## EX-SENATOR THURSTON FINISHES PLEA FOR FORMER COLLEAGUE

(Continued from First Page.)

for subornation of perjury in having influenced Tanner and his son to swear falsely before the grand jury, was answered by Mr. Hency by the statement that such an indictment had been returned. It was called to mind that the last days of the grand jury had been very ones, and that of necessity several tments had been voted which, for lack of time, had not been returned. One of these was an indictment against Sena-tor Mitchell for subornation of perjury. Neither had Mitchell been singled out as scapegoat for the sins of the many. In round numbers, 80 people had been indict-

ed by the grand jury, and more would have been brought before the people had the time of the jury warranted it. This would show that Senstor Mitchell had been singled out either for prosecu-or for persecution.

It had been contended by the defense, the speaker said, that the defendant had not known any of the claims to be dishonest and that he had assisted in their exon for favor and not for compensa-But the Senator had known that A. D. Puter, Kribs, Hyde, Dimond and Benson were all interested in the lands, which in itself should have thrown a cloud of suspicion over the transactions. The fact that Kribs was so anxious to have the claims expedited was also proof. and his desire to sell them so soon after patent augured that he wished to get them into the hands of an innocent purchaser, so that they would be off his hands. under the law, the purchaser would

Mr. Hency declared that the argument of the defense that Mitchell had nothing to do with the transactions before the Land Office was unfounded. If Tanner expected no assistance from Mitchell in the Benson matter, he had simply charged his client \$1500 for writing a letter to the department. In the Kribs matter, if Mitchell was not to have given assistance in Washington, the Senator had charged his customer \$1000 for a little advice. On the other hand, the evidence shows that the work on the Benson claims had been done in Washington, while the same could be said from inference of the Kribs trans-

again to the firm accounts. He read extracts from the books, showing a steady monthly payment of \$500 from an unnoted source. This had been salary for servform done to a corporation, and it formed the larger portion of the income of the firm. Therefore, if the Senator's share of the dividends were ordinarily about \$200, it would certainly occasion remark him when the sum was doubled for o or three months in succession. Mitch-had undoubtedly known that the firm was doing practically no business other

than the land business.

Yr. Henry then took up the knowledge of the Senator, and stated that he knew source of his dividends from the exefters from Tanner telling of fees paid and to be paid. He had been told in let-ters of the fact that Kribs had paid his \$1000 fee, and by other items. The firm books and his examination of them, the variation in the size of the checks drawn variation in the size of the coordinate from month to month, all had brought behad known all of the details of the busi-

worried by the heat of the room, and knowing that the case could not be sent to the jury anyway, ordered the adjournment of court until Monday morning at 10 o'clock. Mr. Heney will then finish his argument, and the case will be placed in the keeping of the jury by the charge of

