"MITCHELL NEVER SAW KRIBS' CHECKS," TESTIFIES TANNER

er or not you were in the habit of writing similar letters, many similar letters, to Senator Mitchell and getting answers where you were receiving no compensation whatever?

A. Yes, sir; I was. I have written hundreds of letters to him for people without ever getting a cent for it or charging anything for it.

Q. What are the facts in relation to his answering them the same as he answered these?

A. He usually answered them in the same way.

Q. What about his attending to them there in the same way, to what was to be done back there, whatever was to be done?

A. I think they had about the same attention in one case as in the other.

Q. What do you say?

A. I think they had about the same attention. I got prompt answers in reference to them.

Q. As a matter of fact, Senator Mitchell didn't do much about these matters, anyway, did he?

Mr. Heney: That is asking for an opinion of the witness. We object to that; what he did do is in evidence.

Court: I will sustain the objection. The witness, upon his direct examination, testified, and there were some letters put in here showing what was done. You may cross-examine him about those letters.

Mr. Bennett: I do not want to keep asking a question after your Honor has ruled upon it, but I want to get the matter in the record, if your Honor will permit me.

Court: Very well.

Q. Isn't it a fact that all Senator Mitchell did in relation to these matters about which you wrote him, so far as you know, was to forward your letter to the department, and get the information returned to him for which the letters asked, and return that information to you?

Mr. Heney: The question is somewhat hypothetical, and the letters in evidence state, some of them, that he went to the department.

Court: I think that is proper. Let the witness answer whether he knows.

Letters Show What Mitchell Did.

A. I know of nothing, personally, further than what his letters show that he did for me in the matter.

Q. You know of nothing, then, that he did personally except as is shown in his letters to you?

A. That is all.

Q. In relation to the other matters about which you wrote to him, you don't know whether he did anything or not except as is answered you in these letters that have been introduced?

A. That is all. I was not there, of course. Could not say what he did.

Q. And those matters were in no case intended to be covered by the charge you were making to Mr. Kribs? The matters of what he did back there, I say, were in no cases intended to be covered by the charge you were making against Mr. Kribs?

A. No, sir; they were not.

Q. You were asked in your examination, Judge Tanner, whether Senator Mitchell had not frequently cautioned you as stated in the Robertson letter not to mix him up in department affairs; and as I understand you, you answered that he had frequently told you that you mustn't take any fee to mix him up in any matter for his personal services back there? That is right, is it?

A. Well, I didn't mean to say that he had done that frequently. What I meant to say was that he had stated to me that he did not want me to make any contract to bind him to do any work there or make any charge for anything that he did. But he stated that he would always be willing to help me in these matters and push them along whenever he could.

Q. That is, as Senator?

A. What he could properly do as Senator to help me along in the matters.

Q. Without making any charge for it? And he didn't want you to make any charge for it?.

A. Well, that was as I understood it, yes, sir.

Q. Now, you said, I believe, also, that there was nothing said, no objection made, to your taking cases in the Land Office and charging and carrying that work into the firm business?

Never Intimated Anything Wrong.

A. I did, yes, sir. He never objected to it in the world; never intimated that there was anything wrong in it, or anything that would involve him in any way.

Q. Then you made a distinction between charging for work that was done by you and carrying it into the firm, and work that was done by the Senator? You made a distinction in charging for and carrying them into the firm work?

A. Yes, sir, I looked at it in this way: That under the partnership agreement, he had reserved that matter to himself; that he, for any services rendered there, if he wanted to charge for it, that was a matter of his own, that I had nothing to do with?

Q. But he had told you not to charge for it?

A. Yes.

Q. You were going on the theory, were you not, that it was lawful and all right to charge for work that you might do and carry it into the firm?

A. Certainly.

Q. But that it would not be to charge for work that the Senator might do and carry it into the firm?

A. Yes, I looked at it that it was perfectly proper for me to take this business and do this work and charge the fees for it, and I never understood that it would in any way involve the Senator at all.

Q. You did not know there was anything wrong about it? If there was, you didn't understand it so?

A. I did not so understand it. I never had looked particularly or had my attention called particularly to this statute under which he is indicted.

Q. You were intending to keep entirely within the law?

A. Certainly.

Q. And if you got over the law in any matter in that regard, it was an oversight? Is that right?

A. If there was any violation of the law on his part, I did not know it; did not understand that it would be, for him to do what I asked him to do there in punching these matters along; getting them through, if he could.

Q. And you did not understand that if you did work and carried it on to the books that there was any violation of law?

A. No, sir, I do not.

Q. Now, I understand you to say, Mr. Tanner, that when Mr. Kribs came to you in relation to these matters, he assured you that they were all right, honest and straight in every respect?

A. Yes, he did. I inquired particularly into the matter. I wanted to find out what the situation was; what there was to the claims that might be holding them up, or that might cause a delay. I said to him, if there is any fraud in these matters, if you are in collusion in any way with these entrymen, I cannot do anything for you and do not want to touch it?

