TELS. 618-694. WE CLOSE SATURDAYS AT 6 P. M. Bee, Jan. 7, 1904.

Trading with this store is a good habit.

Underwear Specials For Saturday.

More broken lines of underwear have been added to this clearing sale for Saturday.

Women's Silk and Wool Union Suits, beautiful quality—our regular $3.00 suit, Saturday your choice at $2.00 suit.

Women's Vega Silk Swiss Ribbed Union Suits, white only, buttoned to the waist line, our regular $2.50 quality, Saturday's price, $1.75 suit.

Women's Onelta Union Suits, small sizes only, color gray, our regular $1.50 quality, Saturday's price, 98c suit.

Women's Fine Medium Weight Ecru Cotton Vests and Pants, $1.00 quality, reduced to 50c each.

Women's Black Wool Tights, small sizes, our regular $2.25 and $2.50 qualities, Saturday's price, $1.59 each.

Boys' Heavy Fleeced Cotton Shirts and Drawers, sizes, worth up to 35c, Saturday's price, 15c each.

HOSIERY.

Our Hosiery Sale has been a great success. More here for those who want them at the reduced price. If you wear size 8½ you will find a large line of styles to select from in lisles and cottons, plains and fancies—Hosiery worth up to 85c in this January sale,

29c. Per Pair.

THOMPSON, BELDEN & Co.

Y. M. C. A. Building, Corner Sixteenth and Douglas Sts.

for or on account of agreeing to pay or paying certain sums of money to him or performing contracts for him during the months of July, August, September and October, 1901, under a contract made with him as a member of congress whereby Jacob Fisher was to be appointed postmaster.

Applies to Both Cases.

He explained that the nolle was intended to apply to both the bribery cases against Fisher and to so affect the remaining bribery indictment against Senator Dietrich which had no material difference from the one under which he was found not guilty.

The court then rendered its decision on the demurrer filed by the defense in the leasing case against Dietrich, the conclusion being that "a contract, although validly made by one who becomes a member of congress, ipso facto terminates on the date such member takes the oath of office, and he is deterred from any further right to enjoy the lease and is subject to the pains and punishment of the statute."

Summers said that one government witness was in a hospital at St. Joseph and another government witness was attending him, and wanted until 2 o'clock before taking up the case. The court expressed itself as very much disinclined to grant any delays, but conceded a recess of twenty minutes. During this time the following nolle in the last case remaining against Dietrich was prepared and filed by the district attorney.

Files His Last Nolle.

In this case, wherein the defendant is charged with holding and enjoying a certain contract or lease with the government of the United States while a senator in violation of section 3739, the contract referred to in the indictment seems to have been entered into on the 24th day of April, 1901. The defendant, under the construction by the court of section 1781, did not become a senator until December 2, 1901. Therefore, from April 24, 1901, to December 2, 1901, he did not hold and enjoy the contract in violation of the law. While it is true the government can prove that the defendant held and enjoyed the contract on the date charged in the indictment, it is also true that a short time thereafter the record discloses the defendant executed a deed to the premises described in the contract to his daughter, and that he held and enjoyed the contract for only a short time after he took the oath as senator.

The government has never in this district, to my knowledge, placed a man on trial for what might be deemed a technical violation of the law. I would not ask a jury to return a verdict of guilty against a man under any indictment unless I believed such a verdict to be in the interest of justice.

Therefore, in view of the construction placed by your honors upon section 1781, as to the time the defendant assumed the status that made the holding and enjoying of the contract a violation of the law, I desire at this time to enter a nolle prosequi in this case.

That was all. The court announced that all cases placed upon the docket for the special assignment had been disposed of and the talesmen were excused until 9 o'clock Saturday morning, when the regular order of cases will be taxen up by the district court, Judge Van Devanter leaving the bench.

Order for Acquittal.

Following is the decision of Judge Van Devanter in full, holding that Dietrich was not a member of congress when the lease was made and instructing the jury to acquit him:

We have given as careful and as exhaustive attention to the question which was submitted to us yesterday as the time intervening would permit, and, while we have arrived at a conclusion, at which we are quite agreed and which seems to us to be the correct one, we have not had the time to reduce our reasons for it to writing and in that form which we would be glad to leave upon the records of the court and among its files. The formal opinion will be prepared and left among the files as evidence of those views which in our consultation have led us to the opinion which we announce.