### THURSTON FINISHES PLEA.

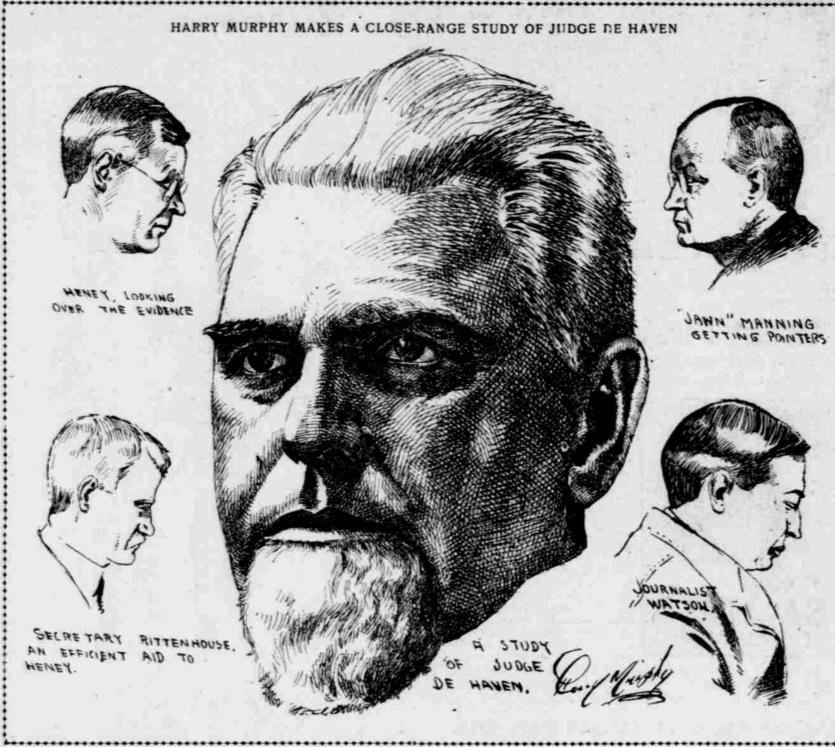
### Ex-Senator Completes Brilliant Ap-

the Jury:

If, ou yesterday, in my zeal for my client and in the arder of debate, I criticised the acts of the prosecution with perhaps some severity. I do not thereby intend to reflect in the slightest degree upon any act which has been done by the District Attorney in court and in the trial of this case. I say, with all sincerity, it has been one of the pleasures of my professional life to cross swords in court with a prosecutor who his tried his case in such an able and clean and lawyerlike manner. I have been amazed in court with a prosecutor who his tried his case in such an able and clean and lawyerlike manner. I have been amazed by his mastery of the detail of his case, and I have been alarmed by that wonderful power of his with which he groups together acts and incidents, harmless and innocent in themselves, until he makes them all appear a guilty whole. If the Secretary of the interior, in his endeavor to search out the land frauds of this Western part of the country had searched the whole wide land, in my judgment, he could not have found another so able prosecutor as he has found in this case. My criticisms have gone to those conditions which appear in evidence here of the apparently remarkable manner in which the whole force and power of the prosecution, before the trial of this case, had been centered upon the desired conviction of John H. Mitchell. I cannot understand, and I do not believe that you can understand, why It is—and it is—that a prosecution originally directed, as I stated on yesterday, against the alleged land-grabbers, the alleged robbers of your great timber resources, has been turned aside from them and centered on this public servant and his associates. I do not understand it. I do not believe that you understand it.

Purpose of Testimony.

Now, gentlemen, I shall not go over this morning, and I propose to conclude this morning. I shall not go over anything that I went over yesterday in the discussion of the indictment, or the acts and doings of the parties up to the time when the list payment had been received on the Kribs matter. When the last sum of money had been paid by Kribs, or the last check had been given by Kribs, or the last check had been given by Kribs, or the last check had been given by Kribs, or the last check had been given by Kribs, or the last check had been given by Kribs, John H. Mitchell was either gulity then, or be was innocent. He could not, thereafter, by any act of his make wrong what had been before right, or make right what before had been wrong. The only purpose for which testimony has been introduced to show what took place between Mr. Mitchell and Mr. Robertson and Mr. Tanner afterwards, is for the purpose, and the jury can only consider it for the purpose, of determining as to whether or not his subsequent acts and doings in any degree tended to establish as to whether or not, in the original transaction, he was doing knowingly a guilty act. And, in passing to the consideration of what this man did and said when he was brought face to face, through the public press and other sources of information, was the fact that he was being pursued before the grand jury in the State of Oregon, and that perhaps from behild closed doors in the mystery of that grand jury chamber, there might come out to the world an accusation against him. I have been called upon to consider many, many cases, in which men charged with criminal acts behaved in various manners, and from my long experience. I can honestly say that I have never yet been able to judge in the case of any one man, as to whether his after actions disclosed a guilt or an innocence, I have known men, as innocent of wrong as is the violet, when charged with trime and brought face to face with the danger of prosecution, to act in a manner that, to the



like to believe that you will judge all the acts of every man in a kindly spirit. We are not very good judges of the hearts and the motives that control the actions of men: we are apt to be harsh, and we are apt to forget that there will come a time when we must stand up before the awful bar of the final judgment and explain our own actions that we have kept concealed from the eyes of men, and I believe that in every human soul there ought to be a desire to be as charitable and as kindly in judging the acts of other men as we will wish our God to be when he comes to pass upon outs. Years and years ago I read a little poem written by Phoebe Carey that I think had much to do with the beginning of that spirit of kindliness toward men which I have always cherished as one of my best possessions:

"Judge not the working of his brain, And of his heart; thou canst not see. What looks to thy dim eyes a stain

Would Have Met Accusation.

peal to Jurymen.

