JUDGE BENNETT MAKES A PATHETIC PLEA FOR MITCHELL

(Continued From First Page.)

such as you; I have lived among you all my life, almost. I came to this country from the old Hawkeye State from which I notice a number of you came, when I was a boy, and I have lived here among you and known you for nearly 40 years, and I know your loyal hearts and I know how you feel, I think, about things of this kind, and about things that come before you generally. And you know me, not personally perhaps, but you know such as me, and knowing me you will not expect much from me; and knowing me and because I have been, as it were, a neighbor of yours here in Oregon for all these years, you will bear with me with kindness, and with all my crudities, and you will listen to me, perhaps, as you would to some neighbor who wasn't very smart, didn't claim to be very smart, but who was trying to tell you, as best he could, a story of great interest to him or to his friends.

Terms Heney's Speech Unfair.

Now, Gentlemen, you have listened for five hours to what has seemed to me one of the most unfair and disingenuous speeches that I have ever heard in a court of justice in a criminal case. Bitter, abusive, vituperative and withal full of unfairness. Now, there are two kinds of unfairness in this world, gentlemen. One is the impetuous unfairness of a person who honestly can't see but one side of the case, and that is his side, and generally that unfairness is the unfairness of an honest, though a narrow man. But there is another kind of unfairness—cunning, careful, ingenuous, deliberately planned unfairness, and it is far more dangerous than the first. I think I shall show you before I get through, gentlemen, that the argument you have just listened to belongs to that latter class.

Now, gentlemen, a few words, if I may, since the matter has been broached, about the importance of this case. It has been said to you that the case is one of vast importance, and it is. It has been said to you that the State of Oregon was on trial, and it is. But, gentlemen, when the learned attorney attempted to make you believe that you could adjudicate the honor of the State of Oregon by disgracing all its foremost citizens and pulling them down, he took upon himself a pretty hard task. He wants you—he doesn't say so—but it is the necessity of his logic, otherwise why did he say anything about it at all; he wants you to convict the defendant in this case whether he is innocent or whether he be guilty, in order that you may show to the world that a jury here in Oregon are ready to pull down your foremost statesmen.

Makes Appeal to Jurors.

Gentlemen, if these men, Senator Mitchell, and the evidence shows that Mr. Williamson is also under indictment, I don't think it goes so far as to show that Mr. Hermann is under indictment, as far as the evidence shows—if these men are the kind of men that Mr. Heney paints Senator Mitchell to be; if they are the kind of men that he paints Senator Mitchell to be; if they are men without any honest instinct, if they are all-around grafters; if they are men eaten up with their own selfishness, then, gentlemen, one of two things is true. Either the people of Oregon elect these to their highest offices because they like them, or it is true that we are such infernal dolts and donkeys that we can't tell an honest man when we see him, although we live by his side and he in the blaze of the public light for years until some one from California shall come to us and open our eyes and show us things that we, as neighbors, never could have discovered for ourselves. I say to you, I appeal to you, gentlemen, that the honor of the state and the honor of every one of us is, indeed, involved in this case. Besides all that, gentlemen, besides all that, the honor and the liberty of the old man who has lived among you for all these 30 years, and who has won for himself and for you, honor, not only in his own state but in the public halls of the Nation—his honor as well as his liberty, and the honor is the greater of the two, is on trial before you. Therefore, I agree, gentlemen, that there never has been and never will be, perhaps, in Oregon, a more important case than the one that you are called upon to try.

Case at Issue.

Now, Gentlemen, having said this much in a preliminary way, I pass to a more careful consideration of the facts in this case, and in the first place, it is well, gentlemen, at the outset to find out just what it is that we are trying. This is of the utmost importance; to find out just what it is that we are trying. Now, the learned gentleman has talked to you for five hours, and he has talked to you about everything the. Is all around and all about the case, and I venture, gentlemen, that after hearing him talk these five hours, if there is any one of you knows exactly what we are trying in this case, you haven't got it from anything he has said. You might think, gentlemen, that we were trying the matter of whether or not money was received from Benson in violation of the law; and therefore whether the defendant was guilty of that offense; no, no, that matter is not in this case, except in a remote collateral way. Then you might think we were trying the matter of whether or not money came from Burke; but that is not in issue in this case; then, again you might think, gentlemen, the learned gentleman devoted himself to more than an hour to the question of whether or not Senator Mitchell was responsible for the changing of that contract; whether he was to blame for the perjury of Tanner, and whether he was censurable or not in relation to that matter, and you might well think, from the long time that was devoted to that question, you might well come to the conclusion, gentlemen, that that was the question, or at least one of the questions, upon which the defendant was on trial; but no, that isn't the question; he is not on trial for that. Then you might say later, come down, then, to the Kribs matter, and he is on trial, perhaps, for receiving money from Kribs, for receiving his half of $200 in four years from Mr. Kribs for work in relation to land matters.