Q. Didn't want to have anything to do with it?

A. Didn't want to have anything to do with it, and he assured me that they were all right; said that the entrymen were all well-known people living around Roseburg or in the vicinity of the lands.

Q. And you believed that to be true?

A. I certainly did. Shouldn't have touched the matter if I had supposed it was in any way tainted with fraud, except I did know that that question was in it as to his having bought at about the time final proof was made.

Q. Did you understand that that was no objection to the bona fides of his claim?

A. Certainly.

Q. And of course, if you did not have any knowledge of that yourself, you did not communicate any knowledge that there was anything wrong about these claims to Senator Mitchell in any way?

Thought Claims All Right.

A. No, sir, I never did. I think on the contrary I assured him they were all right as far as I knew.

Q. As a matter of fact, so far as you know he had no knowledge of the matters whatever except what he got from you, did he?

A. That is, as far as I know, he did not. I don't know what other information he may have had about it, of course. But so far as I know.

Q. So far as you know. In relation to the books, before I pass from that, Mr. Tanner, have you always had charge of these books ever since 1894?

A. Since 1894?

Q. Yes.

A. Up to the present time?

Q. Yes.

A. No, sir, I have not.

Q. Who has had charge of them?

A. Well, I placed them in the hands of the Government officials, I think in February last.

Q. Did you place them in the hands of the Government officials?

A. Yes, sir.

Q. Or did the Government officials come and seize them?

A. Well, they came—what I meant to say is that they subpenaed me with a subpena duces tecum to produce the books, and I gave them to them.

Q. Where?

A. At my office.

Q. They came over there and got them?

A. Yes, sir.

Q. Who came?

A. Mr. Burns, the Government detective.

Q. Anybody else with him?

A. There didn't anyone else come with him, no sir.

Q. Didn't Mr. Robertson come with him?

A. No, sir, he did not.

Q. Was he there with him?

A. He was there at the time that the books were taken, yes, sir.

Burns Got the Books.

Q. Did he help Mr. Burns about taking charge of the books?

A. No, I don't think he did. He was present there and helped about segregating these letters and getting the letters that he called for.

Q. How many different times was Mr. Burns there getting the books?

A. Getting the books?

Q. Yes, and papers?

A. Well, he was there what one time getting the books, and he got at that time most of the letters; but there were some of these letters that were in a personal letter file case, that I omitted to give him at the time, and he came back, I think the day before the trial commenced.

Q. And got them?

A. And demanded those, and I gave them to him.

Q. Was Mr. Robertson with him at that time?

A. No, sir.

Q. How long was Robertson there before Burns came in?

A. Mr. Robertson had called on me, I assumed, to pay a friendly call, and had been in the office about ten minutes, I suppose, or such a matter, when Mr. Burns came in.

Q. When was that?

A. I cannot recall the date. It was some time in February last; that is when the most of these letters were taken.

Q. I mean the first time when he got the books?

A. Some time in February.

Q. What has had charge of the papers and the books that he took at that time, since then?

A. I suppose they have been in the possession of the Government officials. I don't know who has had the actual keeping or custody of them at all.

Q. You have not had access to them since?

A. I have not, no, sir.

Q. Now, Judge Tanner, something has been asked you about these checks. By the way, did Mr. Kribs pay you in all these transactions by check?

A. Yes, sir.

Q. He never paid you in money, in cash, as distinguished from checks?

A. No, sir, I don't remember that he did.

Q. And how long would you keep these checks before you deposited them in the bank?

A. Well, it would generally be the same day, unless he gave it to me after banking hours, and then it would be deposited the next day.

Q. Now, you would take these checks to the bank and indorse them and turn them over to the bank, and the bank would give the firm credit for that amount, would it?

A. Yes, sir.

Q. Right there and then?

A. Yes, sir.

Q. You have said something about the collection of these checks. You don't know anything about whether they were collected or not, do you, except the fact that they came back to you afterward?

A. I know we were credited at the bank for the amount of the deposit.

Q. That entry was made immediately when you turned the checks in, wasn't it?

A. Yes, sir; never any protest on the checks or anything that would indicate that they were not paid.

Q. You know nothing about what was done with them after that time; after you turned them over and got your credit on the books of the bank?

A. No, I don't know what was done with them after that.

Q. Now, when you come to settle with Senator Mitchell, you did not divide up any particular money, but you threw it all in a hotch-potch, as it were, counted up the whole amount for the month, took our your expenses for the month, and then drew the check that you have spoken about in favor of yourself, which you afterwards turned over to Mitchell's account for what would be his share of the net proceeds?

A. Yes, sir.

Q. That was the way in which it was done?

A. Yes.

Mitchell Never Saw Kribs' Checks.

Q. Senator Mitchell, then, never saw one of these checks that you received from Kribs as far as you know?

A. No, sir; as far as I know, he never did.

Q. Well, you know that he did not from the time that they were received until they were turned over to the bank, don't you? You know that he never saw them from the time that you received them until the time you turned them over to the bank, don't you?