The offense with which defendant is here charged is that of agreeing to receive and receiving while a member of the senate a part of the congress of the United States, a valuable consideration from one Fisher for procuring and aiding him to procure the office of postmaster at Hastings, Neb. The statute under which the indictment is found is section 1781 of the Revised Statutes. It has two separate and distinct provisions in it, as separate and distinct as if they were announced either in separate sections of the same statute or announced in separate and distinct statutes. The one is, omitting unnecessary verbiage not here applicable, "every member of congress or officer or agent of the government who takes, receives or agrees to receive any money or other valuable consideration for procuring or aiding to procure any contract, office or place from the government."

The persons who are there prohibited from doing the inhibited acts are persons who are members of congress. The time during which the inhibition is inoperative upon any given person is while he is a member of congress.

The other provision in this section is "every member of congress who takes, receives or agrees to receive any money or other valuable consideration after his election as such member for his attention to services, actions, vote or decision on any question, matter, cause or proceeding which may then be pending, or made by law or under the constitution be brought before him in his official capacity, or in his place as such member of congress, shall be deemed guilty of a misdemeanor."

As to Its Application.

The persons against whom this statute is directed are not only those who have the status of a member of congress, but those who have the status of one who is elected to congress. The period of time during which the inhibition is operative against those upon whom it does operate begins with the date of the election and continues from then until the person steps into the office, and from then on during his continuance during office. The period within which the inhibition is thus operative under this latter provision of this section by the express terms of the statute enlarged so as to embrace not only the incumbency of the office, but that preceding period of time during which it is fairly certain, reasonably probable, that the person will be likely to step into that office. The two acts, or kinds of acts, that are inhibited are quite different. Those inhibited by the first part of the section are the procuring of a contract, of an office, or a place, meaning by that I suppose some subordinate agency or position under the government of less dignity than that which is usually called an office.

We find no place in the statutes—counsel has cited none—where it is made the duty of a member of congress, or of a member elected, to procure contracts, to procure offices, to procure places, for his constituents or others. We find in many of the statutes where members of congress are accorded, as a matter of law, any greater privileges, or any greater authority, in respect of those matters than are other people. There is, however, a matter of which we all take notice, that persons occupying such situations are accorded a greater and higher degree of influence; that their support is much more potential than is that of one who has not obtained either a membership in congress or an election to congress.

Matters that Are Inhibited.

With respect to the matters that are inhibited by the latter part of the section, they are only acts which pertain to such duties as are by law expressly cast upon members of congress. They go to the question of voting, to the question of deciding of questions, matters, causes or proceedings which may then be pending; that is, at the time of their election, or which may by law or under the constitution be brought before them in their official capacity. It seems fairly clear that the latter part of this section relates only to the inhibition of receiving, or agreeing to receive, a bribe in connection with those matters, which will come before one as a member of congress, upon which he will be required to vote, to decide, to exercise judgment; while the first part of the section relates not to matters with respect to which he has any affirmative duty, but relates to matters which he may or may not enter upon at his discretion. With respect to the latter, those where by the law he has an affirmative duty, it is said that he may not, at any time after an election, after the first step toward his incumbency of office has been crossed, take, receive, or agree to receive, any compensation for the purpose of affecting his discharge of his duty. With respect to those matters which he may or may not do, where there is no affirmative duty resting upon him, it is said he cannot receive or agree to receive, any bribe while he is a member.

Under the laws of the United States there are no crimes, save those that are declared by congress. By the common law of England, which has become the law of most of our states, offenses known and recognized at common law, have become offenses here. But under the distinct and separate government of the United States, as contradistinguished from a state government, there is no common law crime; there are no offenses save those that are prescribed by congress. We do not make the law. It is not any function of the court, even to suggest what the law ought to be, nor is it any function of judges to suggest what they would like the law to be, as a matter of opinion upon their part. The laws of the United States are made by congress; they are construed by the courts of the United States. Here congress in the exercise of its judgment and authority, has chosen to say that members of congress who take, receive or agree to take or receive a bribe for procuring or aiding in the procurement of an office, shall be punished. To the common man, it is repulsive that anyone, whether an officer or not, a citizen, should take money or become venal in the matter of procuring or aiding in the procurement of a public office.

Power of Congress.

