SHALL THERE BE KNIFING?

MUGWUMP THREATS, AND COOL COUNSELS OF DEMOCRATS.

A Cleveland-Hill Democrat's View of the Situation—Plain Words for the Fool Contingent—What Will the President Do About It?—Col. Dan Lamont's Mission.

TO THE EDITOR OF THE SUN—*Sir*: In the interest of Mr. Cleveland, your article this morning on "A Conspiracy to Knife Governor Hill" conveys a timely and instructive admonition. Under the example and inspiration of Governor Hill his Democratic friends are according to Mr. Cleveland a loyal and zealous support; and of his Republican friends not one avows hostility to Mr. Cleveland, or proposes to organize for his defeat. Should not this generous forbearance be reciprocated? But it is not; and the question confronts us, How long will the friends of Governor Hill endure these treacherous assaults upon their favorite? If the adherents of Mr. Cleveland decline to return the kind offices of the Hill men, will not the Hill men retaliate the ill offices of the Cleveland men? Be assured they will; and if mutual slaughter be the business to which they are challenged they will exact ample revenge, and both State and national ticket will be the inevitable sacrifice. I am an ardent admirer of Mr. Cleveland, and as such I entreat his Mugwump allies to desist from their suicidal practices.

At the same time, to temper the resentment of the Hill men, I would remind them that, in most instances, the attacks upon their candidate comes, not from Democrats, but from Mugwump Republicans masquerading as friends of Cleveland and Thurman. For example, the "John C. Eccleston, D. D.," who fulminates anathemas against Hill from "Clifton," is a Republican clergyman commissioned by the Episcopal Church to preach the Gospel of peace and good will. With what feelings does this venerable denomination contemplate the conduct of their minister? The Episcopal Church has been conspicuous for the abstinence of its pastors from partisan contentions; and it is this exclusive devotion to the work of the Master that has conciliated to the Episcopal Church so much of popular love and veneration. But here is an Episcopal pastor, rushing into the heat of a political canvass, and proposing to rally around him, a "D. D." an organization of political malcontents, with the added animosities of personal passion! Then, too, observe his foul aspersion upon the entire Democratic party of the State—that they have nominated as a candidate who "stands for corruption"—and have so offered "an insult to the moral sentiment of the State!" Is it thus that the Episcopal Church proposes to gain access for the Gospel to the hearts of the half million Democratic voters of New York? Has the Episcopal Church, as represented by the Rev. John C. Eccleston, D. D., no respect for the feelings of its Democratic communicants?

This reverend pastor's offence is still more flagrant; he is guilty of a palpable deception in purporting to represent Democratic hostility to Governor Hill. That there is ground for this call, at present, to the supporters of Mr. Cleveland, our intention is to prevent our enemies from claiming that our movement is simply a Republican movement in disguise." What is this but an implication that the men in the "movement" are Republicans—not Democrats? The paragraph is susceptible of no other construction than that the "movement" is a Democratic revolt against the candidacy of Governor Hill, the Rev. John C. Eccleston being all the while a notorious and inveterate Republican.

So it is that Democratic opposition to Governor Hill is manufactured and magnified; but it is a business in which I scarce expected to see an Episcopal clergyman the principal agent.

A CLEVELAND-HILL DEMOCRAT.

NEW YORK, Sept. 28.

Hill is All Right—Remember That.

From the Graphic (Dem.).

David B. Hill is, by long odds, the most effective speaker in this campaign. Every State Committee wants him, and he is making more dates outside New York than any two other men would be willing to fill. And when he speaks, in this State or out of it, his voice rings clear and loud for Cleveland. Instead of there being any jealousy on his part, as his enemies claim, Gov. Hill seems to be working for President Cleveland to the neglect of the Gubernatorial canvass.

Well, Hill's all right. He can afford to trust himself to his friends. New York State is likely to give Hill 20,000 majority. The Governor is putting in his hardest work for the Democracy where it is most needed. In the name of the party, let us smile.