The stenographic report of ex-Senator Thurston's address to the jury in defense of Senator Mitchell follows:

May it please the Court. Gentlemen of the Jury:

If, on yesterday, in my zeal for my client and in the arder of debate. I criticised the acts of the prosecution with perhaps some severity, I do not thereby

## In Spirit of Mercy.

in this spirit, gentlemen of the jury, I ask you to come to the consideration of what John H. Mitchell did and said, when he was called from the honors of the Senate chamber to face the announcement in the newspapers published from one end of the land to another that he in his own home city, and behind closed doors, and that there might come out from that secret chamber an indictinent from that secret chamber an indictinent from that secret themes an experiment in the secret chamber an indictinent from that secret chamber and more own than the higher and more honorable position in which a man is at the trime a criminal accumulation is made stringly upon his own feelings, and controls just so much stronger his own actions. You must remember also, and i do strongly upon his own feelings, and controls just so much stronger his own actions. You must remember also, because it is a fact in the stronger his own actions. You must remember also, because it is a fact in the stronger his own actions. You must remember also, because it is a fact in the stronger his own actions. You must remember also, because it is a fact in the stronger his own actions. You must remember also, because it is a fact in the stronger his own actions. You must remember a fact of the stronger his own actions. You must remember also, because it is a fact in the stronger his own actions. You must remember a fact of the stronger his own actions. You must remember a fact of the stronger his own actions. You must remember a fact of the stronger his own actions. You must remember a fact of the stronger his own actions. You must remember a fact of the stronger his own actions. You must remember a fact of the stronger his own actions. You must remember also, because it is a fact in the stronger his own actions. You must remember also, because it is a fact in the stronger his own actions. You mus In this spirit, gentlemen of the jury, I ask you to come to the consideration of what John H. Mitchell did and said.

### As Boarding-House Senator.

This old man, threatened through the newspapers with a charge of receiving momey guiltily, can you imagine how that affected him when it came out; why didn't he say to himself. "I lived through the Senate years, through all the years of the Star Route and Whiskey Graft and Sugar Tariff and Rallroad Legislation, and Steamship Subsidies and Postal Contracts; I lived through all these when information was within my reach that I could have used and turned in a way that the world calls honest to have brought me in thousands and hundreds of thousands of deliars; and do they charge me now, as I sit here, poor and broken, do they charge me now, after I have lived all these years as a Boarding-House Senator," and you don't know what that means in Washington, where a man has to struggle hard, and hard loceed to keep his influence. This old man, threatened through the

with that accusation, being a strong man physically, not yet quite broken mentally, physically, not yet quite broken mentally, thank God! that I would not have acted exactly as John Mitchell did; and if he had been 40 years younger, he would not have acted exactly as he did. But I think you can explain everything he did after that accusation had been hurled through the public press, consistently with the innocence of the man's every action in the past. He came out to Oregon. He wired Mr. Tanner to meet him on the train. Is that a suspicious circumstance? Does that, of itself, show any idea that he knew himself guilty? Why, it was the logical thing to do; it was what an innocent man would have done. And when he met Tanner, the District Attorney says that there was something in his guilty knowledge, that made him immediately refer to the Kriba case, because he said the Kriba case at that time had not been under consideration, so far as the public knew. But, gentlemen, this evidence shows that in some way, before he left the City of Washington, he was advised and knew that the prosecution was trying to indict him on the Kriba charge. He knew it He didn't understand why, but he knew that that was what was trying to be done. And when he met Tanner he spoke to him about it on the train. Now, gentlemen, Mitchell was guilty unless Tanner knew it right then at their first meeting. If Mitchell was guilty in the Kriba matter, Tenner knew it. thank God! that I would not have acted

Called for the Books.