It would be competent for congress, in all probability, to make it a penal offense, for anyone, whether an officer or individual citizen, to take or receive, or to agree to receive a monied or other valuable compensation for procuring or aiding in the procurement of an office for another. But it is not suggested here that congress has exercised its full power. No one can contend, or in fairness suggest, that this statute is as broad as the power of congress in the premises. Instead of saying "that everyone who takes a bribe for procuring an office for another, or in aiding another to procure an office (I speak of an office under the federal government), instead of saying that congress has said that members of congress, or officers or agents of the United States, to do this, shall be punished. It has thus not gone to the full extent of its authority, but has been, for reasons to it satisfactory, content to describe that offense only in respect to members of congress, officers or agents of the United States.

Words in a statute, and especially in a criminal statute, are to be given that interpretation and meaning which ordinarily pertains to them; they are to be understood as they are ordinarily understood when not employed in a statute.

An exception to this rule is that where by the context, by the surrounding language of the statute, there is that which indicates that words capable perhaps of different meanings are used in some particular and special meaning, in some narrower or broader sense, than that in which it is ordinarily understood—that then, in order to give full effect to the other language in connection with which it is used it will be given that broader or narrower meaning which will then make the entire enactment harmonious. But here, in this first provision, we have nothing which reflects upon the sense in which the words members of congress were used, save the words themselves. The meaning in which these words "members of congress" would be ordinarily understood is that of a person who has been admitted to congress, a person who has been admitted to membership—the advantages of membership in congress; a person who has assumed the duties and responsibility incident to membership in congress; a person who has advanced that far that he cannot receive, assumed responsibilities which he cannot cast off; one who has assumed a duty which must be performed.

Voice of Constitution.

Now, under the constitution—and that is controlling upon congress, controlling upon us, controlling everywhere, upon everybody in this country—it is declared that the two separate houses of congress shall be the exclusive judges of the qualifications, elections and returns of their respective members. By the statement made by the district attorney in this case, that that which he proposes to prove, or that which the facts will permit him to prove, it appears that defendant was elected a member of congress on March 29, 1901; that there was no session of the senate of the United States from that time hence forward until December 2, 1901; that upon the date last named the defendant appeared in the senate, and upon being duly and favorably passed upon, he was admitted to take the oath, become a member of that body and to assume the privileges, advantages and responsibilities of that membership. Until that time the question of his qualifications, the question of the returns respecting his election, the question of his election itself, had not been and could not have been passed upon by anyone authorized to pass upon it for the United States. Until then it was not known and could not be known whether he would ever be permitted by virtue of that election to occupy a seat in the United States senate, participate in the proceedings of that body, to assume any of the responsibilities or duties incident to membership therein or to receive any of the privileges or advantages that might come from that membership; until then it could not be known whether he would be permitted to act for the people of the state of Nebraska as one of their chosen representatives. He was not permitted by any law of the United States to act as a representative of the state of Nebraska, in respect of those things which by law act until his election had also been passed upon favorably by the senate of the United States.

Arguing Vital Point.

It may be, and probably is true, that if upon the 2d of December he had appeared at the senate of the United States and had taken the oath, presented his credentials and had proceeded to vote upon questions there pending and otherwise to perform the functions of a member of that body, then he would be a member of the senate, recognized by the senate as such, a member by the acquiescence of the senate in the sense that was mentioned by the district attorney when speaking of a de facto officer. It may be that the fact that his credentials were not in suitable form; it may be that the fact that he did not take any oath, that that was omitted or neglected, or that the oath which he took was not the prescribed oath, would not now be inquired into on the trial of him for any offense committed at a time when he was in the senate, recognized by the senate as a member and admitted by it to participate in its proceedings as a member.