The Offense Charged.

No, gentlemen, he isn't on trial for that. That might be no offense, and if it was an offense, it isn't the offense charged in this indictment. The offense charged in this indictment, and we want you to fasten this in your minds, gentlemen, and keep it with you as we go along through the case all the time, the thing that is charged in this indictment, and upon which we are on trial is, that at the time stated in the indictment, the Kribs money was received by the defendant for services rendered in appearing before and persuading Binger Hermann to do certain things. Now, this, gentlemen, is the charge in the indictment. The state in this case, or the Government, as in all criminal cases, cuts its pound of flesh; it marks it out, and it cuts it, and by that pound of flesh it must stick; it can not take one drop of blood; it cannot take one fraction of an ounce more than that it marked out in this indictment, and the crime that is charged in this indictment is not taking money for work that Tanner may have done in the Land Department here in Oregon, before the land officers, or in getting up title, or in preparing abstracts, or in getting affidavits ready; none of these things, perhaps, were unlawful; certainly none of them were charged in this indictment; and the question for you is whether or not the Government has proved, and proved beyond a reasonable doubt, that that money was taken for the work that was done by Senator Mitchell before Binger Hermann in Washington, and that he knew that it was for that when he took it; not some other time; not some later time, but that it was for work that he did in the department in Washington, because nobody else did anything there—not in any of the departments in Washington, even, but for work that he did before Binger Hermann in relation to these matters, and that he knew that it was for that work at the time he took it. How it simplifies the case, gentlemen. How little of the argument that has been addressed to you by the learned attorney has been addressed to the principle. He didn't even tell you that that was the issue involved.

Not a word has been devoted to showing you that the money that was taken from Kribs was for work done by the defendant before Binger Hermann, at any subsequent time, in appearing before him and persuading him to do certain things. And, gentlemen, I take it that you can see the reason why this real issue has been covered up in five hours' talk upon collateral matters; in vilification of the defendant in relation to the Roberts letter, and in relation to the matter of the change of the contract; and in relation to Tanner's perjury; matters that were entirely collateral to the case—because he knew, as I will show you presently, gentlemen, he knew, and you know, if you realized what the issue was, that when their one witness, and their only witness in relation to that matter, Mr. Tanner, came upon the stand and swore that that money was not received for what the defendant did at Washington, but that it was received as a retaining fee by him for work that he was doing, out here in Oregon, when their own witness came upon the stand and testified to that fact, the case was at an end.

Their case was at an end, and all he could do would be to drag in these other matters and talk about them, and vilify the defendant, and if possible awaken a prejudice in your minds against him, by which he would supply the weakness in his evidence by the strength in his argument. Now, gentlemen, keep that in mind as we go along through the case. Keep in mind that the charge that you are trying is the charge that the defendant took this money for work done before Binger Hermann, in appearing before and persuading him to do certain things—that and nothing else. And if they fail upon that, upon nothing else can they convict. Now keep that in mind, and let us ask for a consideration of the evidence; and we will come back to that proposition more particularly again later in the case.

The Original Contract.