Then they came to Portland, and Mitchell immediately went to the office and called for the books. They would have you believe that Mitchell was so familiar with those books from time to time that it was a mere pretense on his part to call for those books, but Mitchell was not acting then for the purpose of making up a defense; Mitchell was there in the office with his partner. He had no idea that what he did or said there would ever be heard of anywhere else, and therefore what he did and said in that office, with his partner, must have been the honest act, and must have been the honest act, and must have been the honest act, and must have been the honest diffied that as Mitchell went over the books and looked at these entries from time to time in the Kribs matter, he said: "Why, Tanner; how could you have kept these books in this way? My God!" he said. "I am so surprised." "Why," he said, "I am afraid that you have put enough entries in that book to convict me"; not because he had done anything wrong, but because entries had

been made there that could be turned by the power of a skillful District Attorney into badges of wrong and fraud. Tanner says Mitchell expressed great surprise and indignation at the way those books had been kept, and the charges entered in those transactions. And he did. Was he honest about it? He was there all alone with his partner. He didn't need to try to fool his partner, and the facts are, gentlemen, that Mitchell had but the vaguest sort of a notion of anything that had been kept in Mr. Tanner's office. When I pinned Robertson down on this stand, after he had said that he saw Mitchell repeatedly examining these books—you remember how I took him from period to period in three years, showing just how many days Mitchell had been in the City of Portland—how he was busy at his desk and in his office, with numerous political and other friends besieging his door, with his daily correspondence to transact; how I pinned that besteging his door, with his daily correspondence to transact, how I pinned that man Robertson down, taking those occasions up in detail, until he was compelled to admit that never but twice had he seen Mr. Mitchell with that daybook in which were entered these transactions-never but twice. On those occasions he simply brought in that book to Mitchell and put it on the table, and saw Mitchell looking at it; and he admitted that he was besteged by people coming in and out all the time, and he didn't know whether he looked at that book for a minute or for an hour.

### No Admission of Guilt. -

Well, so far, there wasn't a thing done or said on Mitchell's part out of the way, or one that would tend to show any admission of guilt on his part.

We come now to certain interviews in the hotel at Portland, as testified to by Mr. Tanner. This prosecution is virtually endeavoring to secure a conviction at your hands by the attempt to show that something was done or said there by Mitchell that was reprenenseble and wrong. There may have been. Wherever this man, under the stress of hie situation and the accusation against him has been weak. I have no apology to offer for him. And yet, gentlemen of the jury, I do not believe and I cannot believe, and no man who has been his colleague in the Senate of the United States will ever believe, that Senator Mitchell suggested or tried to induce his old partner to perjure himself and his son. I don't believe it. And I like to be charitable toward Mr. Mitchell in whatever he has been foolish and weak. But take that testimony of Mr. Tanner, and he says it was himself who first suggested that the rewriting of the contract would involve the necessity for perjury in order to make it good. I don't believe that was ever considered in that room in the hotel, and I don't wish to be harsh in my judgment of Mr. Tanner. He also has been facing the awful situation of being in the power of the prosecuting branch of the Government of the United States; he also is in that awful position where his only hope is upon the friendship and recommendation of the District Attorney. He stood where it was said to him "The grand jury has voted an indictment against your son, and your son goes to the penitentiary unless—unless what? Unless you testify for the United States." Testify what? Testify how? Well, so far, there wasn't a thing done

An Implied Threat.

I don't suppose that anybody said to Mr. Taaner "You must testify so and so," but underneath it all was that implied threat that if you carn your escape from the criminal act you have done, and I think done almost madvertently, you must testify for the Government of the United States. That bargain, whatever it was, was made, and part of the payment delivered, for in consideration of Mr. Tanner becoming a witness for the United States the vote of the grand jury of an indictment against his son for perjury was withdrawn and he was promised, with the assistance of the recommendation of the District Attorney, a pardon. I hope Tanner will come out all right: I sincerely trust that under that arrangement he will never be punished a day. I know that the District Attorney has the power with his recommendation to carry out his pledge, and oh, Tanner. I hope in the providence of God you may not be disappointed. I believe Tanner testified pretty fairly on all matters until it came to the crucial one of conversations in a room alone between himself and the defendant. All his other testimony was not needed by the prosecution. To have it was no inducement for leniency toward him. What they needed was evidence that would show that Mitchell, out of a guilty heart, counseled and advised perjury. Gentlemen, you may believe it or you may not believe it, you may charge it up, if you do believe it, as a weak act of an alarmed old man, not fit to be a counselor for himself under such trying circumstances.