But there is no suggestion here, and there cannot be, that there was any acquiesence on the part of the senate, or anything which, directly or indirectly bound the senate to the idea, or the defendant himself to the idea, or the relation that would flow from his being a member of the senate under the laws of this country. One does not become an officer by virtue of an appointment or by virtue of an election, either under the governments of the respective states or under the government of the United States. It requires also an acceptance, an assumption of duties on the part of the officer elected or appointed. It is optional with one who is merely elected or appointed to public office whether he will accept. It is not usual that such elections or appointments are defined, but it is in fact true they are at times. This defendant, as appears, was the governor of the state of Nebraska, at the time when he was elected a senator. One cannot be an officer of a state and a member of congress at one and the same time. Yet he continued for a time not stated here to be the governor of Nebraska and discharged the duties of that office. So long as he did that it was impossible under the constitution of the United States that he could be a member of the senate. It was optional with him whether he would surrender the office of governor of Nebraska and accept that of a senator of the United States. He chose, so long as he did remain in the office of governor of Nebraska, to be governor. He could have served his entire term as governor of the state of Nebraska. Having been duly elected and inducted into that office, the election by the legislature of Nebraska did not oust him from it, and could not oust him from it without further action in accepting the office of United States senator. Had he remained as governor of Nebraska, I take it from what was said, his term would have continued beyond the time when the matters here charged against him occurred, and it could not, with any plausibility, be said that during that time he was a senator in congress as well as governor of Nebraska. The option upon his part to accept or decline the office of senator to assume the duties and responsibilities of that office, or to decline their assumption, continued up until that time when he should appear before the senate of the United States, and in pursuance of their favorable action respecting his qualifications and election, then assume the duties of the office either by then taking the oath that was prescribed, or by then entering into the performance of those duties which are by law cast upon a member of that body. Up until that time it was optional with him whether he would ever become a member of the senate or whether he would ever assume any of the duties and responsibilities of that office.

Still at Liberty to Decline.

After the commission of every act here charged, the defendant was still at liberty, if his judgment should incline him in that way, to decline the then offer which had been given to him by the legislature of the state of Nebraska to become its representative in the senate of the United States. Upon the second day of December, 1901, the defenant could have written a letter to the governor of this state and the president of the senate, if he had chosen so to do, and have said that he had concluded not to accept the election which had been bestowed upon him by the legislature of the state of Nebraska. Had there been an extra session of the senate of the United States an any time between the date of his election and the date when in fact he assumed the duties of the office of senator, and when they called the roll of the members of the senate in that body, and found that Nebraska was not represented by its quota of two senators, it would not have been within the power of the senate to have sent for this defendant as a member of that body and compelled his attendance. Up until December 2, 1901, he had not assumed that relation to that body which imposed upon him any duty to attend its sessions, and no duty to participate in the responsibilities and deliberations of that body. Until he was free either to participate in the proceedings of that body by first seeking their favorable action upon his election and then assume the duties, or by declining altogether to accept the election.

So it is clear, as it seems to us, that every one of those things which is complained of in this indictment had become a completed transaction before the defendant ever became a member of the senate. Whether those acts are criminal (by criminal I use the word in the sense of inhibited by the statutes of the United States without respect to the view in which they may be held at the bar of public opinion), to be criminal these acts must have been inhibited at the time when they took place, and at that time every element must have been present to inject into them the character of criminality. No subsequent admission of the defendant to the senate of the United States as a member; no subsequent action upon his part or upon the part of anybody else in respect of a matter not a part of these acts charged, could relate backward so as to make violative of the statute that which when it occurred did not violate it. Whether a given act be or is not a crime must be determined by the facts which exist at the time when the act is committed and by those which subsequently and naturally flow from it. Indeed, there are very few exceptions in which anything occurring after the date of the act by the person charged will have any influence in determining whether an act is criminal or not. It is true that in the case of homicide, where one is wounded by the act of another, that if he dies within a limited period thereafter, in law it has like effect as if the death immediately followed the infliction of the wound. But the admission of the defendant to the senate of the United States, his qualification there as a member of that body, his assumption of the duties as a member of that body, in no sense followed as the natural result and consequence of any of the acts charged here.

We find, upon examination of the statutes, it is true, that by section 38 of the Revised Statutes representatives and delegates who have not assumed their duties as members of congress are spoken of as representatives and delegates-elect. That is the explanation in which all of you would ordinarily understand their situation to be. We speak of ex-members of congress, we speak of members-elect, and we then speak of members of congress, and by those different terms we convey different meanings, but they are meanings that are as well understood among those who are not versed in the laws of the country as they are by lawyers and judges. You speak of members of churches, you speak of those who have been members, you speak of those who are seeking membership, but when you speak of a member you speak of one whose relation at the time is such that he is a component part of the body to which the membership relates.

We find that in this very section congress has distinguished between members and members-elect, in that, irrespect of those things which senators and representatives are by common consent permitted to do, but which are not enjoined upon them by any law, we have a statute regulating their conduct, and it speaks of them as members, indicating the situation. The person must have come within the operation of that statute. Then, in respect of other matters which pertain to the discharge of the duties of a member of congress, duties enjoined by law, congress has chosen to speak of them as members elected as well as members, or as members from the time of their election.

