JUDGE DEHAVEN GIVES HIS CHARGE, AND CASE GOES TO THE JURY

ound and reasonable course that was uppeated to him by Tanner, and coming ut and eaying. 'I have never done anything wrong, if those fees were received, hey were never received with my knowlete.' and making a clean breast of that that was the truth, the guilty mind mich carried that knowledge on the cars if the way from Washington—the Kribs natter, although there had been no rumor hout it, and took it up at the first operationly with Tanner—the guilty mind ought a way out. Which way they have of even attempted to excuse, because hey adopt 'such miserable and absurd apedients'—the changing of that conract, the contract being written on paper lifferent from any paper that had been med in the office of that firm, and yet a ontract written with black ink, when up o within six months before green ink or olse ink had always been used.

Mr. Bennett: We object to that on the mound that there is no evidence of it.

The Court: The jury will have to deternine what the evidence is.

Defendant excepts.

Vagary of Guilty Mind.

Defendant excepts.

Vagary of Guilty Mind.

Mr. Heney—That contract which is before you, and which in one paragraph has three misspelled words by which the party who wrote it might be detected, all in the one paragraph that was changed, words which Robertson never would have misspelled; the word salary, salery, the word constituent. "constituent," and some other word which I have now forgotten; the abourd expedient of changing that contract when upon the face of the original contract there was no guilt, but guilt in the mind of Benator Mitchell, because he did not expect to take fees for services performed before the department at the time he executed the contract or he never would have been afraid of the contract afterwards. The absurd expedient of destroying or suggesting the destruction of books. All matters which, as is said here, "he has recourse to such miserable and absurd expedients for covering his guilt as all those who are used to sit in the resat of judgment know have been the cause of detection of half the villalmer in the world." Nothing truer was ever stated. Practically every crime that is discovered is discovered by some absurd or mexpedient thing which is adopted by the prisoner to hide his guilt; just as in this case, because if that expedient had not been adopted in this case, how do you suppose the Government would ever have succeeded in getting the books of the firm of Mitchell & Tanner, or if it got the books of getting all that correspondence. Tanner was suilty of nothing; Tanner could have been done to him for it. And if that has been done, what chance would justice ever have had of finding the guilty person in this case. But the guilty mind that subbbornly insisted upon adopting these absurd and miserable expedients, when advised to the contrary by Tanner, the mind that appealed to Tanner out of its guilty of nothing; Tanner could have destroyed the books and hours of the suilty mind that goes back no washington that he did get a few small checks; that guilty mind has sold age in time

Grand Jury Not Led.

Now gentlemen of the jury. I have neight to say to you that I believe this defendant gullty but I would advise a grand jury to indict a man upon evidence, a district attorney who would advise a grand jury to indict a man upon evidence which he did not believe established the man's gullt beyond a reasonable doubt, in my opinion, such a District Attorney who would place upon neises to testify who he did not believe were telling the truth—i say fo you that, in my opinion, such a District Attorney who would place upon neises to testify who he did not believe were telling the truth—i say fo you that, in my opinion, such a District Attorney who would place upon neises to testify who he did not believe were telling the truth—i say fo you that, in my opinion, such a District Attorney who were stripes in the penitentiary of the due possing the tool of me—led round by the nose of Degon. I can say you and the people of Oregon to judge me by my acts. That grand jury has been accused of being the tool of me—led round by the nose of the control of the due process of iaw, and selected before I had anything to do with it. They had met, and heid court for a week, and adjourned and met again before a swell, and adjourned and met again before a swell with the course of the gull the you that that oregon grand jury was composed of men like yourselves, who can be a swell and the proposed of men like yourselves, who can be a swell and the proposed of men like yourselves, who can be a swell and the proposed of men like yourselves, who can be a swell and the proposed of men like yourselves, who can be a swell and the proposed of men like yourselves, who was a man who wanted to present evidence and asky you to indict one of your United States Senators you would scan, and critically scan, every world of evidence that was put before you. You know that if you would do it you have a right to assume that the oth

sume that the other II men who constituted that grand jury would to like-wise; and you have a right to resent, therefore, the reflection that has been thrown upon them.