In the first place, let us talk about the original contract, that has been offered in evidence and which was perhaps the original source of all this trouble—the contract entered into in 1901, and which the attorney for the Government stated to you in his opening statement would show conclusively that they had deliberately planned that they should do this work, and that the defendant in the case should reap the profit of it. Now, what do we find in relation to the matter? Why, we find, gentlemen of the jury, that at a time previous to that, in 1897, when the defendant wasn't a Senator of the United States, when he was a private citizen, then he had a right to appear before the departments the same as any other private citizen, and to charge for his services the same as any other private citizen. We find that at that time a contract was executed between these parties which, for the first time, provided for the division of money earned in the departments—executed at a time when Senator Mitchell had a perfect right to make that contract. Then time goes on, and Senator Mitchell was re-elected to the office of Senator of the United States, and it becomes necessary to readjust the relations of the firm. They had been practicing here together, and Senator Mitchell, by reason of his long experience and his reputation all over the Nation, as has been said by the learned attorney, was the man that could be expected to bring the vast body of clients. Probably you know how hard it is for a comparatively young man, as Mr. Tanner was in 1897, unless he is very brilliant in some way, to get ahead in a city like this, and a man who has a reputation like Senator Mitchell had would bring probably twenty clients where Mr. Tanner would bring one. Ordinarily, in that sort of firm, gentlemen, the young man does the work, but the old man brings the business. We old fellows in the practice of law feel that, when we have worked actively for 25 or 30 years and built up our reputation, we can then lay on our oars and furnish the reputation, while the young man does the work. Oftentimes our reputation is without any just foundation. So it was in this case, because of Senator Mitchell's reputation and because of his experience and because he would be expected largely to bring the clientage to the firm, it was provided that he should have two-thirds of the fees.

That Change in Contract.

Now, then, when Senator Mitchell was re-elected to the United States Senate, it was still expected that his name and his reputation would be a very valuable asset to the firm—the most valuable asset—because it would still bring in all lines of business clientage to the firm; but because he would not be here, Mr. Tanner thought that the proportion of the fees he had been getting under the old system, when Mitchell was here, would not be right, and Mitchell agreed that it would not be right. So at Mr. Tanner's suggestion, they redrew the contract so as to provide for those fees. Now do you suppose for a moment, gentlemen, that either one of them ever thought about this clause in relation to department work? They were just simply making the one change in their contract. Senator Mitchell wasn't present when it was drawn. Tanner sat down there, when Mitchell had gone to Washington, and dictated the agreement, and it was changed and sent on to Washington. I don't doubt that Senator Mitchell looked over that contract; I don't question that he looked over that contract at all. But what did he look over it in relation to? He looked over it in relation to the matter that had been changed, in relation to the matter that was under consideration, and never thought for a moment about the other clause—it is unreasonable to suppose that he did—and left that clause in there.

Then, again, gentlemen, it is perfectly clear that neither of the parties ever acted on this hypothesis, or acted upon the hypothesis that this money was earned under that clause in this contract—neither one of them—because, gentlemen of the jury, that contract didn't provide that work such as should be initiated in Washington should belong to Senator Mitchell, or work that should be commenced there; but it provided in so many words that for any services that should be rendered before the department in Washington Mitchell should have the whole of it.

Now, then, if they were dividing under that contract and any part of their services were, as contended by the Government, for work done by Senator Mitchell before the department at Washington, or before Binger Hermann, then he would have been entitled to something more than half; he would have been entitled to half for the work that Tanner did out here, and he would have been entitled to all that was charged for the work that he did back there, because those were the terms of that contract. Why wasn't it divided that way? Why, gentlemen, it wasn't divided that way because, as Mr. Tanner said, neither one of them dreamed or thought or intended that any single dime of that money should be for work that Senator Mitchell had done in Washington or before Binger Hermann.

Now, gentlemen, before I pass to some of these letters that have been introduced in evidence, and from which so much is claimed, let me say to you what seems to me to have been the theory upon which Judge Tanner and Mr. Mitchell were acting. They were acting upon this theory: They were acting upon the theory that it was perfectly lawful for Judge Tanner to do any land work that might come to him, to attend to it himself, whether it was in the local land offices here or before the department at Washington, and charge for that and carry it into the firm assets. That was the theory upon which he was acting; that was the theory upon which Senator Mitchell was acting. Now, gentlemen, that may have been a mistaken theory. Indeed, I think that in part it was a mistaken theory. I think the court will instruct you that Tanner had a perfect right to do any preliminary work in relation to those land matters, like making up abstracts, making up and preparing affidavits, advising and consulting—I think that, under the law, the court will tell you, gentlemen of the jury—although no construction of that law is entirely clear, it is so vague—that Tanner had a right to do all such work as that, and to charge for it, and to carry the money into the firm assets, and divide it with Mitchell, and that in so doing, as long as they had confined themselves to that, they would have been guilty of no violation of the law whatever. But it is probably true, gentlemen, that they erred in their construction of the law in relation to this matter.

Where the Law Stands.

