

BRISK SKIRMISH BEFORE DE HAVEN

Indictment of Senator Mitchell Attacked.

ILLEGAL, SAYS THE DEFENSE

District Attorney Contends Document Is Valid.

COURT WILL SOON DECIDE

Argument That Indictment Does Not Charge Mitchell With Being Senator When Alleged Crime Was Committed.

CONTENTIONS OF PROSECUTION AND DEFENSE.

THE CRIME ALLEGED IN THE INDICTMENT.

That Senator Mitchell entered into an agreement with Frederick A. Kribbs and A. T. Tanner, by which the firm of Mitchell & Tanner were to expedite certain claims in the possession of Kribbs then pending in the General Land Office, which claims had been held up for investigation owing to irregularities; that for every claim passed through the office of Mitchell & Tanner, the latter were to receive a fee, Senator Mitchell working in Washington and Tanner in Portland; that fees were paid and the service rendered contrary to the Federal statutes governing the conduct of public officials of the Government.

THE DEFENSE CONTENDS BY DEMURRER.

That the indictment is not definite and certain, in that it does not allege John H. Mitchell to have been a Senator at the time of the commission of the crime, an allegation made necessary by the fact that the indictment made no charge that he was a Senator at the time of the crime, but that it does set out in particular terms the special claims for the expedition of which fees were alleged to have been paid; that the description of the claims is vague and indistinct and technical, and that the indictment through its uncertainty does not form a bar to further prosecution upon the same charge in the case of trial.

DISTRICT ATTORNEY HENEY CONTENDS.

That the indictment is definite and certain; that by recitation of the allegations it is made that John H. Mitchell was a Senator of the United States at the time of the alleged crime; that the charges set out in general are afterwards particularized in a list given which makes definite the allegations as to which claims are involved; that the allegations used in the description of the claims in the indictment are usual and well known and allowable; that the indictment is well founded and contains no defect set out in the demurrer.

Under fire before Judge De Haven yesterday morning was the indictment accusing John H. Mitchell of accepting a fee for services performed while United States Senator. Severe in their denunciations of the document which sets forth the Government case were the attorneys for the defense. Serene in his denial that flaws could be picked in line after line of the Government's accusations was United States District Attorney Henev. Grave, dignified and attentive, while the attorneys unmasked their legal batteries, was Judge De Haven, the man who now has the power to bring the case of the United States against Senator Mitchell to a sudden termination, for a time at least, or to cause the trial to proceed to its conclusion and consequent verdict of guilty or not guilty.

Spectators crowded the courtroom to hear the attorneys for the defense. Judge A. S. Bennett, The Dalles, and ex-Senator John M. Thurston, of Nebraska, attempt to riddle the indictment which accuses their client, and to listen to Mr. Henev's defense of the document.

The alleged crime for which the Government is endeavoring to place Senator Mitchell on trial consists in accepting a fee from Frederick A. Kribbs for expediting claims before the General Land Office while a United States Senator. This is contrary to the Federal statutes. The issue yesterday was the legality of the indictment itself, and the principal arguments of the defense were that the document was loosely drawn, that if tried on its indefinite allegations Senator Mitchell might be again placed in jeopardy, and above all, that the indictment did not even allege that Mr. Mitchell was a Senator at the time of the commission of the crime charged.

One of the essential allegations of the Government," thundered Judge Bennett, "is that Mitchell took a fee from Kribbs. That was not a crime, for he had a right to do it. Such an act only became a crime if it was done in violation of a Federal statute. Alone the taking of money as a fee is not a crime unless it is taken for services performed before a department while a Senator, in a case in which the Government is interested. There is not the slightest indication that

Senator Mitchell knew of the action of the firm or knew of the work done.

"It is a part of the Government's duty to point out the particular instance in which the fee was taken. This has not been done. The land has not been definitely described. The use of abbreviations is not sufficient. They could be understood in the Land Office, but not by an ordinary individual."

Mr. Henev's Answer.