Went to Tanner for Advice. An Implied Threat.

### Went to Tanner for Advice.

And I want you to remember another thing, that when he came to Portland he went to Tanner not only as his partner, but for counsel and advice; as a lawyer whom he had been with he wanted Tanner's counsel and advice. But believe what you please, I tell you, gentlemen

mitted that crime, why did you fall in your duly to prosecute him for subornation of perjury? In my judgment, he did not believe it; in my judgment, he does not believe it today, but he is making a skillful and powerful use of it in the prosecution of this old man's case. That is all I am going to say about Mr. Tanner, I wish him well; he has been a week rather than a bad man. He has his promise of immunity, and I am glad of it, and I shall be still more rejoleed when he gets it.

Gentlemen of the jury, I come to rather an unpleasant part of my argument, for I do not like to reflect upon the acts and doings of men. I love to be charitable in my views of what they have done, and I do not believe I am ever vindictive in my pursuit of men, and I will try not to be here. But, I come to speak now of the star witness of the prosecution, one Mr. Robertson; bright, keen, victous Robertson, the only witness in this case who appeared to seek opportunities to stick the knife in deeper on his own motion on the witness-stand. I really think that the District Attorney tried to examine that witness fairly and squarely; I think he really tried to keep him back from his repeated attempts to volunteer testimony not asked for in order that he might still deeper thrust the dagger and turn it around in Mitchell.

Robertson, brought up almost by Mitchell; treated as his son, taken into his immost confidence, all his business affairs placed in Robertson's hands. I don't hame Robertson for having been a witness before the grand Jury; I don't blame him for anything he testified to that may have been truthful before the grand Jury, and I don't know what he testified to, so I have no right even to suggest that he testified to anything that was not true before the grand Jury. But there are different ways of showing loyality, and there are different ways of showing treatchery. The first time Robertson had anything to do with the matter was when a secret detective of the Government took him into a room in Washington and commenced to question him about the Kribs matter. The District Attorney says that the Kribs matter was not the under investigation, and yet in the City of Washington a secret service detective of the Governmenced to ask him about the Kribs matter.

### Continues to Flay Robertson.

Continues to Flay Robertson.

Now, he was the confidential secretary of Senator Mitchell: he says he refused to tell anything, that he indignantly resented the request that he should make a statement. I don't know whether he did not not, and I don't know whether or not the secret agent of the Government took him then and there into the secret service employ of the Government to use him as a detective and runner-down of Mitchell: but I do know this, that from the moment he had that interview, secret and alone, with the detective of the Government, from that moment he turned against Mitchell. Why do I say from that moment? Gentlemen, if you had been my private secretary, any one of you, and your old chief was threatened through the public press with prosecution, and you had been called by a detective of the Government into a room and put through an examination wherein you had been asked about the Kribs matter, what would you have done? You would have reached Mitchell's room panting and breathless to tell him from what source danger might be expected. You would have raced and ran; your mouth the would have been open in your eager desire to tell him they were after him on the Kribs matter. But that man went from the detective's room somewhere else; he did not go to Mitchell's room, he never told him that the Government detective had called upon him at all, he did not reveal the one thing that has taken place between them, he did not say to him. "They are after you in the Kribs matter." he kept that information which would have been so valuable to his employer locked in his silent, secret, scheming soul.

Discredits His Statement.

### Discredits His Statement.

Then he had that pretended interview with Mitchell, in which Robertson rose in his dignity and strength and accused Mitchell of being a liar, right to his face. Why, he never accused a dog of being a liar to its face, let alone a Senator of the United States! There he was not the bold, defiant gladiator that he

would have you believe him; he was the service, cringing office buy. I don't believe a word he says about that interview; there. I don't know how you feel; imight hang a man on some evidence, but I would not hang a yellow dog on his. Still further: It was a remarkable fact that he was interviewed by a detective of the Government some days before he was subpenaed. As to that interview, he kept still, but the minute he got a subpena he told Senator Mitchell that he was subpenaed to go to Portland, and he had been questioned about the Kribs matter; did not tell him then that a detective had been after him, but "I have got a subpena and I have got to go." And in that good, kindly old heart there still remained an unsuspecting belief in the devotion and integrity of the man he had warmed in his borom and fed from his board, and just as Robertson was about to leave he charged him with a very confidential mission, one that would be confided to no one unless the person confiding had absolute belief and confidence in the loyalty and devotion of the messenger.