A. Yes, he never did.

Q. Now, Judge Tanner, in relation to the change of an entry on the books, which you say you changed from "Puter" to "second lieu" or substantially that; as a matter of fact, the only thing that Puter had to do with that list, so far as you know, was that one of the claims was his claim, ostensibly?

A. Yes, sir; his name was in the list.

Q. And his name happened to head the list?

A. Happened to head the list, and I simply referred to it as the Puter list, that is all there was to that.

Q. And then when these trials came on, and Mr. Puter was getting in bad repute, looking over your books and seeing that there, why, you changed it?

A. I did; yes, sir.

Q. Now, in relation to the October payment, you testified, as I understand you, that the check in this instance for that first payment—which by the way, I upderstand not to be one that is charged in the indictment; that first payment you don't understand to be covered by the indictment?

A. I don't know; I am not familiar with the indictment. I could not say. I don't know about that.

Q. Well, I just wanted to bring that matter out so it will be clear. But any way, that check, as I understand you, was drawn differently from the others, that is, you think that check was drawn in favor of Senator Mitchell, instead of being drawn in your favor when the partnership profits for the month was divided?

A. Yes, sir; I think he was here at that time, and, as I have already explained, whenever he was in the city, so as to attend to depositing the matter himself, I made the check payable to him.

Q. You don't remember whether he was here or not, but you think probably he was?

One Check Payable to Mitchell.

A. I think from the fact the check was made payable to him and indorsed by him that he must have been here, of course. It would not have been done that way if he was in Washington.

Q. You remember nothing whatever about the circumstances of that transaction?

A. No, I do not recall anything about it.

Q. Do you not remember how or where the check was given to him, or whether it was sent to him or given to him?

A. It was probably given to him at the office, but whether I gave it to him personally or handed it to Robertson and told him to give it to him, I cannot remember.

Q. You do not remember whether it was given to him at the office, do you?

A. No, I don't know. I don't remember a thing about that. If I gave it to Robertson, he may have handed it to him at his room; I don't know; I have forgotten about that.

Q. And it might have been put in a letter and sent to him, for all you know?

A. I don't know about that. I would not know anything about that.

Q. That check you turned over to Senator Mitchell was not Krib's check, was it, but your check for the division of the money for that month?

A. Yes, sir.

Q. You never turned over one of Krib's checks to Senator Mitchell, at all?

A. No.

Q. In some of these matters about which you have testified—I shall not attempt to go into detail as to all of them with you—in some of the matters about which you have testified as to work done by you for Kribs and different parties there was a great deal of defects in abstracts of title, was there not, to be cured, that is, of the base lands and so on, where there were lieu-land selections?

A. Yes, sir; especially in those lieu selections of Kribs; there were a great many defects in the abstracts, lacking in certificates as to judgments, taxes and various matters that the department required to be shown in the abstract, which were missing, and I had to supply them, and I have done a great mass of corresponding and work in getting the abstracts perfected so as to comply with the requirements of the department in that respect.

Q. Did you have to correct titles in some instances?

A. Yes, sir; I had to get deeds and correct errors in other deeds, and in various matters perfect the abstracts so as to show the title to the base land was good and free from incumbrance.

Q. How long were you working at this matter of getting the titles in a position so they would be proper to present to the department?

A. I have been working on these two lists ever since I was employed in the matter to the present time. Some of them have been approved for patent and others are still held up for some defect or another. We have been trying to comply with the requirements of the department.

Q. Can you give an idea to the jury as to the extent of work there was involved in getting these deeds and completing the abstracts and getting the matter of the title of the base lands in a condition to be presented to the department?

A. It would be a very difficult thing to do that. I have written a great many letters to get certificates as to taxes to various County Auditors and Clerks, some in Idaho, some in California, and have sent deeds to be re-recorded and abstracts brought down to date, and a great many matters of that kind. I cannot recall now all of them, but there has been a great mass of work of that kind to do in connection with the matters.

Q. Was all that covered by the retaining fee you have charged which you have testified about, that work of getting abstracts, deeds, records and all that kind of work that is covered by all these years?

A. Yes, sir.

Q. In relation to the conversation when you met Senator Mitchell at Kalama, who did you say was present at that time?

A. I did not say that anyone was just present when we were talking privately about these matters, but when I first met him in the train, I think Mr. Hermann was there, and I also recall that Frank Baker was on the train.

Q. That was when the conversation first commenced?

A. Yes, just general conversation and the greeting that would take place.

Q. I believe you testified that they were asking you about how things were here and what had been done and so on?

A. Yes, sir.

Q. That was just shortly after Puter and McKinley and some of those people had gone before the grand jury and testified, was it not?

A. Well, I don't know about that. I know there was rumor here about some statements they had made or were about to make, or something of that kind; but I don't remember whether they had been before the grand jury or not. I had not been paying attention enough to it up to that time to know anything about it.