But they say, poor Tanner! He became a witness for the Government of the United States, and by reason of the United States, and by reason of having done so he is entitled, as the Eupreme Court of the United States has said to the equity of a pardon, no matter what I may think. But if I could exercise that influence over him, how would it have been exercised? They don't accuse me of being a foot; and yet I would be one if I had exercised it on Tanner to abstract from him the conversations between him and Mitchell that be has testified to and I had hestitated to say to Tanner. Tanner, this itestimony of yours about never intending to include Mitchell's services, in the light of all this correspondence, is all buncombe, and if you expect a pardon at my hands, or a recommendation for one, you will have to tell the truth in regard to this matter, and let it he known, what certainly must be the fact, that you talked with Mitchell time and again about the Kribs fees. Wouldn't that have been a simple proposition? If Tanner is under my control and power, wouldn't it have been a simple proposition? Wouldn't it have been the first thing to think of? Why, these evidences of gulit are a collateral mitter. They are something from which you inferhackward. But there would be the positive proof, and it would be absolutely consistent with every line that was ever written from Tanner to Mitchell or from Mitchell to Tanner. It would be conissert with every line that was ever written from Tanner. It would be consistent with every line that was ever written from Tanner. It would be consistent with every line that was every

bis salary. His salary was \$5000 a year, which makes \$25,000, making the sum total \$72,000 that went into the hands of Senator Mitchell in the four years that he was Senator this last time. That is \$15,000 a year-\$1500 a month-\$50 a day. Just think of it! \$50 a day-\$1500 with which to eke out a miserable existence, and pay for that little room of 14x16.

State of Oregon on Trial.

Now, gentlemen of the jury, I said to you that if you believed beyond a reasonable doubt from this evidence—and my statement is based entirely upon that "if, as my original statement was—if you believe beyond a reasonable doubt from this evidence that this defendant is guilty, you have a right to infer from that that the outside public, and the outside world, and especially throughout the United States, have reached the same conclusion from the evidence. So that if you have reached that conclusion, I tell you that you have a right to consider the fact that the State of Oregon, and the standard of its citizenship, is now upon trial. You have a right to assume that, if you have reached that conclusion from this evidence, the outside world have also reached it, and they are now watching anxiouly to see whether the citizenship of Oregon is of such a standard that it will say "No man is above the law, and whenever our public servants betray our trusts in this manner, and we know it and have the proof of it, we will stop it as quickly as any state in the Union. I say to you that, if you believe beyond a reasonable doubt from this evidence that the defendant is guilty, you have a right to assume that President Roosevelt, to whose moral influence I referred, is—not waiting anxiously, and idd not say so, for the conviction of a man; but that if you believe, from this evidence, beyond a reasonable doubt, that this defendant is guilty, that he has reached the same conclusion; and when Senator Thurston says that President eached the same conclusion; and when Senator Thurston says that President Reosevelt would stop at a point where he had placed the man before a jury of his peers for trial. I say he is doing him an injustice. I say that President Roose-veit cares more for the standard of citiveit cares more for the standard of citizenship in every state in this Union than he cares as to whether any Senator remains in the Senate or goes out, or whether any defendant is convicted or not convicted. The question that he is looking anxiously for, if he is looking at all, is not as to whether Senator Mitchell is convicted or not, but whether the State of Oregon and its citizenship is convicted or acquitted—acquitted of the charge that it will, out of sympathy or out of something which has no place in a case, violate the ostins of the jurors by rendering a verdict of not guilty when the evidence is entirely the other way.

Now, gentlemen of the jury, again I

which says of it he is looking at all, is not as to whether Senator Mitchell is conticted or not, but whether the State of Oreson and its citizenship is convicted or acquitted—acquitted of the charge that is will out of sympathy or out of something which has no place in a case, violate the oaths of the jurors by rendering a verdict of not gully when the evidence is entirely the oaths of the jurors by rendering a verdict of not gully when the evidence is entirely the oaths of the jurors by rendering a verdict of not gully when the evidence is entirely the oaths of the jurors are violated to have given me throughout this case, and I leave the matter in your hands, with the confident hope that justice will be done.

Thurston's Upbeld Protest.