Calls Him a Traftor. Calls Him a Traitor. Ah, Mitchell, you may have been be-

Ah, Mitchell, you may have been betrayed many times in your life; political friends may have cast you aside; you may have met bitterness and disappointment in your judgment of others many, many times, but never in all your life had a confidential measurger false to his trust as you had in Robertson. Gentlemen, that was not the ordinary case of the transmission of a letter. Here was the old man in trouble, not yet indicted, but in most serious trouble. Robertson knew they were after him, trying to indict him; Robertson knew that that letter which was confided to him undoubtedly had much to do with the old man's case and the old man's safety. There was only one thing for him to do as an honest and honorable man; when that letter came to him and he was asked to be the messenger he ought to have said "No, I cannot, I dare not, I will not," or he ought to have said "Yea, I will, and God help me, through any picket line that may be formed, I will penetrate until that message of the old man's safely rests where he wishes it to go." But Harry Robertson, from the time be left Washington, was a traiter to his trust, a traitor to his employer, a traitor to every honest and noble instinct of the human heart. He came here, met no detective, there was no picket line, he did not run across them. I wonder a good deal at that, because they had been thicker than files in August, but he did not meet one of them, and he went to the hotel and got a good breakfast, and I suppose he smoked a cigar; he feit comfortable and happy, and so, instead of going down to Tanner's office and delivering the letter then, he went to the grand juryroom, offered himself up to the District Attorney.

Calls II Deliberate Treachery. trayed many times in your life; political

### Calls It Deliberate Treachery.

When pinned down on cross-examination he admits that he did it deliberately; says "I did not dare give that letter to Tanner: I was afraid Tanner would make me perjure myrelf, and I was afraid I would yield." Didn't dare! This brave man who stands up and calls a Senator of the United States, in his own room, a lar, to his face, if you believe his testimony, cld not dare go to the office of Tanner-and Tanner len't a flerce man; he is a rather nice, pleasant gentlemanmony, cld not dare go to the office of Tanner-and Tanner isn't a ficre man; he is a rather nice, pleasant gentlemanhe is a rather face Tanner. Do you believe that is what his motive was? Don't you know that was a story made up in his own mind, in the moment I asked him that question, false and black? Made up than and there to try to stick another dagger into Senator Mitchell. He saw to it, either as an agent in the employ of the Government himself, or as a man engaged in the business of betraying his employer, he saw to it that that letter did not get to Mr. Tanner, he saw to it that it got to the District Attorney. Afraid to go down and deliver it? Couldn't he call a messenger at the hotel the moment he arrived there and send it down by him? He didn't have to go with it. No, he saw to it that Tanner did not get it, and that is all I am going to say about Mr. Robertson. Whatever is the result of this case, there is one thing such that Robertson has gone out of this court on to be avoided by men and thin ed by decent women all his life. These is one thing that the human heart and line honest men and women of the load will not forgive, and that is treacher to the confidence of an employer. When great Caesar in the Senate of Rune was relabed by all the Senators. to the confidence of an employer.

It is the confidence of an employer.

It is the senators who is rounded him, he bore himself bravel, and heid his head up, unarmed and defer eves though he was, but when his trusted friend, who had lived in his tent and sept in his bed and shared his cloak, who ind been brought up by him and given great honors in the army and in the council of the Roman people, when that man Brutis plunged his dagger into his back, great Caesar drooped his head and said "Et tu Brute!" and fell in despair at the foot of Pompey's statue. Oh, gentlemen, ingratitude will never be forgiven by men, and if there is no other way in which it can be known, I ask the world to sublish it abroad today that that man Robertson is an ingrate and traitor to his trust and his employer, unworthy of the confidence of men, unworthy of belief in any word he said.

Thanks the Jury.

