judgments of the district and circuit courts in these cases; and the state, the legality of whose act is involved in the proceeding, ought to have the right to be heard as a party thereto. And it might be well, where the petitioner is imprisoned on final process from a state court, that the writ might be allowed by either the district or circuit judge, returnable only into the circuit court, where the cause should not be heard until two of the judges of that court were present; and that in the mean time the prisoner might be admitted to bail.

UNITED STATES v. HAGUE.

(*District Court, W. D. Pennsylvania.* October Term, 1884.)

TAKING ILLEGAL PENSION FEE—REPEAL OF ACT OF JUNE 20, 1878—PAST OFFENSES.

A pending prosecution upon a bill of indictment found for taking an illegal fee in a pension case in violation of the act of congress of June 20, 1878, fell with the repeal of that law by the act of July 4, 1884, the latter act having no saving clause as respects penalties incurred or past offenses.

Sur Motion in Arrest of Judgment.

Wm. A. Stone, U. S. Atty., for the United States.

B. C. Christy, for defendant.

ACHESON, J. On the eighth of May, 1884, an indictment was found against the defendant for a violation of the act of congress, approved June 20, 1878, entitled, "An act relating to claim agents and attorneys in pension cases." 20 St. at Large, 243; Supp. Rev. St. 336. The defendant was put upon his trial at the last term of the court, and on October 22, 1884, was convicted. He has moved the court in arrest of judgment, upon the ground that prior to his trial and conviction the act under which he was indicted was repealed. And such is the fact. The act of congress of July 4, 1884, (St. 1st Sess. 48th Congress, 98,) not only covers the whole subject-matter of the act of June 20, 1878, but in express terms repeals that act. It saves the rights of parties in certain contracts, but makes no reservation as respects penalties incurred, or past offenses. It follows, therefore, that the prosecution here fell with the repeal of the act of June 20, 1878, upon the well-settled principle that after the repeal of a statute there can be no further prosecution of a pending proceeding under it unless there be a saving clause in the repealing act. *U. S.* v. *Tynen*, 11 Wall. 88; *Abbott* v. *Com.* 8 Watts, (Pa.) 517; *Genkinger* v. *Com.* 32 Pa. St. 99. Hence the conviction here was without warrant of law, and no valid judgment can be pronounced thereon. There must be an arrest of judgment; and it is so ordered.

UNITED STATES *v.* MASON.

(Circuit Court, E. D. Virginia. October, 1884.)

USE OF MAILS IN AID OF LOTTERIES—REV. ST. § 3894—INDICTMENT.

A citizen who mails a letter to a lottery dealer ordering lottery tickets, and inclosing the funds to pay for them, does not thereby commit an offense against the United States, the statute (section 3894) being intended to prohibit the use of the mails only by lottery dealers, and others using the mails for purposes of deception.

Motion to Quash Indictment.

Section 3894 is in these words:

"No letter or circular concerning lotteries, so-called gift concerts, or other similar enterprises, offering prizes, or concerning schemes devised and intended to deceive and defraud the public for the purpose of obtaining money under false pretenses, shall be carried in the mail. Any person who shall knowingly deposit or send anything to be conveyed by mail in violation of this section shall be punishable by a fine of not more than five hundred dollars, nor less than one hundred dollars, with costs of prosecution."

The defendant had written to a lottery dealer ordering tickets to be sent him for money already in the hands of the dealer. The indictment charged that he had unlawfully, knowingly, and wrongfully deposited in a post-office to be conveyed by mail, within the meaning of section 3894, a letter addressed to the dealer, and that said letter was concerning the Louisiana State Lottery, etc. The indictment set out the letter *verbatim.* Motion was made to quash, on the ground that the sending of a letter to a lottery dealer, ordering tickets in a lottery about to be drawn, was not an offense within the meaning of the statute.

Edmund Waddill, U. S. Atty., for the United States.

Charles U. Williams, for defendant.

HUGHES, J. It is very plain that the broad, literal terms of this statute are to be restricted in some manner. It declares that the mailing of any letter concerning a lottery shall be punishable; so that a father writing his son, warning him against spending money upon tickets in any specified lotteries, would be indictable for a criminal offense. That cannot be the meaning of the statute. It must be construed, not according to its literal terms, but with reference to the evil to which congress was addressing itself, and the remedy it intended to provide for the suppression of that evil. The phrase employed by congress is, "*letter* or *circular* concerning a lottery." The two terms are used synonymously as to the person mailing the things referred to. A letter is indited to a particular person; a circular is intended for a number of persons. Whoever was in the mind of congress as mailing the circular, was in its mind as mailing the letter. But it is only lottery dealers who send lottery circulars. It was only lottery dealers who were in the mind of congress as sending out letters concerning lotteries, and not the occasional and indi-