Mr. Thurston: If the court please, on behalf of the defendant, we except to one statement made by the District Attorney in the course of his argument. It reads as follows: "Now, why wasn't an indiction of the course of his argument. It reads as follows: "Now, why wasn't an indiction of the course of his argument. It reads as follows: "The evidence shows that the grand jury adjourned the day of that the grand jury adjourned the day of that confessed." The evidence shows that the grand jury adjourned the day of the grand jury and the call of the defendant."

We except to that for the reason that it is an unfair and prejudicial statement of a fact not appearing in evidence; that the records of this court show that no indiction ment be and the oath of office, of the District Attorney.

We except to that for the reason that it is not claimed by the Government that this knowledge and consent, or if such murphy as charged; that the statement of the defendant, and with his knowledge and consent, or if such murphy as charged; that the statement of what the proper of the defendant of

JUDGE DE HAVEN'S CHARGE

What Constitutes Violation.

It was the privilege of the defendant, as a Senator of the United States, to make inquiries at the General Land Office, or of any of its officers in regard to the status of any matters therein pending, and to make inquiries as to what stees had been taken by the officers of the General Land Office, and what steps might be contemplated by such officers in connection with the investigation, consideration—and determination of the several land entries described in the indictment. If such inquiries were made and the information received communicated to Kribs and Tanner, and no attempt was made by the defendant to influence Hermann to make special, expedite and approve the said applications or recommend the issuance of patent therefor, the defendant committed no violation of the statute. But if, by letter or otherwise, the defendant while a Senator of the United States, exught to induce Hermann as Commissioner of the General Land Office, to make special, expedite and approve the said applications, and knowingly received compensation for so doing, then the acceptance of such compensation was a violation of the law which I have read to you.

First Count of Indictment.

said Hermann as Commissioner in reation to the timber entries described in the
count.

The second, third and fourth counts are
similar in form, each specifying a different date upon which it is alleged compensation was received by the defendant for
the alleged services; and the second and
fourth counts, charging that compensation
was received by Mitchell & Tenner in the
form of a check of the value of 500.

Counts five, six and seven allege that
the service rendered and to be rendered
was in appearing before Binger Hermann,
Commissioner of the General Land Office,
for the purpose of inducing him to make
special expedite and approve certain lieu
selections of public lands in which Kribs
was intercated, in some as selector, and
in others as claimant, these selections
having been made in lieu of other public
lands lying within the limits of forest reserves of the United States.

These counts allege that compensation
was made to Mitchell & Tanner for the
services therein referred to, in the form
of checks having the money value therein
stated. The same principles of lise apply
to all the counts, and it is unnecessary
to repeat, for your guidance in the consideration of the other counts, the instructions which I shall now give to you as to
the first count.

Directs Jury's Attention.

Directs Jury's Attention.

Directing your attention, now, to the first count, the Government is not re-quired to prove that the timber entries therein referred to were, in fact, fraudu-

Upon this point I charge you that the

The complete stenographic report of Judge De Haven's instructions to the live that it was money paid by Kribs as compensation for services reniury follows: kribs as compensation for services rendered, or to be rendered, either by himself or Tanner in proceedings before the Commissioner of the General Land Office in the matter of the timber entries referred to, and for the purpose of inducing the said Hermann "to make special, expedite and approve the said applications and recommend the issuance of patents therefor." In other words, a guilty knowledge or intent upon the part of the defendant must be shown; that is, it must be shown that he knowingly received as compensation the money or some part of the money paid by Kribs.

The defendant is not guilty of receiving compensation as charged in the indictment, unless at the time such compensation was received by him, he knew that it had been paid and was received by him for services rendered or to be rendered as charged in the indictment.

Presumption in Agreement.

Presumption in Agreement.

by aim for services rendered or to be rendered as charged in the indictment.

Presumption in Agreement.