Q. You told Senator Mitchell, Mr. Baker and Mr. Hermann about those rumors at that time, didn't you?

A. Yes, I did. They were trying to get at what the charges were against them, or going to be against them.

Q. Didn't you tell them that it was rumored around that those people had made peace with the District Attorney, and that they had or were going to go before the grand jury and tell a story in relation to the matter? Didn't you tell them that was rumored around?

A. Yes, I think I did.

Q. And it was rumored around that they had been promised immunity?

A. Yes.

Rumors of Granting Immunity.

Q. Didn't you also tell them in the same conversation that it was rumored around that Mr. Heney was giving immunity to anyone that would tell something to fasten these matters upon Mr. Hermann and Mr. Mitchell?

A. You say, did I tell them there was such a rumor?

Q. Yes.

A. I think perhaps I said that, yes; something to that effect.

Q. And that he had said the big fish was what he was after; didn't you tell them that in that conversation?

A. I don't remember of using that language, but I might have done so.

Q. Didn't you tell them that in substance?

A. I might have said so in substance. I don't recall the exact language.

Q. And you told Senator Mitchell, did you not, while they were present, and also after you were out privately with him, that they were moving heaven and earth to get something against him?

A. I said that that was the rumor that was about on the streets here.

Q. You told him that you thought so?

A. I don't remember to have said that; though I might have done so. What I was aiming to convey to them was the general rumor and report that was going about here on the streets.

Q. And you say that Senator Mitchell was greatly discouraged?

A. Yes, he seemed to be.

Q. In distress of mind, I believe you put it?

A. Yes, he was, apparently. He seemed to be.

Q. You told him enough to put anybody in distress of mind, didn't you?

The Court: Pass that. That is a matter of argument.

Q. At that time, as far as you knew, the Kribs matter was not under investigation at all, was it?

A. No, not so far as I knew.

Q. There had never been any report that it was under investigation at that time, had there, nor any intimation of that kind?

A. I had never heard any intimation of the kind.

Q. And you never had heard any intimation of the kind until after the change of this contract, had you? I mean outside yourselves; you never had heard any intimation that the Kribs matter was under investigation until after you changed the contract, had you?

A. Well, the first intimation I had about it was what the Senator said to me.

Q. But outside of yourselves you had not had any?

A. No, I had not.

Q. Up to the time you changed the contract?

A. No, I had not.

Q. It was the attempt to connect Senator Mitchell with the Puter matter that you told him about?

A. I told him that I thought that is what it was; yes, sir.

Q. Do you claim, Judge Tanner, that the Kribs matter and the Kribs checks were talked over in that conversation?

A. Yes, sir.

Q. In the presence of Baker?

A. No, I did not say that.

Q. You claim it was only talked over privately, between you and the Senator alone?

Mitchell Bought Up Kribs Matter.

A. Yes, sir. We were sitting alone in the Pullman talking the matter over, and he brought it up himself.

Q. Whereabouts do you claim to have been sitting when that conversation took place between you, or when you claim it took place?

A. We were sitting in the seat in the Pullman car; I don't remember which seat it was.

Q. Where was Mr. Baker?

A. He was in the same car somewhere; and so was Hermann, I think.

Q. About how close to you?

A. I don't remember about Mr. Baker, but Mr. Hermann and his wife occupied, I think, a berth just opposite the berth we were in.

Q. Then they were close enough so they could hear everything you said in the tone you were talking?

A. No, sir; they were not.

Q. Do you claim to have talked in such a low tone of voice they could not have heard it across the aisle of the car?

A. We were talking privately; yes, sir. I don't think they could have heard it. I don't think they did hear it.

Q. And then you claim that after you got up to the hotel you had another talk?

A. Well, not that same evening. What occurred at the hotel was at another time. As I explained before, I called on the Senator almost every evening while he was here at the hotel, and extended what sympathy and support to him I could, and had various conversations about the matter.

Q. Where was it you had the first talk with him that evening after you got up in the car?

A. I had it in the car as I have already stated, on the way up from Kalama to Portland; and I accompanied him to his room at the hotel and remained a short time, and bade him good night and left, and did not have any further talk about it that evening.

Q. You did not have any more talk about the Kribs matter, or the Puter matter, after you left the car that evening?

A. No, sir.

Q. How long was it after that until you had another talk? As I understood, you had another talk, as you claim, after that?

A. Yes, he came to the office the next day or so, and wanted to look over the books. And I got the books, as I have already explained, and took them into his private room and gave them to him, and I sat down there on one side of the table and he on the other, and he went over the books carefully, page by page, from one end of them to the other.

Q. Who do you claim to have been present at that time?

A. There was no one present but he and me.

Q. No one in the office?

A. I don't remember about that. We were in his private room. I do not recall whether there was anyone else in the office or not.

Q. What time of day was it?

A. I think it was in the forenoon.

Q. You do not remember whether anyone else was present in the office or not?

A. No, I do not.

Q. But you claimed there was no one present in the private room when you say you went over the books with him?

A. There was not.

Q. How long do you claim to have been in there looking over the books?

A. We must have been in there something like an hour, possibly longer.

Q. Were you doing any talking while you were in there?

A. Yes, sir; quite a bit of talking.

Q. There was one entry in there particularly that Senator Mitchell made some protest about; about the matter of a charge against Joseph Teal, was there not?