It is probably true that if Mr. Tanner had gone into the local Land Office and appeared before the local land officers, or before if he went before the Secretary of the Interior, or that if he went before the Commissioner of the General Land Office, or if he appeared before any officer of the Government and there performed services, that is the limitation of the law. It must be a matter in which the United States is interested, and it must be before some officer. As long as Tanner didn't appear before any officer, he was violating no law, and Mitchell was violating no law in taking the fees; but if Tanner appeared before some officer of the General Land Office and performed services there before the officer, he had no right to carry that into the firm assets and to divide it up with Senator Mitchell; and I think in that matter, gentlemen, they were mistaken as to their theory of the law, and that, if Tanner, as a matter of fact—which it doesn't appear that he did—if Tanner, as a matter of fact, appeared before any of the Departments and did any work and charged it up, they would have been guilty, unknowingly, of a technical violation of the law in that matter.

See, gentlemen, how hard this law is to construe. There is a theory that everyone knows the law; but it is a hard theory and it is not true in practice. When our learned Supreme Court, constituted of the greatest lawyers of this or any other country, nine of them, differ upon questions of this kind, and four are on one side and five are on the other, how can you expect the common lawyers, or uncommon lawyers even, shall always know the law. Why, you have seen an explification of that, gentlemen of the jury, in this very courtroom. Mr. Heney has brought these matters before the court—the Gobbi matter; the matter of appearing in a contest between two parties and the matter of appearing for Chinese, where there was no matter pending before the Department, and he stood here and insisted with the greatest earnestness that that was the law; but the Court says: "No, I cannot see it that way." Here they are differing in construction—one saying that under this law that act is perfectly honest, and the other saying that under this law that act is criminal. If it had chanced that my brother Heney had been sitting upon the bench, and the learned Judge, who sits here, had been in Congress and had, perchance, done the act that he thinks is entirely innocent, he might have been standing here before Judge Heney, and Judge Heney would have adjudged that he was technically guilty of a violation of this law.

Intricacies of Law.

Now, gentlemen, it is true that if a person picked up that law and read it carefully, with a view to any particular thing, and read it very carefully, he would probably see that there was a little clause in there, that for any services rendered before any Department or officer of the Government, "by himself or another," Congressmen must not take fees, and therefore those fees taken by Tanner for work done before the Departments, if there had been any, would have been a violation of the law. But, gentlemen of the jury, men are not so constituted that they can carry those things in their mind, or anything more than a general idea of them. You have heard that law read. How many of you remember just exactly what it was? I will venture that if there was any close question, while His Honor has heard that section read one hundred times, maybe, and read it himself, yet if there was any close question upon its construction, he would want to take the law again into his hands and read it carefully with relation to that matter. Gentlemen, there is now law in the State of Oregon that is more familiar to lawyers than the law upon execution and the property that is exempt from execution. There isn't a lawyer in the state, perhaps, that hasn't had to refer to it five hundred times; and I will venture to say, gentlemen, that you can go to any lawyer in this state tomorrow and ask him what property is exempt from execution, and there won't be one of them in all the thousand, perhaps, that are within the limits of the state, there won't be one single one of them that can tell you exactly what property is exempt from execution, without going to the statute books, from which he obtains his authority.

Now, then, this law that was upon this statute book. It was passed forty years ago. It was an old law. Until very recent years there had never been any occasion to enforce it. Senator Mitchell knew that there was such a law upon the statute book. We don't question that—not for one moment. He knew that there was such a law upon the statute book, but he had only the general remembrance of it that men have in relation to those things. He only had the general remembrance of it, and from that general remembrance it seems to have escaped his attention, as well as Mr. Tanner's, that those words "or another" were in there. Now, those words "or another" didn't apply to preliminary matters in relation to that matter, to advice and consultation, and taking a retaining fee. It didn't apply to work done in getting up abstracts of title; it didn't apply to work done in the matter of getting up affidavits; it didn't apply to any of these things at all; but it applied when the party "or another" appeared before some officer, or Department, the idea of the law being to prevent the influencing of these officers or departments in their decision by the appearance, either directly or indirectly, of a Congressman who was appearing there for a fee.

Now, keep in mind, gentlemen, this theory, that is perfectly evident upon Tanner's part, partly right and partly mistaken—right in so far as Tanner had a right to do all preliminary work here and charge pay for it and carry it into the firm account, but wrong upon their part in so far as it would have authorized Tanner to do work before the departments at Washington and charge for it.