The presumption is that any agreement which parties may make, and which is lawful according to its terms, is lawfully intended, and anyone asserting that such an agreement is merely a cloak or cover for illegal purposes must prove the same, and the jury are instructed that the partnership agreement entered into between the defendant and Albert H. Tanner on the 5th day of March, 120, for carrying on the general law practice was and is lawful according to its terms. The provision in that agreement which reads as follows: "It is understood and agreed that the interest of each of the parties to this agreement, as to all services rendered, all moneys received and all business done by the firm shall be the equal one-half thereof, except that for any services which may be rendered by said John H. Mitchell, in the City of Washington, D. C., either in the Supreme Court of the United States, the Court of Claims, or before Congress, or any of the departments, shall be the individual matter and claim of said John H. Mitchell, and all fees so earned by him in either of said courts, or before Congress, or any of saids departments, and his saiary as Senator, shall be the individual property of said John H. Mitchell, and the firm shall have no interest therein. But for all services rendered by the firm or either member of it, in any other place, save and except as above, shall be considered firm business and the parties equally interested therein—was such an agreement as the parties had a right to enter into, notwithstanding his office as Senator of the United States and Court of Claims, or before Congress, or before any of the departments, in all matters in which the United States was not directly or indirectly interested, and unless it is proved that such provision in the parties had a right to enter into, notwithstanding his office and courts or in Congress or in some department of the Government with respect to matters

title to and use of the same, contracted for the services of John H. Mitchell and Albert H. Tanner, copartners in the practice of law, as autoreacys for him in a life of law, as autoreacys for him in a life of law, as autoreacys for him in a life of law, as autoreacys for him in a life of law, as autoreacys for him in a life of law, as autoreacys for him in a life of law, as autoreacy for him in a life of law, as autoreacy for him in a life law of the same of law of the same of law of the same of law of the law

tainty and beyond a reasonable doubt, every other hypothesis but the single one of guilt, or the jury must find the defendant is related to the existence of some other facts and circumstances which common sense draws from circumstances which your common sense draws from the testimony, and then you simply apply your common sense draws from circumstances which your common sense draws from the testimony of what deductions or interences, or conclustions on sught to be drawn from these facts, and if, when the evidence is thus considered, you are satisfied in your own minds beyond all reasonable doubt, that the defendant is guilty, then it is your duty to so declare, and if you are not duty to so declare. There has been evidence of the duty to so declare,

reputation and usefulness may be seriously affected by your verdict. The case is important, too, because it involves an alleged violation of the law intended to promote the public welfare and secure efficiency in the public service.

"In approaching a final consideration of the case, you should bear in mind that the law, and the courts of the land organized to administer it, are not and cannot be any respectors of persons. The high and the low, the weak and the powerful, must alke be subject to their behests."

As before stated, you are the sole judges of the credibility of the different witnesses who have testified in your hearing, and you are also the exclusive judges of the facts in the case. That is to say, it is your exclusive province, upon consideration of all the evidence, to determine what facts have been proven and upon your tion of all the evidence, to determine what facts have been proven, and upon you rests the sole responsibility of returning a verdict which shall be in accordance with the justice and truth of this case. A grave and solemu responsibility rests upon you. No public clamor, if there be such, whether for conviction or for acquitaal; no feeling of sentiment or prejudice against or sympathy for the defendant, if you have such; no consideration of consequences which may result from your verdict, should be permitted, in any manner, to influence your deliberations, or induce you to return a verdict which is not in accordance with your conscientious belief as to the truth of this case.

With these instructions, gentlemen, you may retire and deliberate upon your verdict.

NEVER GOT MONEY

Tax Paid by Check, but the to the plans and specifications, as the architect 1 order the money withheld, but I could not hold it back in this case, County is Out.

CRACKER COMPANY IS SUED

Queer Fact Brought to Light of Check Being Cashed by Former Deputy County Clerk William Stimson.

The suit of Multnomah County against the Portland Cracker Company to recover \$800 personal taxes was tried before Judge Cleland yesterday and brought to light some queer doings under a former County Clerk's administration. The tax was compro-mised in 1991 by the payment of \$250, but the county never received the money. The books further show that the tax was canceled in June, 1907, by an order of the County Court, but the testimony disclosed that this entry must have been made long after the Anthony Neppach, who is associated