Now, then, I read the next section, or a part of it, as indicating that a different meaning is intended when a different situation is described. Section 1782 says no senator, representative or delegate, after his election and during his continuance in office, shall do certain acts there named, and if they shall be done by him, or any of them, that a penalty shall be imposed. You will see that congress has thus deliberately in the one instance spoken of members of congress as the people against whose wrongful acts it is legislating. You will see that in the other instance it designates senators, representatives or delegates, after their election and during their continuance in office, as the persons whom it is intended to embrace within the reach of the legislative inhibition. So section 5501, I think it is, also contains provisions inhibiting the doing of certain acts by a person elected to congress, whether the act be done at any time before or after the assumption of duties by him.

Means Active Member.

We find, then, that where congress deliberately—and its act must all be treated as deliberate—deliberately, in one section or in one statute, speaks of a member of congress, that it means a member in the sense in which that word would ordinarily be accepted, and that when in some other section it speaks of a person elected to congress and inhibits the doing of certain acts by him at any time subsequent to his election, that it means altogether a different thing, and a broader time is comprehended than when it simply uses the words "member of congress."

Our view is, therefore, that this defendant did not have that status at the time when the acts are charged against him here—charged to have been committed, which would give to him the status which it was necessary that he should have to come within the prohibited terms of this statute. The result of that conclusion is that, and under that statement made by the district attorney of what his evidence will be, that we must instruct the jury to find the defendant not guilty upon the charge embraced in this indictment.

Gentlemen of the Jury—It results from the fact which has just been stated in your presence that all the evidence which the prosecution has in hand and which has been described to you were now here introduced and before you, that it would appear that the defendant had not obtained that official relation to the United States which it was necessary that he should have obtained in order that he should come within the terms of this statute, and in that event we would be compelled to instruct you to find him not guilty; and since the district attorney has laid before you a clear and precise statement of what his evidence will be, and that this appears from that statement, it renders it unnecessary to have all that evidence detailed before you, because the result which ultimately would have to be reached is now quite clear. It will be, therefore, your duty to find a verdict of not guilty. The first gentleman here will sign it as foreman. This act upon your part is under the instructions of the court and must be in response to the court's act.

Rules Against the Demurrer.

Judge Van Devanter ruled against the demurrer of the defense to the charge against Senator Dietrich of holding and enjoying an agreement between himself and the government while a member of congress in this language:

We have carefully considered the defendant's demurrer to the indictment charging him under section 5739 of the Revised Statutes of the United States, with holding and enjoying, while a senator in congress, an agreement between himself and the United States for the use and occupation for purposes of a United States postoffice, of a building and lot in Hastings, Neb., owned by him.

The agreement was entered into prior to the time when the defendant became a senator in congress, but is charged to have been held and enjoyed by him subsequently to his becoming a senator.

The question presented by the demurrer is whether a person who enters into a lawful agreement with the United States, and who subsequently, and during the life of the agreement, becomes a senator in congress, can thereafter lawfully hold and enjoy the agreement.

Section 3739 provides:

"No member of or delegate to congress shall directly or indirectly himself, or by any other person in trust for him, or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into in behalf of the United States by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor and shall be fined $3,000. All contracts or agreements made in violation of this section shall be void."

Another section, 3741, also provides:

"In every such contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no member of or delegate to congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon."

We think it is entirely clear that the effect of this legislation is to inhibit a member of congress, during his incumbency of that office, from having any contractual relation with the United States. It does not seem to be questioned, and we think it cannot be questioned, that the effect of this legislation is to inhibit (1) the making of an agreement between a member of congress and the United States, and (2) the assignment or transfer to a member of congress of any interest in or benefit to arise from any agreement with the United States. There is also a clear inhibition against the holding or enjoying by a member of congress of an agreement with the United States. But it is urged on behalf of the defendant that this inhibition relates only to agreements originally made by a member of congress in violation of the statute and to agreements with the United States assigned or transferred to such member, and is without opposition to an agreement which comes to be held by a senator, not through any unlawful act in its original making or in a subsequent assignment or transfer thereof, but through the lawful and subsequent election as a member of congress of the individual with whom the agreement was lawfully made.

Basis of Argument.