Question of Fees.

Now, consider these letters in the light of this theory, which they evidently had in mind at that time, and where is there one of them? Where is there one of those letters; show me the letter that is inconsistent with that theory. Here is a large number of letters covering the four years. There are some 35 or 30 letters, and sometimes Tanner refers in those letters to the fees as "my" fees, fees that I am going to get, and some times, in four or five instances, I think, out of the 25 or 30 letters, he refers to them as "our fee," and "the fees which we are going to get." Now this fee, according to Tanner's sworn statement, was for preliminary matters that he had done here, according to his idea he was to do the work, and they were in some sense his, and he was the man that was employed, but they were to be divided between the two of them, and therefore, also, in some sense they were "our fee" and "the fees which we are to have." And so, it isn't surprising, in view of these facts, that as time went along and these letters were written, that Tanner should refer to them sometimes in one way and sometimes in another way.

Now we come to the argument of the learned attorney in relation to these matters. He says to you that Tanner was getting educated; he says to you that along at first Tanner was writing "we" and "our," but that as the months and years—he says it took about two years—as the months and years went by, that Tanner was getting educated. It took about two years to educate him, and by that time he got so that he didn't write "we" and "our" any longer, but that he wrote "I" and "me" then.

Talks of the Letters.

Gentlemen of the Jury, as a matter of fact, among those letters, you know that the bulk of it was written in relation to the Kribs matter along in February, March and April of 1902. Gentlemen, I have examined these letters carefully, and unless I have made a mistake, and I don't think I have, although they haven't been introduced in any order, and therefore you can't be sure, there are so many of them—unless I mistake, there was a single letter prior to May, 1902, in which these matters were referred to as "we" and "our," and that was the Benson letter of October 4, 1901, which isn't included in this case at all. Now, in that letter, the fees were referred to as "our fees," and "we are going to have a fee," but from that time on during all the correspondence in relation to the Kribs matter up to May, there was no reference to "we" or "our," but it was always "I" and "me." Then, in May, there is another letter, again about the Benson matter, and that refers to it as "we" and "our," and then from that time on, there are two or three letters, there wasn't very much correspondence after that time in relation to these matetrs, but from that time on, there were two or three letters in which it was referred to as "we" and "our," and, as a matter of fact, gentlemen, instead of the letters that referred to it as "we" and "our" being the first letters that were written, with one exception, they were the last letters that were written in relation to that matter, and so, instead of being the basis of an argument that Tanner was getting educated, the learned gentleman might turn it the other way; he might turn it the other way with equal and more force and say that Tanner commenced all right in the matter but got careless toward the last. Ah, these things can be turned beautifully; they are things that work either way, gentlemen of the jury, when you get an acute, sharp, clever mind turning them up for a purpose. Of course, if you are hunting, gentlemen; if you are after Senator Mitchell, if you are hunting for something on which you can run him down, as this learned gentleman is hunting for something, why you can find something in these letters that you can twist and turn and make appear that way; but, ah, there is nothing in words, in the human language, no act in human life that can't be given a bad construction if you are hunting for a bad construction to give it.

Asking for Copy of Books.

Again, gentlemen of the jury, the learned attorney talks to you about the fact that Senator Mitchell asked for a copy of these books in May or June of 1902. He goes on, with a great, long argument, to show you that a number of these fees had been collected during the intervening six months since Senator Mitchell had seen his books, and, therefore, he says to you, gentlemen, don't you know that the reason why Senator Mitchell wanted to see these books was because he knew that those unlawful charges were in there? Because he knew that these unlawful charges were in there, and he wanted to see whether he had got credit for his unlawful charges or not. Gentlemen, did you ever see such an argument? It is based upon the proposition that a man never wants to see his own books unless they are dishonest. Is there anything in it, whatever?

Suppose those entries had not been in there at all; is it anything strange that he had not seen the books for the first six months, when they were beginning to do business, and when he did not know what kind of a system was going to be adopted or anything of that kind, is it anything strange that even a careless man should want to see a statement of his books once in six months? And yet, from that mere fact that he wanted to see his books or wanted a statement of them at this time, counsel asks you to say that he had some wicked motive in his heart. Couldn't you say that he wanted to see the honest entries just as well as the dishonest ones? Is a man more interested in dishonesty than in that which is honest? I submit to you, gentlemen, that there is no difference that can fairly be drawn in relation to this matter. You remember that when Shakespeare paints in words the story of one who had married a young, innocent wife, spotless as the white of an angel's wings, jealousy got into his heart, and every act of that wife, however innocent, was in his mind concocted as a suspicious circumstance, until it looked to him that the proof was absolute. Finally pursued with these bitter jealousies and misconstructions of innocent acts, he struck her to death; and Shakespeare says, "In his jaundiced mind proofs light as air were confirmation strong as holy writ." And so it is, in the jaundiced mind of the Government attorney. From the most innocent act can be drawn plausible conjecture, plausible inference.