Gentlemen, I wish I knew how to thank you for the great patience with which you have listened to my argument, and the cureful interest you have manifested in the arguments in this case. I am done in my weak way I have said everything I could say in the bare and belief that In my weak way I have said everything I could say in the hope and bellef that I might throw some light upon the facts in this case that would enable this lury to go out and perform a pleasant rather than an unpleasant duty. I have hoped I might say something in this case that would turn away from the brow of this old man the shadow of shame. I have hoped that if there were nothing else in this case, his great character for faithful performance of public service, his long years of devotion to the people of Oregon, his faithfulness in meeting the requirements and wishes of the highest and the lowest, would stand as a bulwark, as a fact, in the case to disarm every suspicious circumstance, and to induce you to believe that John H. Mitchell could not have been guilty of taking money unlawfully, as he cumstance, and to induce you to believe that John H. Mitchell could not have been guilty of taking money unlawfully, as he is charged in this indictment, it runs counter to his whole life. It seems impossible that it can be true at the end of a long and distinguished career; and there have been no more spiendid careers in the Senate of the United States than that of this man. He sits there today as your selection, the oldest Senator in service in the United States Senate He has held more high places on Senate committees than any other man that ever sat in that great body. He has done more work for his state and her people than any other man that ever sat in that great body. He has done more work for his state and her people than any other man that you have ever sent or ever could have sent there. Why, there isn't a public improvement in the State of Oregon that is not silently day and night voicing gratitude to John H. Mitchell. Every great steamer that goes out and in over the bar at Astoria, bringing commerce and trade, prosperity and riches, to the people of Oregon, every great steamer that plows her way up the river and brings water navigation so much nearer your farm that every bushel of your grain may bring an additional price, every one of them, as it plows that mighty river in a feet of channel depth, where bars once were: every one of them, as it rings its bell and toots its whistle in the air, cries to the world. Thank Senator Mitchell."

### The Father of Oregon.

The Father of Oregon.

He has been the father of Oregon in the occurement of all her great, liberal appropriations from the Government of the United States. He ought to have been the van to stand on a pedestal at the opening of that Exposition, and have been crowned at he author and benefactor of that great have. My friend Judge Bennett, has said that lesser men than he have had marble library among men. Gentlemen in one of the corridors of the Capitol which is called Statuary Hall there is a space set aside where every state in the Union can place two marble statues of her most distinguished sons after they are dead. I know that Oregon had been reserving and justly reserving one of those places for a marble statue to her greatest statesman, most faithful son. John H. Mitchell. And after his death, if that statue had been placed there, there is not a statesman who has ever been associated with him in public affairs but would have bowed down in reverence as at a master, and said. Oregon has done right. It may be, gentlemen of the jury, as Judge Bennett has suggested, at there has come enough of public rumer and of newspager assoult, to cast some reflection in the minds of the public upon the character of this old man in his declining days. It may be it has been sufficient so that his marble statue may

Gentiemen of the jury, men are misunderstood oftentimes, and human judgment
is liable to err; there are none of us infallible. But ail good men ought to look
for the best, rather than for the worst;
and I believe you will in this testimony
and in this case. "Oh Good that men
would know each other better; or, not
knowing, have more faith in man. Oh,
Good, that men would love each other
dearer, and thus more nearly know their
God and understand."

You and I-most of you, and I know I
come in that class-are rapidly following
the procession of the years toward the
same bearne from which no traveler returns But yet a little while have we to
walk among our fellowmen; only a little

turns But yet a little while have we to wake among our fellowmen; only a little longer can we sit with our wives and our children. Time is coming so quickly and so surely when you and I must face the judgment seat of God. Gentlemen, all I ask of you now and today is to answer in this case as you will answer in that last great day, when consciences of men are read by the Omnipotent Eye; and I ask you to decide this case with that same merciful consideration that you would ask for your own souls in that great final day.

day.