A. Yes, he spoke of that.

Q. A charge of $10 made against Teal?

Protested at Teal Charge.

A. Yes. I will tell you what occurred about that if you want to know what was said about it. He came to that item and protested he had never charged Col. Teal anything for any services or anything of the kind, and I explained to him what it was, that it was a pension matter, that Col. Teal had come into the office and wanted me to prepare the papers for an application for pension under the Indian War Pension Act; that he was entitled to a pension, and I prepared the papers and sent them on and got the pension allowed. It is the custom in the Pension Bureau to send a Treasury warrant for $10, and that was forwarded to me as the attorney. I put myself in the application as attorney for him. When that was received it was entered on the books.

Q. And he was very much disturbed about that entry, was he not?

A. Well, he seemed to find some fault with it.

Q. Protested against it very vigorously, didn't he?

A. Oh, I don't know as I could say vigorously. He said he had never charged Col. Teal anything and would not charge him anything for work.

Q. Said he would not charge for a matter of that kind, anyway?

A. I think he said that.

Q. What?

A. I think he said something to that effect, yes. I told him and the facts were, that I had never made any business of taking pension claims, except in one or two or three instances, where friends of mine or his came in and insisted on my preparing the papers, and I did so; and in this case of Col. Teal and another case of my mother-in-law, I got a pension for her, the same entry was made without any thought that there was anything wrong about it or anything that would affect him at all in the matter.

Q. You had told Senator Mitchell, hadn't you, that you did not take these pension claims at all except as a matter of friendship?

Took Few Pension Claims.

A. No, I did not tell him that. I had written him, I think, that I did not make a business of it, and did not care for it; it was entirely too much work and too much correspondence for the money I could get out of it, and I did not care about the business; but in a few instances where they were old-time friends of his or mine, that I would take the applications and forward them in the usual way and do the work. And when the Treasury warrant came, I usually entered it on the book without saying anything particularly to the pensioners about it.

Q. You had not said anything to Senator Mitchell about putting these warrants on the books in these pension matters?

A. No, I don't think I had.

Q. Didn't he tell you in that same conversation that even when he was a private citizen he had attended to a hundred pension claims and never charged a man a dollar for a thing like that in his life?

A. I don't remember that that was said, though it might have been; I would not say about that.

Q. When was it that you had the first talk about changing this contract of 1901?

A. That was in his room at the hotel, some day or two after we had the talk in the office about the books.

Q. Did you ever have any talks about changing that contract, with him at the office?

A. No, that matter did not come up at that time.

Q. Never did come up at the office?

A. No, I think not.

Q. When you were talking with him about that at the hotel, do you claim to have had the contract there at the hotel?

A. The original contract?

Q. Yes.

A. No.

Q. Then, at the time you were talking with Senator Mitchell about it, you did not have the contract with you?

A. No, I did not. I simply told him what the substance of the clause in the contract was—reminded him of what it was.

Q. He seemed to be surprised, didn't he, when you told him that that was in the contract?

A. No, he did not.

Q. Didn't he claim to be surprised?

A. He did not seem to be. I told him myself that that clause about his retaining for services in the department might be misconstrued, and look bad.

Q. Might be misconstrued?

A. Yes, it looked as though he was intending to practice in the department, something like that, and looked bad on the face of it.

Mitchell Seemed to Be Worried.

Q. He seemed to be worried about that, when you told him about it, didn't he, that it might look bad and be misconstrued?

A. Yes, sir, and he suggested immediately that we should change the contract.

Q. He suggested that, you should change the contract?

A. Yes.

Q. After you suggested that it would look bad?

A. Yes, and after I had told him that the contract provided that he should have one-half of all other fees wherever earned.

Q. When he suggested that you might change the contract, you suggested that that would involve perjury, did you?

A. I did, yes, sir. I said to him, "Senator, to try to change the face of things as you are proposing, and make it appear that you did not get any part of that Kribs money, or was not entitled to it, will require a lot of lying and swearing to it in the court on the part of both of us."

Q. You were the first one that said anything about swearing to that? If there was any talk, as you claim, about swearing to that in court, you were the first one that first mentioned the matter of swearing to it in court?

A. Yes, sir. Of course, I was looking ahead—I could naturally see that that is what it would end in, if we changed the agreement and tried to carry it through.

Q. And you claim he said to you, virtually, that he waited you to do it, nevertheless, if it did involve perjury?

A. I have told you what he said. I can repeat it, if you like.

Q. Well, repeat it.

"Persecution," Said Mitchell.

A. He said, "Judge, I consider anything justifiable under the circumstances. This is a case of persecution."

Q. He said that was a case of persecution, and he considered anything justifiable under the circumstances?

A. Yes, sir; and he said, "We have done nothing morally wrong. Hitchcock has a grudge against me and is going to try to rule me out, and I want you to stand by me and help me in the matter."

