the government was entitled to withdraw it from sale. *The Yosemite Valley Case*, 15 Wall. 77, followed.

2. SAME—INJUNCTION—SUFFICIENCY OF CROSS BILL.
The cross bill having failed to show that the cross complainant was prevented from entering the land by reason of any fault on the part of the land officers, the rule that where one offers to do anything upon which the acquisition of a right depends, and is prevented by the fault of the other side, had no application to the case. An allegation that such officers combined to deprive cross complainant of the land, without stating the acts done or omitted in pursuance of the combination, was insufficient to make the rule applicable.

In Equity. Suit by the United States against Walter Braddock to restrain defendant from cutting timber on public land. Cross bill by defendant, setting up an application to purchase the land and compliance with statutory requirements, and alleging a wrongful refusal of the land officers to issue a certificate of entry and purchase. Heard on demurrer to the cross bill. Demurrer sustained.

M. T. Allen, U. S. Atty.

H. C. Dillon, for defendant.

Ross, District Judge. This suit was commenced to obtain an injunction restraining the defendant from cutting timber from a certain quarter section of timber land situated in township 15 S., range 25 E., Mount Diablo base and meridian, of which the bill alleges the government is, and since the acquisition of California has been, the owner in fee. The defendant filed an answer to the bill, and also a cross bill, to which the government interposed a demurrer, now for disposition. The cross bill, in effect, alleges that on the 5th day of October, 1885, the land in question was surveyed unappropriated timber land of the United States, and open to sale under the terms and provisions of the act of congress of June 3, 1878, (20 St. p. 89,) known as the "Timber and Stone Act;" that on that day cross complainant had the necessary qualifications to enter and purchase the land, and did then, pursuant to law and the regulations of the land department, make application to purchase it, by presenting to the register of the land office of the district in which the land is situate his affidavit, in duplicate, setting forth the statutory requirements, and which was in all things true; that upon the filing of the affidavit the register posted a notice of the application to purchase in the land office for the period of 60 days, and furnished the cross complainant, as such applicant, a copy thereof for publication in the newspaper published nearest the location of the land, which notice the applicant caused to be so published continuously for 60 days; that