that in April, 1901, William Stimson

who was then a deputy in the County Clerk's office, called to see Mr. Nicolal in relation to this tax, thinking Mr. Nicolal was largely interested in the Portland Cracker Company, Neppach said he Informed Stimson that Nicolai had sold his stock in the cracker company and advised Stimson to see Herman Wittenberg. As he, Neppaca, and Wittenberg were owners together in an Alaska mine, and desiring to see Wittenberg, Neppach stated that he walked over to the office of the cracker company with Stimson. The latter stated that he had authority from the County Court to compromise those old taxes, and clean up the books. After consulting with his attorney, W. D. Penton, Mr. Wittenberg agreed to accept the proposition made by Stimeon. Neppaca testified further that as he had brough; Stimson to Wittenberg. Wittenberg made out the check in his name some days later or the same day told him to settle the matter. He went to the office of the County Clerk and did so, receiving a certificate of cancellation signed by Cord Sengstake. He indorsed the check in blank. The check was introduced in evidence and shows that it was indorsed and cashed by Stimson, Mr. Wittenberg told of the visit of Stimson and the acceptance of his offer. He stated tout ome time previous and before the Portland Cracker Company sold to the Pacific Efscuit Company, Williams, Wood & Linthicum, attorneys for the latter, looked up tax matters, but did not discover this personal tax. Mr. Wittenberg sald he did not know such a tax was due and unpaid until Stimson called his attention to it. Sengstake explained that his connection with the case was in the course of his regular duties in the County Clerk's office. He made out the certificate on request but the money was not paid to him. Judge Cleland took the case under advisement.

This transaction is one of several brought to light by George Black, who experted the books for the county commencing three years ago. Mr. Black was engaged at the work for over a

SUIT OVER A CONTRACT.

Real Estate Dealer and Property-Owner Go to Law. .

Caroline Baum is seeking to recover 2000 from O. M. Smith, an abstractor of titles and real escate dealer, and Smith has sued Mrs. Baum to set aside an award of a board of arbitrators in favor of Mrs. Baum for the amount in dispute. The trial of the case was begun yester-

day before Judge George. The evidence submitted in the case disclosed that Mrs. Baum owns land at Twenty-third and Roosevelt streets, which she mortgaged to Smith for \$2000.

ford to sign that, because I am in busi-ness with Smith," and waiked out. Mc-Laren said he reached an agreement with the other arbitrator. McLaren fur-ther testified that he drew the plans for the houses, and was ashamed of the way they were built. "Ordinarily," said the witness, "if the contractor don't live up withheld.

because Smith had all the money." Mrs. Baum, when Smith refused to abide by the award, employed Spencer & Davis, attorneys, who sued him and at-

Smith retaliated by suing her to have the award of the arbitrators set aside. Smith contends that the houses are much better built than the contract calls for, although the material is not same in every instance as called for in He endeavored to show that McLaren is prejudiced against him. The trial has not yet been concluded.

GO TO THE DIVORCE COURT

Unhappy Couples Seek Release From the Matrimonial Bonds.

George E. Hutchings has sued Annie E. Hutchings for a divorce in the State Cir cuit Court and Judge Frazer at his re-quest has signed an order enjoining Mrs. Hutchings from withdrawing \$1600 from a local bank and selling the household furniture, and a horse and buggy. Hutch-ings says he gave his wife all of his money which she deposited in her own name and he ascertained that she is about to convert it to her own use, and also dispose of all of their personal prep-

The litigants were married in 1881, and have one child. Beginning in May, 1902, Hutchings alleges that his wife combrook and W. B. Steele, who comprised the County Commissioners' Court in June, 1993, testified that no order was made by the court canceling the court cancel made by the court canceling this tax. own breakfast. She told him he was live with the horse. This treatment Hutchings avers, caused him great disin business with Louis Nicolai, testified tress and mental suffering

Hattle E. Grim has instituted suit against Ralph C. Grim for a dissolution of the matrimonial bonds because of descriton beginning in June, 1902. They were married in Clackamas County in

Seek to Be Declared Legatees.

G. H. Dressel and Mary Dressel filed a petition in the County Court yesterday in the matter of the estate of H. W. Corbett, asking to be allowed \$200. The will of H. W. Corbett provides "I give and bequeath to each of my house servants in my employ at the time of my death,

The petitioners declare that at the tim of the death of Mr. Corbett and for a long time prior thereto, they were en-Corbett station. This was not Mr. Cor-bett's residence, but the petitioners think they were entitled to be classed as house servants with others.