Q. And then, you agreed, did you, as you claim, to go in and commit perjury?

A. I did not say that. I have told you what occurred. I have told you the facts as fully as I can.

Q. Well, you went off and changed the contract with the deliberate intention of committing prejury in relation to it if the matter was called up in court. You want the jury to understand that, do you?

A. I understood that that is what it meant, yes, sir.

Q. You say you were born in 1855?

A. Yes.

Q. Then you were at that time 49 years old?

A. I was, yes.

Q. You had been engaged in the practice of law about how long?

A. About 26 years.

Q. And you had been Municipal Judge in this city for three or four years?

A. Yes, sir.

Q. You knew all about courts of justice and the administration of oaths?

A. I did, yes.

Q. And you had had an active practice for 26 years, and tried a great many cases in the court?

A. Yes.

Q. Now, Judge Tanner, you got your son to write that contract, did you?

A. I did, yes.

Q. And when you brought it back to Senator Mitchell, you say you and he talked the matter over?

A. I said that I gave it to him and he read it very carefully; he said it was all right, that that would fix it up.

Q. He said that was all right?

A. Yes, sir.

Q. Then you claim that he asked you if your son was all right, or words to that effect?

A. Yes, he said, "Can the boy be relied on?" or something to that effect. I said yes, and I said, "You will have to take care of Robertson," or "look our for Robertson," or something of that kind.

Q. And he asked you if the boy could be trusted, or could be relied upon. I believe were the words you used, and you said he would do whatever you told him?

A. Yes, sir.

Q. You had it in mind at that time that the matter might go in court and the boy might have to swear that he had not drawn the paper, did you?

A. Of course, that was understood by both of us.

Q. That was what you had in mind when you said that?

A. Yes, sir.

Q. You meant that the boy would come in and swear to a falsehood in relation to that if you told him to. That is what you meant, was it?

A. That is what we both understood about it.

Q. And you claim that you, in the same conversation, referred to the matter of Robertson?

A. Yes, sir.

Q. Having drawn that contract?

A. Yes, sir.

Q. And you claim that you asked him if Robertson could be depended on, or something like that?

A. I said to him, "You must remember that Mr. Robertson prepared that agreement, or ran it off on the typewriter, and knows all about it, and it would not be safe to try to change it unless we can count on him."

Q. And you claim that he said he would manage Robertson, or words to that effect?

A. Yes, sir.

Q. Judge Tanner, is it not true that at the time you changed that contract, at the time you were talking about that contract, and the time you changed it, that either one of you did not know, and did not know until long afterwards who it was that drew the contract of 1901?

A. No, sir, that is not so.

Q. Is it not true that you had both forgotten and that you did not know, especially that you did not know yourself, that Robertson had drawn the contract, until long afterwards?

A. I don't think it is.

Q. Isn't it true, as a matter of fact, that not a word was said about Robertson drawing the contract at that time, and that you inquired long afterwards of Senator Mitchell as to whether Robertson drew that contract or not, and ask him to find out whether Robertson drew it or not personally, I mean? To see him here in Portland and find out, and told him to find out?

Mr. Heney: If you are asking the witness about a writing, the fair way is to show it to him.

Mr. Bennett: I am not.

Q. I am asking if you did not meet Senator Mitchell personally here in Portland, after you changed that contract, a month or two afterwards, and inquired of him as to who it was that drew that contract, whether Robertson or not, and asked him to find out?

A. You mean the contract of 1901?

Q. Yes.

A. I don't remember anything of the kind.

Q. You could not have done that if you know at the time the contract was changed, who drew it, could you?

Positive Robertson Drew It.

A. I was pretty certain; I was very positive that Robertson did it; though I might have felt some little doubt about it at the same time, as to whether it was he or not, but I was very positive that it was he that did it.

Q. But you claim you said to Senator Mitchell that Robertson drew this, and he knows all about it?

A. I did, yes; that is what I said.

Q. You must have known, then, at that time, who drew it, if that was true?

A. I did feel very positive of it.

The Court: We have now reached the hour of our usual recess. I desire, if there are to be any requested instructions, to have them passed up as soon as possible.

Whereupon a recess was taken until 2 o'clock P. M.

AFTERNOON SESSION.

A. H. Tanner on the Stand.

A. H. Tanner resumes the stand.

Cross-examination continued.

Q. I believe you stated, Judge Tanner, that at the time you changed this agreement, the Kribs matter was not under investigation at all, so far as you knew?

A. Not so far as we knew; no sir. But the Senator seemed to anticipate something of that kind and wanted to be prepared for it. That was the idea.

Q. Never mind what he seemed, unless you can tell what he said. Isn't it a fact that Robertson, or his drawing of that agreement, was never mentioned at all in any of those conversations about the change of that contract?

A. No, sir; it is not a fact.

Q. Isn't it a fact that it was never expected or intended by either you or Senator Mitchell, at that time, that that matter would ever come in court, or that you would ever be called upon to testify in relation to it?