These remarks are not designed for Democrats, but for the instruction of those fool supporters of Cleveland who are working against Hill. They combine in equal parts the salient qualities of the monkey, the rhinoceros, the jackass and the snake; and it is hard to move them by the usual arguments. They don't understand ridicule, satire, or denunciation. They are incapable of gratitude. They are obtuse to magnanimity and they know about politics nothing—nothing. Feeling all this, we nevertheless make the attempt to drive into their thick skulls the spikes of a few thoughts.

The success of the Gubernatorial ticket in this State is practically assured. What Hill loses from the Mugwumps he will gain from the lovers of courage, candor, and honesty among the Republicans. If the Mugwump votes were twice as large as it is, it would not overcome the gains Gov. Hill will make.

The tariff issue, on the other hand, confuses our calculations on the national ticket's prospects. We expect to carry New York State. But we shall do it either by a tremendous and astonishing majority, or by a very narrow one.

The man calling himself a Democrat, who favored the Gove nor against the President, or the latter against the former, would be kicked out of every Democratic council as a meaner man than the late Judas Iscariot, or—may the Lord help us when we get there—be compared to those supercilious and smiling cutthroats!—than a professional Mugwump.

Col. Dan Lamont's Mission.

From the Brooklyn Eagle (Dem.).

Mr. Lamont's visit to the city gives rise to a heap of gossip. The truest of the rumors is that he has come to town simply to see folks and look the situation over. Report has it that his observations leave him serene and confident, and that the President has been in that blissful condition right from the start. The Republican managers who assume a knowledge of their opponents' doings theorize that Mr. Lamont's business is to argue out of the State Committee's mind a notion, which it is conceived exists, that the President should write a letter saying nice things about Governor Hill and asking the Mugwump dogs to please quit. The trouble with this theory is that the President does not own the dogs.

From the Brooklyn Standard-Union (Rep.).

At a late hour last evening, in response to a telegram sent to Washington by the National Democratic Committee, Dan Lamont, the President's private secretary, arrived in town and immediately proceeded to the Hoffman House, where he went to room 210 on the seventh floor, and had a long and no doubt very interesting discussion with Messrs. Murtha and Murphy. It is said they laid their case before Dan Lamont clearly, stating that unless the President wrote a letter of disclaimer to friends to vote for and to support Hill, and called off the Mugwump papers, it would be war to the knife, and no effort would be spared to cut Cleveland and to defeat him in this State.

Dan Lamont is cautious, and simply argued that it would be an unwise policy for the President to give Hill a character. It is asserted there was no parallel in the cases of Gov. Hill and District Attorney Fellows, because the latter was only a candidate for a local office, and Mr. Hill was seeking the highest office in the State. Therefore, while the President had a kindly feeling for Hill he didn't think it good policy to ask Democrats to vote for a man who, being nominated in Convention, beyond a doubt represented the wishes of the party and would receive its hearty support.

This clever line of argument did not have much effect with the two wily politicians who were managing State affairs, and they insisted that the President must take some action to stop the men who, while praising Cleveland, were stabbing Hill. Otherwise the President would have to suffer.

Neither Must He Made to Suffer.

From the Brooklyn Eagle (Dem.).

All of the men who have avowed their purpose to vote for the President will not vote for the Governor, for some, as Mugwumps, have declared that they will not. All of the men who will vote for the Governor will not vote for the President, because some of them are Republicans on national issues, if that party can be said to have any national issues. An expert corps of malignants, affecting to belong to the Democracy, hang on its flanks, to loot its camps and to distract its not entirely homogeneous forces to jealous rivalry and mutual distrust. The collective Republican enemy is alert to take advantage of this fact.