This argument is based upon the theory: (1) That a statute should not be construed to avoid or invalidate an agreement, lawful at the time of its making. And (2) that the provision that "All contracts or agreements made in violation of this section shall be void," indicates a purpose to avoid or nullify only such agreements as are unlawful at their inception and to leave unaffected and in full operation all agreements lawful at the time of their making.

We do not accede to this view of the statute; giving effect to all of its provisions, it unmistakably declares it to be against public policy that a member of congress, during his incumbency of that office shall enter into, sustain or enjoy contractual relations with the government. The prohibition goes not only against the making of such agreements by a member, but also against his acquisition of any interest in such an agreement lawfully made with another, and even more, it wholly prohibits him from holding or enjoying any such agreement.

There are strong reasons why the provision declaring void, that is of no effect or force whatever from their beginning, agreements made in violation of the statute should not have been extended or made applicable to agreements valid at the time of their making. Where an agreement with the United States, valid when made, is subsequently attempted to be assigned or transferred to a member of congress, the purpose of the statute and the interests of the government are better subserved by merely avoiding the assignment or transfer and by leaving the individual with whom the agreement has originally made fully charged with the performance of his obligations thereunder. It would not be wise in such an instance to declare the agreement itself void from the beginning, or at all. If such were the effect of the statute, an individual having such an agreement with the United States, the performance of which had through changed conditions become burdensome or inconvenient, could avoid the fulfillment of his lawful obligations through an assignment or transfer to a member of congress. Now, is it necessary or desirable, in order to accomplish the purpose of the statute, to wholly avoid or render null from the beginning an agreement lawfully entered into, were during its life, the individual with whom it was lawfully made becomes a member of congress. In so far as such an agreement has been performed before the individual with whom it was made becomes such a member, it would be altogether inequitable to attempt to extinguish or avoid the rights of either party acquired by the performance or breach of the agreement up to that time. The purpose of the statute would be fully accomplished and satisfied by terminating or dissolving the agreement only to the extent that it then remains executory.

Rule is General.

It is a general rule, recognized by many courts, national and state, that where performance of an agreement, lawful in its inception, becomes unlawful by any subsequent event, the agreement is thereby dissolved, in so far as it remains executory, and both parties are excused from its further performance in that regard. When the agreement in question was made with the defendant the statute to which we have referred became an essential part of the agreement as such as if it were copied at length therein. In effect the agreement, when interpreted in the light of the statute, and of the rule of decision referred to, declared as effectively as if the words were written in the agreement that it should never have been held or enjoyed by a member of congress; that if it should be subsequently assigned or transferred to such member, the assignment or transfer would be null and without effect, and that if the defendant with whom it was made, during the life of the agreement should become a member of congress, the happening of that event would render the further holding and enjoying by him of the agreement unlawful and would thereafter excuse both him and the United States from its further performance in so far as it remained executory.

It seems to us that the contention of the defendant, if sustained, would prevent the statute from fully accomplishing its purpose, and that the statute is readily susceptible of an interpretation, as herein given, which enables it to reach every situation within its purpose or intent, and this without prejudice or injury to the interests of anyone. The demurrer is, therefore, overruled.

Dietrich Leaves City.

Senator Dietrich and his secretary, Henry Smith, left Omaha this afternoon for Hastings, where the senator plans to spend a week or so trying to catch up with his official business. He has been unable to attend to it since the indictments were brought against him and much work has accumulated. Just as soon as he can get his affairs in shape he will go to Washington and resume his seat in the senate. The means he will take to vindicate himself and his acts in the eyes of the public are under consideration and will be announced later.

General Cowin's Statement.

General Cowin, attorney for Senator Dietrich, last night made this statement as to the course pursued by the defense:

We demurred to the conspiracy indictments, for the reasons stated by Judge Van Devanter in delivering the opinion of the court sustaining the demurrer, as follows:

"The indictment is challenged by a demurrer upon the ground that agreeing to receive a bribe and agreeing to give one under such circumstances are acts specifically prohibited by section 1781, and that, therefore, such an agreement is taken out of and excepted from the general section 5440. If section 1781 was in terms confined to prohibiting the receipt of such a bribe by a member of congress and the giving of such a bribe by an applicant for office, or other person, then we would be of the opinion that the indictment, in charging a conspiracy or agreement to do that which is prohibited, would charge an offense punishable by section 5440; but, since section 1781 is so framed by him as to prohibit an agreement to accept or give such a bribe, as well as the acceptance or payment thereof, we are of the opinion that such an agreement between the bribe taker and the bribe givers can not be made the subject for a prosecution for conspiracy under section 5440."