Just Hunting for Suspicion.

As I said before, if you are hunting, like Othello, for things to sustain your suspicion, if you want to find things to make old Senator Mitchell look black and wrong, if you have got it in for him for political reasons or any reasons, you can find in this correspondence this and that and the other thing that you can turn to his disadvantage. But I don't believe that you are approaching this case with a feeling of that kind.

But they say here is a letter which Tanner writes to the department, a nice, dignified letter, for Mitchell to place before the department, and then in a separate letter he says to Senator Mitchell, "I wish you would punch this letter up, Senator," and counsel calls that undeniable proof of guilt, because Mitchell did not file with the Honorable Secretary of the Interior that "punch-him-up" letter. Suppose somebody wrote a letter to me to file before His Honor here, and then in a separate letter he would say, "Bennett, I wish you would punch this matter, punch the Judge up, get him to take hold of this matter." Do you think I would come here to a dignified Judge and file that "punch-him-up" letter? Not very much, gentlemen, and nobody else would. As a matter of fact, it was the most natural thing in the world that Tanner should write those two letters, one of them for the Senator and one for the department. There was absolutely nothing wrong and nothing unusual in relation to it.

There is another matter of the same kind, these little things that absolutely amount to nothing at all, except in the jaundiced imagination, and that is the letter in which Tanner wrote to him about the Kribs matter and about the Benson matter, and said something about their fees in relation thereto. Senator Mitchell wrote back to him asking him "Please write me the selection numbers contained in this Benson matter separately from everything else"; and they say he wanted to go before the department with it. He says he wants it so as to keep everything by itself and separate. But suppose he did want it to go before the department. He would not want to go before the department in one matter with a letter referring to three or four other matters, nor would he in the nature of things, I care not how innocent it might be, he would not want to go parading before the officers of the Government private business between him and Tanner nor or between them and their clients; nobody ever heard of such a thing. Who ever went into court and paraded letters from his client, showing what talks they had in the matter? It is an unheard-of thing. Nobody would ever do it; and the fact that he wanted something that referred to the public business in the letter alone, which did not discuss their private matters, is nothing from which the just mind could draw any inference of wrong.

Now, gentlemen, we come to another matter, the terms of some of these letters. Senator Mitchell has written fifteen or twenty letters, and they agree that the only thing they can find in them, in all the letters that the Senator ever wrote about this matter himself—for he is not responsible directly for the letters Tanner wrote, in any way—from which they can claim anything wrong is that in one of the letters to the department, in writing about the Kribs matter from Portland, which he would have done for any individual, as the testimony shows, either within or without the state—that in writing one letter to the department he says, "In the interest of friends here"; and they jump onto him in relation to that matter, "Why didn't he name his friends, why didn't he set up the whole thing, why didn't he say that in the interest of Mr. Tanner, who is my law partner, or in the interest of Mr. Kribs, who is a client of ours, and in the interest of Mr. Pillsbury, who has an interest in these lands; and in the interests of Mr. Smith, who has an interest in them," and go into the details of the whole transaction? Why didn't he do that, instead of making it brief—because he was no doubt in a hurry, as he always was, and never studied his words, not supposing they would be misconstrued in this kind of a way. He simply makes his letter short and says, "In the interest of friends I write in relation to this matter."

Wanted It Understood.