In the circumstances Democrats, by whom are meant those who are for Cleveland and for Hill both, will have to keep their tempers sunny, their minds philosophical, and their associations and counsels free from contention. President Cleveland must not be made to suffer because there are Cleveland men who are not Hill men. Gov. Hill must not be made to suffer because there are Hill men who are not Cleveland men. The number of these partisans should be made as small as possible, but there will be some of them. Their existence is an embarrassing fact, and they are annoying factors in the canvass. They will accomplish or fail to accomplish harm according as they are berated or ignored by the general mass of Democracy. They should be ignored.

The Mugwump Hope.

From the Evening Post (Mug.).

There is now no reason to doubt that there is a serious break between the managers of the national campaign and Hill's supporters, which threatens to grow more serious. * * * The truth is that the Hill men are engaged in a desperate effort to secure a certificate of character for the candidate from the President, or, failing in that, to induce President Cleveland to call off the Democrats who are waging the war against Hill. * * *

As we remarked yesterday, the movement against Hill is the work of the independent voter, and the independent voter takes orders from nobody.

As to Trading Votes.

From the Epoch (Mugwump Ind.).

The business of trading votes is one which can be carried on very successfully in New York city and Brooklyn, and in the event of serious danger to Hill's chances, we shall see Democratic votes for Harrison exchanged wholesale for Republican votes for Hill. * * * To expect, therefore, to find Hill run largely behind his ticket would be to overlook the opportunities for trickery at the polls possessed by the Governor's friends on one side and the Republican managers on the other.

Democrats Want No Mugwump Aid.

From the Brooklyn Citizen (Dem.).

Democrats are not likely to be misled, and whether Republicans are or are not can make no great difference, for there are Democrats enough to reelect the Governor by a large majority. The case of his enemies is evidently desperate. * * * In Kings county the majority for Hill will, at the very least, be 20,000.

Truly a Rare Exhibition.

From the New York Times (Mug.).

It is a good many years since there has been such an exhibition in politics as has been furnished by a clergyman on Staten Island, who has called his neighbors together to devise means for defeating the reelection of the Governor of the State.

No Neutral Ground.

From the Kansas City Journal (Rep.).

Between the Mugwumps and the Hill Democrats in New York Mr. Cleveland cannot occupy neutral ground nor common ground.

ANOTHER MADE-OVER BANNER.

A Money-saving Effigy of the Old Roman Frightens a Cow.

WATERTOWN, N. Y., Sept. 29.—The remarks made by THE SUN a few days ago in regard to political banners that did service in the campaign of 1884, had a very vivid as well as a very amusing illustration in this city to-day. Stretched across one of the principal streets is a big banner that the local Democracy flung to the breeze for the first time four years ago. It then had the portraits of Cleveland and Hendricks. This year the Democrats secured the services of a local sign painter to fix up a picture of the Grand Old Roman, and he concluded that, with a little work, he could do it, using the portrait of the late Mr. Hendricks as a foundation. The whiskers were painted on and the eyes touched up so that they had the appearance of being turned in and rolled up at the same time. Somehow the work was allotted on the grand old man, and everybody, irrespective of politics, said so. Those who put it out have been reminded several times that they ought not to discourage the voters by such an exhibition, but it still remains.

To-day a countryman driving a meek and humble specimen of the bovine race came through the street. The animal travelled all right until she came near the banner; then, rearing her head in the air, took a searching and critical look at it. The look must have created a lasting impression, for the animal turned with a snort and stampeded down the street, dragging the unlucky countryman in the mud. The occurrence drew a crowd, and suggestions to the poor fellow were many and pointed. "Better get the painter down here to tell her who that is on the banner," she thinks it's Warner Miller." "That cow's an artist; she knows something." "Blindfold her and she will go all right," and other similar remarks filled the air. The countryman began to pull off his coat. The crowd thought he meant fight. But no; the last suggestion had hit him. He threw the coat over the cow's head and led her under the banner in triumph amid loud and prolonged cheers. Arrangements are now being made to secure a respectable portrait of the honored candidate for the Vice-Presidency.

MR. BLAINE'S QUIET DAY.

Many Members of His Party but Few of the Managers Call Upon Him.