There was a separate indictment against Senator Dietrich pending in court, charging him as a member of congress with agreeing to receive money or valuable consideration for procuring the appointment of Fisher as postmaster, and a separate indictment against Fisher charging him with agreeing to give the same. These were the same agreements as charged in the conspiracy indictments, thus seeking to put the defendants twice in jeopardy for the same alleged offense.

When the demurrer to the conspiracy indictments were interposed Senator Dietrich had already been arraigned and plead not guilty to the separate indictment against him, consisting of six counts, and had demanded a speedy trial thereon and was then ready for trial.

After sustaining the demurrers the case of United States against Charles H. Dietrich, on the last mentioned indictment, was called for trial, a jury was empanelled and opening statements made by counsel for the respective parties.

How Summers Put It.

In the opening presentation of the case to the jury upon the part of the United States, it was stated by the district attorney, that Mr. Dietrich was elected senator by the Nebraska legislature March 28, 1901; that there was no session of congress between that time and the assembling of congress December 2, 1901, at which time Mr. Dietrich took the oath prescribed by law and qualified as United States senator. This statement necessarily presented the question whether Mr. Dietrich was a member of congress within the meaning of the first paragraph of section 1781, between his election and his qualification, and showed clearly a failure of proof to establish the offense charged, if it should be held that Mr. Dietrich was not a member of congress during that time, because it was during that time all the transactions alleged took place.

From the first it was the determination of Senator Dietrich to bring this bribery indictment to trial upon the facts as to the alleged transactions, but with this statement we were confronted with the question as to whether that could be done. No consent, agreement or stipulation upon the part of Dietrich, as to his status between his election and his qualification could change the actual status as presented by the district attorney, and the United States circuit court, not being an investigating committee, would not receive such agreement or stipulation with respect to a status different from the facts any more than it would receive a stipulation as to jurisdiction in a criminal case.

It was evident, therefore, that under the statement of the district attorney, if he proved everything that his statement contained, at the end of his proof the court would be compelled to direct the jury to return a verdict in favor of the defendant, if the court should hold that Dietrich was not a member of congress at the time of the alleged acts complained of.

Two Courses for Defense.

Under these circumstances the defense had two courses to pursue; first, it might refrain from making objection to the introduction of the testimony on behalf of the prosecution, and thereupon the prosecution could introduce all its testimony, but at the conclusion thereof, having failed to show that Mr. Dietrich qualified until after the acts complained of in the indictment, the court would have required a presentation of the question as to whether an offense had been proved, and would have determined that question then and there without proceeding further. As the court finally determined that Mr. Dietrich was not a member of congress within the meaning of section 1781, had the defense pursued the course above indicated, a verdict would have been rendered for the defendant, but all the testimony on the part of the prosecution would have been in the case, in the record and presented to the public without any opportunity on the part of the defendant to introduce one word of testimony in defense.

Second—The other course to pursue, and which I took the responsibility of adopting, was to present the question as to whether Mr. Dietrich was a member of congress under section 1781 during the times alleged in the indictment, before any testimony was introduced, basing my objection to the introduction of any testimony upon the statement of the district attorney, in the nature of a demurrer thereto. By this course if the court should determine that Mr. Dietrich was a member of congress, then all the testimony would go in, that for the prosecution as well as for the defense; if the court should determine that Mr. Dietrich was not a member of congress during that time, then no testimony could go in, either on the part of the prosecution or on the part of the defense. To have pursued any other course, as the court finally ruled, would have allowed all the testimony on the part of the prosecution to go in and none on the part of the defense, and it was not in the power of the defense by agreement, stipulation or otherwise to put in any testimony.

These are the reasons why the question as to whether Mr. Dietrich was a member of congress, was presented by me before the introduction of any testimony.

Van Devanter's Charge.

Judge Van Devanter, in charging the jury, said:

"It results from that which has just been stated in your presence that if all the evidence which the prosecution has in hand and which has been described to you were now here introduced and before you, that it would appear that the defendant had not obtained that official relation to the United States which it was necessary that he should have obtained in order that he should have obtained in order that he should come within the terms of this statute, and in that event we would be compelled to instruct you to find him not guilty; and since the district attorney has laid before you a clear and precise statement of what his evidence will be, and that this appears from that statement, it renders it unnecessary to have all that evidence detailed before you, because the result which ultimately would have to be reached is now quite clear. It will be, therefore, your duty to find a verdict of not guilty."