A. It is not a fact; no, sir. The matter was talked of and it was expected that I would be subpoenaed at any minute to bring the books and papers of the firm before the grand jury.

Q. Although it never had come to you that the matter would be investigated at all?

A. I had no official notice, but it was expected any minute that the grand jury would start in on this firm matter.

Q. But you had never had any notice official or otherwise, that the Kribs matter was under investigation at all?

A. No, sir. It was just an anticipation of the Senator that something of the kind might occur.

Q. You insist, then, that at that time you had deliberately made up your mind to go in and perjure yourself and have your son perjure himself in relation to this mater?

A. The Senator appealed to me in a way—

Q. I am asking you if that is not the fact. Answer my question.

A. I did so. But I would like the privilege of stating why I did so.

Court: Go on.

Senator Made Appeal.

A. The Senator appealed to me in a way that I could not very well resist, and insisted on having his way about it. I advised him to take a different course, but he said this was the only thing that would save him, in effect. And I saw that it was necessary to let him have his way or break with him and defy him, and be accused of deserting him in his old age and in his extremity, when he needed his friends if he ever did before in the world, and I yielded to his judgment in the matter, and undertook to carry out the scheme of defense that he wanted to have carried out in it.

Q. You went and had your son write this agreement, knowing that he would be called in court, probably, as you say, expecting that he would at any rate, to testify in relation to the matter?

A. Yes, sir. And the Senator knew it, too.

Q. Now, I will ask you whether or not you sent Senator Mitchell, at that time, this telegram?

A. Yes, sir; I did.

Mr. Bennett: We offer the telegram in evidence, your Honor.

Marked Defendant's Exhibit D, and read as follows: "The Western Union Telegraph Company. Portland, Oregon, February 1, 1906. Hon. John H. Mitchell, U. S. Senate, Washington, D. C.:—Grand jury investigating our firm business. Find if Harry prepared partnership agreement of March 31st, 1901, and also warn him to be careful identifying agreement. Important. A. H. Tanner."

Q. Was the Harry referred to in that telegram Robertson?

A. Yes, sir. I would like to explain that dispatch, if I may have the privilege of doing so.

Court: The witness is entitled to explain it.

A. In view of what had occurred between the Senator and myself when he was here——

Mr. Bennett: We object to this explanation as being incompetent and immaterial.

Court: The witness is entitled to give an explanation in connection with his former testimony.

Mr. Bennett: We take an exception to your Honor's ruling in relation to the matter.

A. In view of what had already occurred between the Senator and myself when he was out here in December, and when this matter was fixed up, and I had told him that we could not go on with it without Mr. Robertson, I was trying to find out from him what Mr. Robertson was going to do, whether we could depend on him or not; and of course I did not dare to put a matter of that kind in a dispatch, and I worded it in that way so that he would understand I wanted to know what Mr. Robertson was going to say about this matter.

Q. And so you asked him to find out if Harry prepared the partnership agreement?

A. I knew that he would understand, or he ought to have understood what I referred to.

Q. You didn't have any doubt in your mind, then, at that time, but what Robertson did draw the original agreement?

A. I did not, sir; no, sir.

Q. You knew that positively?

A. I was positive of it, and told him so at the time the arrangement was made.

Q. Then what you testified to before dinner, that you had some doubts in your mind in relation to that matter, is not true, is it?

A. I said then, and I say now, that I was as positive as a man can be of anything that Robertson had prepared the agreement.

Q. Well, did you, or did you not, have any doubt whatever?

A. I had no doubt that would amount to a doubt about it. I was positive as I say in my own mind that he had done it.

Q. Judge Tanner, you did go before the grand jury and testify that this contract, which had been substituted, was the original contract, did you not?

Undertook to Carry Out Plan.

A. I did, sir; yes, sir. I undertook to carry out the plan of defense that Senator Mitchell wanted to carry out in the matter.

Q. And you had your son do that?

A. I did.

Q. Afterwards you were indicted for the crime of perjury in relation to that matter?

A. I was; yes, sir.

Q. Under the statutes of the United States?

A. Yes, sir.

Q. In this court?

A. I suppose it was in this court. I don't know whether it was the District Court or the Circuit Court. I don't recall.

Q. Well, it was the United States Court, anyway?

A. Yes, sir.

Q. And you pleaded guilty to that indictment?

A. I did; yes, sir.

Q. Mr. Heney was then prosecuting that indictment, was he?

A. Yes, sir. I did so, if you will allow me to explain, to save my boy from indictment.

Mr. Thurston: Your Honor, we object.

Q. Mr. Heney, then, was threatening to prosecute your boy unless you would testify in this matter?

A. He was threatening—and told me that the grand jury had voted to indict my son and that he would be indicted unless I would tell the truth about this matter.

Q. And did he also promise you immunity?

A. He did not; no, sir.

Q. Did he promise you any leniency?

A. No, sir.

Q. Did he promise that he would recommend your pardon?

A. He did.

Q. Oh, he did?

A. Yes, sir.

Q. And in view of that, and pursuant to an arrangement with Mr. Heney, you went in and plead guilty, did you?

A. The arrangement that I speak of that they were to save my son from indictment.

Q. And secure pardon for yourself?

Promised to Recommend Pardon.