Senator Mitchell wanted it entirely understood in the Department at Washington always that he was not interested himself as a lawyr in relation to these matters; it was his understanding that that was what was prohibited by law. It was his understanding that it was the theory of the law that if a member of Congress went before the department and was interested in getting a fee, that they might be disposed to favor him, he having some influence, far more than they would if he went there simply without any personal interest in the matter as a friend or an individual. And it was the very appearance of evil that Senator Mitchell was trying the best he could, and as he did in all these matters, to avoid, at the same time that he helped Tanner just as he might Mr. Stillman or any other lawyer in relation to matters he attended to. So, there is another matter that they twist in the same way: He writes afterward in relation to some matter, saying, "Several parties have written to me about this matter." That was literally true, according to their own testimony, for Tanner had written to him and Kribs had written to him, and that was several parties. But they say, "Why didn't he name the parties in these letters?" "Several parties," very suspicious, gentlemen, that he should use the words, "several parties." But, gentlemen, there is another argument along these lines that has been famous for a long time, and I want to call your attention to that argument, because it is so nearly the same that I think Mr. Heney's argument in relation to these matters must have been copied from it. You, gentlemen, who are students of Dickens, our great English prose writer, remember the famous case of Bardell, the Pickwick.

He Cites Pickwick.

You remember how through some unfortunate circumstances Pickwick had got into such relations with his housekeeper that she claims he had made her an offer of marriage, and when he would not carry out that offer, she sued him for breach of promise, and Serjeant Buzfuz appeared in court on the argument in her behalf, and there, as here, gentlemen of the jury, there were some letters in the case. There, as here, the letters were entirely innocent in themselves. There, as here, the attorney, with very little foundation, was trying to make a misconstruction of them. The two letters were notes Pickwick gave to his housekeeper, in one instance indicating that he wanted mutton chops for luncheon, and in the other instance he had written to her when delayed at a distance, informing her that he would not be home as soon as he expected, that there was a slow coach, and telling her not to be particular about the warming-pan. Very innocent things, gentlemen of the jury, but here is the argument of the learned attorney: "And now, gentlemen, but one word more. Two letters have passed between these parties, letters which are admitted to be in the handwriting of the defendant, and which speak volumes indeed." That is exactly the argument here; these letters are in the handwriting of the defendant. "These letters, too, bespeak the character of the man. "They are not open, fervent, eloquent epistles, breathing nothing but the language of affectionate attachment." These letters are not open, fervent, eloquent epistles, breathing nothing but the facts in relation to the fees. "They are covert, sly, underhanded communications." These letters are covert, sly, underhanded communications. "But fortunately, far more conclusive than if couched in the most glowing language and the most poetic imagery."

Keeps Up the Comparison.

But fortunately, these letters are more conclusive than if they had been couched in the most open language. "Letters that must be viewed with a cautious and suspicious eye." Letters that must be viewed with a cautious and suspicious eye, says Mr. Heney. "Letters that were evidently intended, at that time, by Pickwick, to unlead and delude any third parties into whose hands they might fall." Letters, says Mr. Heney, which were intended at the time to mislead or delude any third parties into whose hands they might fall. Let me read the first: "Garroway's 12 o'clock. Dear Mrs. B. Chops and tomato sauce. Yours, Pickwick." Gentlemen, what does this mean? Chops and tomato sauce. Yours, Pickwick. Chops! Gracious heavens! And tomato sauce! "Several parties; interest of friends." Good gracious! "Gentlemen, is the happiness of a sensitive and confiding female to be trifled away by such shallow artifices as these? The note has not date, which in itself is suspicious. Oh, very! How easy to make these things suspicious. "Dear Mrs. B.: I shall not be at home till tomorrow. Slow coach. Don't trouble yourself about the warming pan!" Why, gentlemen, who does trouble himself about a warming-pan? When was the peace of mind of man or woman broken or disturbed by a warming-pan? And so on. Gentlemen, the result of that case was that the eloquent and urgent Serjeant Buzfuz obtained a very large judgment on the strength of those letters from Mr. Pickwick.

Refers to Serjeant Buzfuzz.