It was, therefore, utterly impossible for Senator Dietrich, under any circumstances, to introduce any testimony in the case.

JOHN C. COWIN.

JURY TAKES ANOTHER VIEW

In Driggs Case It Is Decided that Congressman's Incumbency Follows Election.

NEW YORK, Jan. 8.—Former Congressman Driggs, who was convicted here yesterday of receiving compensation for aiding in the procurement of a contract with the government, in his defense said, although he had been elected as congressman, he had not taken his seat at the time of the alleged improper transaction. Mr. Driggs' attorney contended throughout that his client was not a congressman until he had actually taken the oath of office, but the prosecuting attorney maintained that the defendant was a member of congress from March 4, when the preceding house of representatives adjourned.

Judge Thomas left it to the jury to decide whether the term as congressman had actually begun at the time in question and the jury brought in a verdict of guilty.

SEARCH WOMEN FOR WEAPONS

Chicago Court Will Take No Chances at Car Barn Bandits' Trial.

CHICAGO, Jan. 8.—The searching of spectators for weapons at the trial of the car barn bandits was today extended to women. Mrs. Van Dine and Mrs. Neidelmeir mothers of two of the men on trial, were among those forced to go into an anteroom, where the police matron searched all women suspected to see if there might be any weapons which may be used in effecting the escape of the bandits.

To Cure a Cold in One Day

Take Laxative Bromo Quinine Tablets. All druggists refund the money if it fails to cure. E. W. Grove's signature is on each box. 25c.

HYMENEAL.

Chalfant-McCulloch.

PLATTSMOUTH, Neb., Jan. 8.—(Special.)—William F. Chalfant and Miss Della M. McCulloch were united in marriage by Rev. D. A. Youtzy, pastor of the Christian church, at his home yesterday.

Walker-Horner.

LAMONI, Ia., Jan. 8.—(Special.)—A quiet home wedding occurred at the home of Dr. J. B. Horger of this city, when his daughter Grace was united in marriage to Mr. D. J. Walker.

Sore Never Matters

After Porter's Antiseptic Healing Oil is applied. Relieves pain instantly and heals at the same time. For man or beast. Price, 25c.

DIED.

ROCCO—Mrs. Marion, age, 79 years, at the family residence, 624 South Twenty-eighth street, January 8, 1904, after an illness of a few weeks. Funeral notice later.

STECKER—Mrs. Julia D., sister of the late Joseph F. Sheely, at the residence of her niece, Mrs. Nellie Sheely Patterson, 1060 South Twenty-eighth street, on Wednesday, January 6, 1904, aged 78 years. Funeral Saturday, January 9, at 2 p. m. Interment at Prospect Hill. Friends invited.

SATURDAY

WILL BE A BUSY DAY IN OUR

Boys' Suit and Overcoat Section

Clearance Sale

BOYS' SUITS AND OVERCOATS

A GREAT BIG SEASON HAS LEFT MANY BROKEN LINES.

For you the garments are just as good.

Here's prices to move them quickly.

150 BOYS' SUITS—Worth $4.00, $4.50, $5.00 and some worth $6.00—all ages 3 to 16 years; nearly all styles, your choice..... 2.85

250 BOYS' SUITS—Suits worth $6.00, $6.50 and $7.50. Note the saving, now..... 3.65

250 BOYS' SUITS—Here are suits worth $8.00 and $9.00. America's finest, now..... 4.85

BOYS' OVERCOATS—In this sale $4.85, $3.85 and..... 2.85

BOYS' COASTER REEFERS—at..... 50c

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Do you think that the material, workmanship or linings must necessarily be inferior on account of the low price?

Do you think there's some trick about it?

THEN convince yourself quickly—by first carefully examining the excellent woolens we offer!

ASK to see the linings that will be used in your garments!

THEN insist upon seeing a sample of our finished garments!

WE'LL take chances on getting your order after you have done all this!

THERE'S no secret about it!

IT'S simply Nicoll's way of getting rid of hundreds of remnants—short lengths single suit patterns—and surplus stock at the end of the season.

WE mean to be generous with you; if we fail to please you in material—fitting—trimming—or workmanship—you have a perfect right to refuse the garments.

OUR window is an index of what you'll find on our tables.

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