Mr. Henev very calmly answered the most vital argument of the defense, that the indictment did not accuse Mr. Mitchell of being a Senator at the time of the commission of the alleged crime. He pointed out that in the first statement in the indictment it had not been charged directly that the defendant was a Senator of the United States, but that later it had been alleged that the crime had been committed to be committed and had been consummated while he was a Senator and that the allegation to that effect had been clearly and definitely made.

"It is not stated," said Mr. Henev, "that he was a Senator, but it is alleged that he was. It is an agreement, it is alleged that he was elected Senator, and that he did it while he was a Senator. It may also be argued and supported by law that the court could take judicial knowledge that the defendant was a Senator.

"The indictment is not only definite and certain, but it gives gratuitous information to the defendant. The allegation of the indictment is that Senator Mitchell agreed to perform the services for Kribbs, knowing that the United States was interested; that he did it while United States Senator, and that he received money for what he did."

Ex-Senator Thurston attacked that indictment on technical grounds. "I insist," he said, "that the indictment as it stands throws the defendant into great danger, as it proves no bar to further proceedings. If he were acquitted, it would give no surety that he could not be indicted for the same offense by another jury. It is not an indictment charging in any way the commission of acts necessary to constitute the crime alleged."

"I challenge the court and counsel to show that one of these claims set out were pending before the land office at the time alleged."

Taken Under Adversity.

At the conclusion of the arguments, Judge De Haven took the matter under consideration, stating that he did not know just how long it would require for him to arrive at a conclusion, but that he would consider both the written arguments interposed with the demurrer and the oral statements made in court, heading down his decision at his earliest opportunity. The court was then adjourned until this morning at 10 o'clock.

New Courtroom Is Crowded.

Standing room was at a premium in the new courtroom yesterday when United States Marshal Charles J. Reed gave the signal that brought the members of the bar and the spectators to their feet upon the entrance of Judge De Haven to the courtroom. The benches outside the railing the idly curious filled the seats, the aisles and the corners until no additional man could pass through the doors into the room. Inside the bar, the members of the bar of the city filled the chairs allotted, the jury box and the available corners and open spaces of the courtroom.

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Judge Bennett sat at the end of the counsel's table, beside ex-Senator Thurston, while the other members of the bar sat further along the table, surrounded by a mass of papers and faced by a goodly array of law books. Joseph Simon, Cyrus A. DeLoe, H. S. Hixon, and The Dalles, Judge H. S. Halloway, Judge Thomas O'Day, S. B. Huston and many other of the leading attorneys of the city and the state were grouped around the counsel's table.

After the court had been convened and the attorneys had made their minor orders, in different cases brought to his attention, the demurrer in the Mitchell case was announced as ready for consideration. Judge Bennett stated that he had reviewed the indictment, and that he was ready to submit it to the court without argument, though in the last few days he had found there seemed to be some misstatements in the indictment.

Judge Asks for Arguments.

Judge De Haven replied that he would like to hear a short statement of the grounds for demurrer alleged by the defense. He would in addition examine the indictment and the demurrer, and then submit an oral statement of the defense and the Government as to their respective positions.

Mr. Bennett then began his argument in which he reviewed the indictment and the demurrer and attempted to show why the indictment should not be considered legal and binding. He said in the course of his remarks:

"The indictment is a long one of seven counts, the first five of which relate to Senator Mitchell's receiving money for services alleged to have been rendered before the Interior Department in Washington, while holding office as Senator of the United States. It alleges that Frederick A. Kribbs, who is represented to have retained Senator Mitchell to do work for him, was acting fraudulently in the matter, that he had a large number of claims pending before the General Land Office at the time the crime is alleged to have been committed by Senator Mitchell. It is alleged that Senator Mitchell's services had been contracted for, knowing that he would transact business before the department and attempt to show why the indictment should not be considered legal and binding. He said in the course of his remarks:

Argues Indictment Is Not Certain.

"One ground of the demurrer in this case is that the indictment is not certain as to the particular transactions pending

(Continued on Page 14.)

CALIFORNIANS VISIT THE FAIR

Promotion Committee Arrives on Special Train From San Francisco.