A. I did not know whether it would result in pardon or not. He stated that I would have an equity of recommendation for pardon.

Q. And in pursuance of that, you went in and plead guilty?

A. I did, sir; and made an open statement in court about the matter.

Q. And that matter is pending over your head now, isn't it?

A. Yes, sir.

Q. No sentence has been pronounced upon it?

A. No, sir.

Q. Your son was not indicted—has not been?

A. No, sir.

REDIRECT EXAMINATION.

Q. Judge, was the statement which you there made in court the first one that you ever made to any Government officer—the one you made in open court?

A. Yes, sir; it was.

Q. Did you receive any reply to that telegram which has been shown you? (handing witness a paper.)

A. That is a reply to another dispatch that I sent the Senator, I think, the same or the next day. I don't think that is the dispatch.

Q. Have you a copy of the other dispatch?

A. I don't think I have. I supposed you had it.

Q. You can get it at the telegraph office. They keep them six months.

A. I can state in substance what it was if I am permitted to do so.

Mr. Thurston: We object to that; we prefer to have the dispatch, so there can be no mistake about it.

Q. Were you in Washington at any time while Senator Mitchell was Senator under this last election?

A. No, sir; I was not.

Q. Were the office books kept in the safe during the day, during business hours at the office?

A. Yes, sir.

Q. I call your attention to Government's Exhibit 76, a letter written by you to Senator Mitchell, the sentence where it says, "if we can win this case we can, as we contemplated, charge a big fee for services in the matter." Had you had any conversation with Senator Mitchell in regard to the charging of a fee in that matter prior to that time?

Talked of the Big Fee.

A. Yes, sir; I had. This relates to that application of the California & Oregon Land Company to select indemnity land within the forest reserve; and I had talked with him and we had discussed to some extent the question of law involved in the matter, and I told him that if we could win the case and establish the right of the company to make selections in the forest reserve, that we could make a big fee in the matter; that the company would be willing to pay a big fee in the matter. And that is what this letter refers to.

Q. Did he make any suggestions to you at that time in regard to how the fee should be divided if divided at all?

A. No, sir; there was nothing said about that.

Q. When Senator Mitchell came here, after his election at any time, did he have a private room at the office?

A. He did; yes, sir.

Q. Did anybody occupy that private room with him?

A. No, sir.

Q. Did Mr. Robertson come here each time with him when he came?

A. He did; yes, sir.

Mr. Bennett: These questions are very leading, your Honor.

Q. Did you see Robertson in Senator Mitchell's room at any time while they were here?

A. Yes, sir; very many times I saw him going in and out of his room, and in his room. He was like any private secretary, constantly with the Senator, and attending to his correspondence and his business matters generally.

Q. Did you ever see Robertson have the books of the firm in his possession?

A. I don't recall that I ever did. Oh, I have seen him have the books, and he has helped me at times there about fixing up these balances, these monthly settlements and things of that kind. And of course, the books were open to him and accessible to him at any time.

Q. At the time that Kribs came to you and asked to employ you as to the 40 timber claims, did he tell you as to where the claims were pending at the time?

A. I think he did. He said they were pending in the department at Washington before the Commissioner of the General Land Office.

Q. And what did he say he wanted you to do in relation to them?

A. He wanted me to take the matter up and give him advice and direction what to do, and do whatever was necessary here to get the claims expedited and passed to patent.

Q. Did you agree to take any part in the getting of the affidavits from entrymen?

A. The retainer was to do whatever was necessary, whatever work was required.

Q. But were you to do anything about getting the affidavits from the entrymen?

A. I don't know that I was, except to direct him and advise him what to do, how to protect his interests in the matter.

Q. Did you do anything about getting the affidavits?

A. Nothing except to talk to Van Zante about going up there, and giving him directions in regard to it.

Q. Now, did you do anything at all in regard to those 40 timber claims, or the other 39 timber claims, known as the "Puter list," except to write to Senator Mitchell about them?

A. Except the advice and direction I gave Mr. Kribs about it and preparing an affidavit which he made here.

Q. That Pillsbury affidavit?

A. No. No, it was an affidavit which Kribs made in reference to those entries setting forth that he had bought them in good faith and showing the circumstances under which he had purchased the claims, that was sent on to the department with the other affidavits.

Q. The Pillsbury affidavit was in the lieu selection matter?

A. Yes, sir, that was in the matter of lieu selection.

Q. Now, then, was anything said by Kribs in the conversation with you in the

SUMMARY OF THE RESULTS OF JUDGE TANNER'S CROSS-EXAMINATION BY THE DEFENSE.

Though Judge Tanner was delivered into the hands of the defense yesterday morning, his testimony was not changed in the slightest from the story he had told for the government the day previous. One ray of hope was gleaned from the entire cross-examination and that was