Filed Papers in Divorce Suit.

The Sheriff vesterday filed papers in a divorce suit filed in Oregon City by Mabel C. Hansen vs. C. E. Hansen.

Librarians of the Country Convene Today.

DELEGATES ARE IN TOWN

Sessions Will Last Five Days and Several Hundred Persons Will Be in Attendance at the Gatherings.

The men and women who hand out books to the multitudes are in Portland. They come as delegates to the 27th annual convention of the American Library Association, which will convene at 11 o'clock this morning in the parlors of the Hotel Portland, the first open session to be this afternoon at 2:30 o'clock in the First Unitarian Church, Seventh and Yamhill streets. The majority of the delegates arrived last night on a special train from New York, Boston, Chicago and way points. The convention will last for five days, and there will be several

hundred persons in attendance.
The present officers of the association are Dr. E. C. Richardson, Princeton University Library, Princeton, N. J., president; Frank P. Hill, Brooklyn Public Library, first vice-president; Luite E. Stearns, Public Library, Madison, Wis., second vice-president; J. I. Wyer, Jr., second vice-president; J. I. Wyer, Jr., University of Nebraska Library, Lincoln, brary, Salem, Mass., treasurer; Haines, editor Library Journal, New York City, recorder; Nina E. Brown, of the publishing board of the association. Bosion, registrar. On September 1, 1904, the association had a membership of 1871, and there have been many added since that time. There will be nearly this number of delegates, as, with few exceptions, there is but one member from each library. The association was organized October 6, 1876, and was incorporated December 10, 1897. The purposes mentioned in the incorporation papers were to ef-fect needed reforms and improvements. lessen labor and expense of library ad-ministration, and for the promotion of social intercourse among librarians.

Last Convention in St. Louis.

The last convention of the association in St. Louis, and there but 577 delegates in attendance. Officers of the association stated yesterday that it was a certainty that the number at the Portland convention would be almost twice as large. During the general sessions and in the sections the topics treated will be those of interest to library he the report on gifts and endowments to

work at hand has been done, and each delegate has related to the others the bit of experience he or she has found of value in the past year, will entertainment be thought of. There will, of course, during the progress of the convention, be visits to points of interest in the neighborhood of Portland, and upon a day yet to be selected the delegates and officers will visit the Centennial in a body and drink in the glories of the Dream

This morning the official council will convene in the parlors of the Hotel Port-and, at which time plans will be formuland, at which time plans will be formu-lated for the convention, and the nomina-tion of officers will be made. It is un-derstood that there will be a certain amount of good-natured rivalry among several contestants for the more important offices. The majority of the present officials are candidates for re-election.

The first general session will take

place this afternoon at 2:30 o'clock at the First Unitarian Church, Seventh and Yamhill streets. The entire afternoon will be taken up by the reports of officers and trustees. It is expected that the reports of the secretary and treasurer will reveal the healthy condition of the association. There will be reports from the trustees of the endowment fund and of the official council. The following chairmen of committees will make their

TODAY'S PROGRAMME.

Morning session in Hotel Portland partor: 11 A. M., meeting of A. L. A. officers.

Seventh and Yamhill streets: 2:30 P. M .- First general session, officers' urer, report of trustees of endowment fund, report of official council, report of chairman of finance and of committee on public documents, Adelaide R. Hasse, chairman; report committee on foreign documents, C. H. Gould, chairman; report of international cooperation committee; report of pubman; report of library training committee, Mary W. Plummer, chairman; report of committee on library administration, by Chairman W. R. East-

annual reports this afternoon: Adelaide R. Hasse, committee on public documents; C. H. Gould, committee on foreign documents; W. I. Fletcher, chair-man of publishing board; Mary W. Plummer, committee on library training, and R. Eastman, committee on library

administration. The evening will be spent by the dele-gates and their friends in various ways. Everyone will shift for himself or herself and have a good time celebrating the Glorious Fourth after passing through an important session of the con vention. On Wednesday morning real work of the convention will b and from then until the end of the five days' session, the delegates will be hard at work. An item of special interest will workers. The association holds annual American libraries for June to Decem-conventions for instruction and not for ber, 1904.

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