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

### HENEY COMMENCES REBUTTAL Prosecuting Attorney Replies to

# Thurston and Bennett.

Gentlemen of the Jury:

I feel like congratulating you, as welf as myself, that our labors are so nearly over. We have listened for two or three days to arguments for the defendant, the greater part of which, it esems to me, was an appeal to your prejudices in the first inctance, and to your sympathies in the second instance. Very little time was devoted to a discussion of the evidence. Now, I want to say that if I, at this moment, had the power and duty of sentencing this defendant upon a verdict of guilty at your hands, it would be one of the sudders' duties of my life. I feel just as much sympathy for John H. Mitchell, as a man, as one of the great mass of suffering humanity who has gone wrong, as I think this evidence shows, as any member of this jury can possibly feel, or as even his own attorneys feel. But that can have no place in the duty which I have to perform. Why, even Senator Thurston challenged me to answer why I had not, under my sworn duty as a prosecuting officer, brought in an additional indictment for subornation of perjury against Senator Mitchell, showing that he himself recognizes the fact that sympathy can have no place in determining whether you, under your sworn oaths as jurors to try this case and determine whether it has been proven or not; or I, under my sworn duty as a prosecuting officer, shall prosecute whenever the evidence justifies. President Roosevelt said the other day in a speech to the Harvard students. "There never was a time in the history of this Nation when it needed more than it does today men who can become leaders, who have lofty ideals and who try to follow them, and do not satisfy themselves by merely talking about them."

### Asked Not to Violate Oath.

Asked Not to Violate Oath.

I shall undertake to show before I finthe why you ought to give no consideration to the sugger ions which have been
made to you in the way of appeal to
your sympathy, and in the way of asking
you to violate your oath as jurors, and
permit the defendant in this case to so
unconvicted because he has paid Oregon
in advance for permission to violate the
laws which he helped to make; because
that is the sum and substance of the
argument. Now then, let us go back a
minute to the evidence. And let us first
determine if there is any doubt about the
question of whether the prosecution has
proven, beyond a reasonable doubt, that
John H Mitchell did commit the offense
which is charged in this indictment. question of whether the prosecution has proven, beyond a reasonable doubt, that John H Mitchell did commit the offense which is charged in this indictment. Now, when we have determined that question to our satisfaction, I will endeavor to point out to you the reason why I taink your verdict ought not to be indinenced by these other suggestions. But the first question is whother or not John H. Mitchell has been proved guilty of the offense charged in this indictment. Now, counsel complained that I had expressed an opinion to you as in the guilt of this defendant. I think if he will read carefully the argument which was printed in extenso in the newspapers, he will find that I never once expressed such an opinion; that I have been careful to express no opinion and no bellef; and I have been careful for the reason that the prosecuting officer has no right to testify; what his opinion may be as to the guilt of the defendant is not for him to say; but neither is it for the attorneys for the defendant to testify as to what their belief is as to whether a witness has testified failedy or truly; nor what their belief is as to whether a witness has testified failedy or truly; nor what their belief is as to the character of the defendant upon trial. This chastacter has not seen put in issue, by reason of the fact that no evidence was produced on the part of the defendant to show that he has a good character. I say that all the statements of Mr. Bennett as to what they knew about this defendant, were entirely improper and wrong. I say further that all their statements about themselves—as to whother a purpose accept the hoop that it might induce some one of these furors, and there improve accept the hope that it might induce some one of these furors and there improve a sworn to determine this case solely upon the evidence produced here upon the winess stand. Each rife strong the first purpose accept the hope that it might induce some one of these furors and there into a sworn to determine this case solely upon the evidence which is charged in this indict Now, when we have determined

### That Sectional Argument.

Now, then, reference was made to the fact that I came here from California. What was the purpose of that suggestion? That an Oregon jury might, resent the fact that a foreigner had come in here and had attempted to indict and to convict some of your public men; and Mr. Hennett says that he knows the Oregon jurbe. Why, I tell you Mr. Bennett, that you don't know an Oregon jury one-tenth part as well as I know them, because I know them from my knowledge of human nature, and I know that an Oregon juror has just as much integrity and just as much manhood and just as much common sense as any that an Oregon juror has just as much integrity and just as much common sense as any American citizen, whether he is in the State of California, the State of Washington or the State of Alabama, or any other part of these great United States, and when I meet any one of you in San Francisco, or in New York, or across the water in Europe, all I care to know is that you are an American citizen, educated to love the constitution of this country and its laws: I care not what state you come from, or what section of the United States you may come from. Those querions are buried. And today a prosecuting officer can appear before any jury, in any state in the United States, in a Federal Court, and be absolutely sure that if he is an American citizen he will be received as a friend and neighbor, and what he says will not be looked upon with suspicion upon the theory that he would come into another state and violate his oath, and that