GOOD WORDS FOR OREGON

Men From the Golden State Willing and Anxious to Join With Their Brothers of the North for Common Benefit.

Members of the California Promotion Committee took complete possession of the Exposition grounds, at 9 o'clock in the morning, to the close of the brilliant reception held in their honor in the evening, the very atmosphere was charged with California enthusiasm.

The committee's special pulled into the Union Station at 7 o'clock, and the tired travelers poured from every door, anxious to straighten out the kinks resulting from 24 hours of travel.

There were 125 representatives from the Golden State, and they made a great showing. The train was slightly dusty from its long trip, but gave every evidence of being one of the most comfortable conveyances that ever rolled into the Portland yards.

Show Great Enthusiasm.

The Californians had their breakfast at the Hotel Portland, and started for the Exposition grounds, at 9 o'clock in the morning, to the close of the brilliant reception held in their honor in the evening, the very atmosphere was charged with California enthusiasm.

Introduces President Goode.

In introducing President Goode to the Californians, Mr. Sbarboro said:

"On behalf of the members of the Promotion Committee of California, I sincerely thank you for your kind reception and encouraging remarks. San Francisco sends, through our committee, a greeting to Portland, and California sends her salutations to the State of Oregon. Our committee is doing a grand work for California and for the entire Pacific Coast. Millions of books, pamphlets and literature showing the actual resources of our state without a iota of exaggeration, have been issued throughout the United States and Europe. They are now being read by several million people, all anxious to learn about California. This work is bound to bring great results, not only to our own state, but to the states of the entire Pacific.

Speeches by Many.

President Goode then extended his welcome, and commented with a display of appreciation on the way California had turned out in honor of the Lewis and Clark Centennial.

William D. Wheelwright, president of the Chamber of Commerce, gave a characteristic talk, which was received with joy by the visitors. So much so, in fact, that the Administration had had considerable effort in attempting to drown out the applause that followed his remarks.

Then Rufus F. Jennings, executive officer of the Promotion Committee, made a short address. Mr. Jennings is well known to Californians, but comparatively few Portland people have ever heard him talk. His remarks were so straightforward and to the point that he won his way to the heart of every auditor. He told of a former visit to Portland, and the great improvement that was apparent since that time. He also showed how the interests of the Pacific Coast States were linked together, and that which was of benefit to California, would be of value to Oregon and Washington as well.

Mr. Jennings was followed by Charles Busch, another member of the committee, who recited an original poem in honor of the visit of the Californians to the Exposition. Mr. Busch's efforts were not in vain, for he was cheered loudly.

Vice-President Felschner followed Mr. Busch, and then came R. R. Hale, another prominent Californian, and Tom Richardson. The concluding address of the day was made by H. R. McNoble, past grand president of the Native Sons of the Golden West.

H. R. McNoble's Address.

Mr. Noble said, during the course of his speech:

"Down in California every business interest, every loyal citizen, every one who has the welfare of our state at heart recognizes that a large amount of the recent success that has come to our state in the way of internal improvements and the development of the resources thereof have been brought about by the splendid and untiring

efforts of the California Promotion Committee.

"Our interests, my friends and brothers of the North, are in the main co-ordinate with yours, and in this land of especial prosperity, which has been designated by President Roosevelt as 'The territory lying west of the West,' you in common with us have many and diversified interests, which at the present time are attracting the commercial interests of the entire civilized world.

"With our possessions in the great Pacific in front of us, a century and a quarter behind us, the auriferous cereal bearing and great fruit interests of the Pacific Coast from the Arctic Circle to Mexico with us, the opportunities of California, Washington and Oregon are practically unbounded: much of the future progress of these three great Pacific States depend upon the energy and endeavors of their public-spirited citizens. Interstate visits, such as we are enjoying with you today do much for the mutual benefit and up-building of the social and commercial interests of the Pacific Slope."

Inspect the Fair Grounds.