I cannot but believe—I know all the learning the gentleman has displayed in relation to other matters, and that he is very familiar with all sorts of English literature—and I cannot doubt but that the gentleman is familiar with the eloquent speech of Serjeant Buzfuzz, and I have no doubt that when he was preparing for this case he took that speech to his room and made a careful study of it, and modeled his argument in relation to the letters in this case as closely after it as he might. I submit to you that there is not a thing in these letters from first to last that if you approach them without a jaundiced imagination show any evidences of guilt. There may be things there that Tanner wrote which show that he was charging fees for the work he did, and it may be that Senator Mitchell knew that, although it is not proven beyond a reasonable doubt, because with the hundreds of letters Tanner wrote that he all the time upon his mind, with the fact that he had to appear and perform his duties in the United States Senate Chamber, with the additional fact that he had to attend the meetings of seven committees of one of which he was chairman, and the additional facts that according to the testimony of their own witness he had at least five matters every day which he had to run around and look up in the departments for his constituents in Oregon; when you add to all these things and to all these letters, I tell you, gentlemen, it would take a mind better even than Mr. Heney's mind, added as he is by all of his secretaries and detectives, to keep matters so systematized that he would have time to carefully consider the letters that came to him, or do more than look them over and see what was in them that had to be answered, dictate the answer as speedily as he could, throw it aside and take another one; especially when he had 50 letters to answer in three hours. The learned attorney says, in relation to that first Benson letter on the 4th of October, that when the Senator came out here on the 16th of October, he had the Benson letter with him, in his pocket. Why, gentlemen, according to their own testimony, he had received 600 letters when he was here, 50 letters a day for 12 days, after he had received the Benson letter; and yet he wants you to believe that he kept the Benson letter under his eye all that time. Some of these letters, perhaps, pertained to the Wheelwright matter, in which there was $20,000 or $30,000 involved; some of them perhaps in relation to the Arabia where there was $200,000 involved; some of them perchance in relation to other important matters which he was transacting for different constituents. Has anybody a right to suppose that this particular letter he picks out and hugs to his bosom and carries with him wherever he goes, as a religious man carries his Bible, or the young man the picture of his girl, nearest his heart. Do you suppose for a moment that letter went any different from other letters Senator Mitchell received, which were glanced over, answered speedily and filed away?

Mitchell and His Account Books.

In the matter of the account in the books, I don't know whether Senator Mitchell was that careful, or whether he was not. The last anybody saw it, it was thrown upon the table; it was the closing days of Congress; when Senator Mitchell was busier, perhaps, than usual, even for him, when every minute of his time was taken up. Whether he ever saw those books to go over them carefully I do not know. Very likely in the nature of things, they would be thrown aside. But assume that he did. If you want to; assume that he knew what the books would show in relation to those items, what does it show? It shows simply that Tanner was doing work in land matters out here, charging for that work and carrying the fees into the firm account, but that was a thing he had a right to do, a thing he had a right to divide with Mitchell. Keep that in mind all the time in construing the letters, and then there is not one of these letters that shows to a reasonable man beyond a reasonable doubt at all that Tanner was charging for the work that Mitchell did or putting upon the books one cent for work Mitchell was doing before Binger Hermann, which is the matter charged in this indictment, and according to their idea, the only thing which would have been wrong for them to do. When you take up the letters and read them in this view it isn't any wonder that at some time, not altogether at first nor altogether at last, but intermittently along as it might come into his head, sometimes Tanner referred to them as "my fees," "the fees I am earning," and sometimes referred to them as "our fees." Generally he referred to them as "my fees," but under the circumstances and conditions there is nothing surprising that he should refer to them sometimes in one way and sometimes in the other way. It is only a diseased imagination that could draw a guilty inference from them.

Calls It Appeal to Prejudice.

Gentlemen, there is one more matter in relation to this and then I am through with the letters. The learned attorney for the Government reads one of these letters in which it is said "Go before the department and get these matters expedited," and he grows eloquent in relation to that matter and appeals to your prejudice. There is not a thing in this indictment about helping any one to secure public lands, so far as Mitchell is concerned; they dare not charge him with it in the indictment; they do say, as we shall presently show you, that Kribs was gobbling the public lands; they do say that Kribs was a thief and subornor of perjury; they do say that in their indictment, but they do not say one word in the indictment that Senator Mitchell knew that there was any fraud, or had any idea of any fraud in relation to the matter, nor is there one word of testimony to it. If, as their indictment says, Mr. Kribs was the thief and subornor of perjury, which they say he was, he kept it carefully to himself. Even Judge Tanner says he did not know; he inquired into these claims, and Kribs assured him that they were entirely honest, and he told Kribs if they were not honest he would have nothing to do with them. Kribs assured him they were entirely honest, and the only thing about them was so much red tape in the Government, and he wanted to get them taken up as soon as possible; no question about the ultimate result. And Tanner himself says that he never said one word to

HARRY MURPHY PICTURES JUDGE BENNETT, DELIVERING HIS ARGUMENT AT THE MITCHELL TRIAL, AND SOME OF HIS LISTENERS