After the speaking was all over, the Californians sought other fields of enjoyment. They inspected the Fair grounds until noon, and then they assembled at the American Inn for luncheon. Here again, enthusiasm was the keynote, and long and loud were the praises sung to the sister state of the Pacific Coast.

The afternoon was spent in a variety of ways, according to the whims of the visitors. Some sought pleasure on the lake, in canoe and rowboat while others toured the grounds, or sought retirement in the cool precincts of an exhibit palace. Many made their headquarters at the California State building, examining the work done by the State Commissioners and other representatives.

After dinner, a fitting reception was held by the Exposition officials in the New York State building, which more than 4000 citizens and their families attended. It was late in the evening when the festivities of the day were brought to a close.

Will Visit Fair Again Today.

Today the Californians will visit the Exposition grounds during the day, and after dinner at the Hotel Portland, will attend a reception given in their honor at the Commercial Club.

"It is not true that we are here to boost California," said Secretary Edward P. Antxon, of the Promotion Committee, yesterday, at the California building. "We are here to see the Fair, and to lend all the assistance we can to make it successful. We are not here for the purpose of taking anything from Portland and Oregon, but to give them all we can. We don't want you to think that we are trying to divert people to our state while enjoying your hospitality."

Members of Party.

The following constitute the party: Edward P. Antxon, C. W. Armstrong, William M. Barge, B. Bradley, Henry Bruce, (Continued on Page 1.)

EXCLUSION LAW INJURES TRADE

Representatives of Cotton Industry Appeal to the President.

CHINA THREATENS BOYCOTT

Rigid Enforcement of Exclusion Law Against Merchants and Students Shuts Out Valuable Class. Retaliation Provoked.

WASHINGTON, June 12.—President Roosevelt held a conference today with about 20 members of the American Asiatic Association representing the cotton textile industry and the iron and steel trade of the United States. The delegation entered a formal protest against such an enforcement of the Chinese exclusion laws as might imperil the export trade of this country with China. It was pointed out that the commercial organizations of China were threatening to boycott the American merchants, especially of cotton and steel products, unless arrangements were made whereby Chinese merchants, students, literary men and travelers could enter the United States without the serious difficulty which they now encounter. The Chinese urge that members of the classes which under our exclusion laws are permitted to enter the United States are often subjected to inconveniences and humiliation by the immigration officers and they insist upon a more liberal treatment of the exempt classes of their countrymen.

The delegation was headed by John Ford, of New York, Secretary of the American Asiatic Association, who made the following address:

Great Export Trade at Stake.

Mr. President, the American Asiatic Association is an organization formed to co-operate with the Government in maintaining and defending the trade and tariff rights of the United States against the countries of Asia. Individually, the members of this delegation speak for the cotton textile industry of the United States, representing \$200,000,000 of invested capital and 520,000 wage-earners whose property and welfare are today absolutely dependent on the situation of the market for the products of that industry which has been opened in China; they speak for at least one department of the still greater iron and steel industry of the United States, which speaks for a branch of our export trade which is growing more rapidly than any other, and whose value in the current fiscal year will exceed \$200,000,000.

The occasion of this visit is to indicate your attention to the present unsatisfactory relations with the Chinese empire and the conditions which exist in that country which threaten the continuance of a profitable and highly essential part of our commerce. The United States, in consequence of the absence of a satisfactory immigration treaty between the United States and China, and by the disaffection of the mercantile class in China with what they conceive to be the unjust and oppressive operation of the rules adopted and enforced by the United States, are occupying an attitude in opposition to the principle which it has long maintained that a nation cannot plead its domestic legislation as a bar to the observance of its international obligations.

Exclusion Law Against Treaty.

It must be held to be unfortunate that these laws are at variance with treaty stipulations, which since the expiration of the treaty of 1894 are in force between the two countries. We are not here to question the competency of Congress to modify the provisions of any treaty with a foreign power, but we do question the expediency of the present exclusion laws, which are in force in the United States in dealing with their countrymen whom our law, declare entitled to visit this country.

War in the Far East.

Russia and Japan now consider choice of envoys and place of meeting. Page 2.

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