Mr. Blaine, at the Fifth Avenue Hotel yesterday, continued to enjoy the same degree of quiet that had marked the previous evening. He had many callers, but everything in the way of public demonstration was avoided until the rally of the evening brought him face to face with the public at the Polo grounds.

He rose at 9 A. M. and breakfasted heartily. His earliest caller was Levi P. Morton, the Republican Vice-Presidential candidate. The two had a chat, and at 10 o'clock a reception began. It was informal, and resulted from the pressure of cards from people whom Mr. Blaine either wished to see or to whom he did not care to deny himself. George R. Davis, the Republican National Committeeman from Illinois, was among them, and he urged Mr. Blaine for a speech in Chicago. Mr. Blaine answered that the National Committee would have to be consulted as he is in their hands. This made Mr. Davis happy, as he feels sure that he can secure this favor from them.

W. W. Phelps, William M. Cassius Goodloe, Col. Thomas P. Shallcross, and all of the local notabilities among the Republicans called. But Chairman Matt. S. Quay did not. Mr. Goodloe was the only one of the campaign managers who did. Mr. Blaine went out at 11 o'clock, but did not go down to the Republican headquarters. Neither did he go to see Senator Quay at the Everett House, nor any where else.

But everybody denies that there is any friction between the man from Maine and the campaign generals, and it is announced that an appointment has been made for a meeting between Blaine and Quay to-day. At any rate between the time of his speech at the Polo grounds and his departure for the West at 6 o'clock to-morrow evening, there will be ample opportunity for the fullest kind of a discussion of the situation.

YELOW FEVER AND POLITICS.

A Report that It Threatens to Help the Republicans in Florida and Louisiana.

LOUISVILLE, Sept. 29.—A prominent gentleman who has arrived here from the South says there is danger of the loss of Florida and Louisiana to the Democrats in the approaching election.

In both States the negro vote is largely in excess of the white. Many of the latter have come North to escape the fever, and the Republicans realize their opportunity to get the full colored vote to the polls. The whites who have left cannot return in time for the November election. They come chiefly from the cities and smaller towns, and many of them have hitherto been effective in persuading the negroes to vote the Democratic ticket or not to vote at all. The absence of their influence over the negroes and of their active work for the Democracy in other directions, will seriously endanger the result.

"The negroes, left to themselves," says the gentleman, "will be naturally controlled by their Republican leaders, and will not only poll a larger vote than usual, but will vote the Republican ticket almost solidly." S. P. Q. R.

TO RIGHT AN AMERICAN CITIZEN.

The Cruiser Boston to Start for Guatemala To-morrow Morning.

The cruiser Boston did not start on her maiden cruise yesterday, as had been announced that she would. Capt. Ramsay said the delay was caused by making a change in the electric light system for one that is especially adapted to sea-going vessels, and which is more economical and convenient. The Boston will leave the navy yard to-morrow morning and will sail directly for Livingston, Guatemala, to investigate a case of alleged cruelty to an American citizen. She will also cruise along the Mosquito coast, and thence to Costa Rica to look after American maritime interests there, in view of the recent edict discriminating against American goods and vessels in favor of those under other flags in the matter of customs and port dues.

Orders were received at the navy yard yesterday to go ahead with the repairs on the Yantic and the Galena. Those on the former will cost about $25,000, and on the latter about $10,000. These vessels are to be ready for sea on Nov. 10, when the entire North Atlantic Squadron will assemble here and then start on a cruise in West India waters.

He Dropped Mrs. Bidwell at Montreal.

DETROIT, Sept. 29.—A cablegram received here says that Charles W. Waldron, the Hillsdale banker, who converted all his assets into cash and eloped with Mrs. Bidwell of Quincy, is in London, and announces Waldron's intention to return here soon and straighten out matters. Waldron has also written a letter, mailed at Berlin on Sept. 13, in which he says he had family troubles which induced him to leave home. The Bidwell woman wanted to go with him, he says, and he took her as far as Montreal, where he gave her a small sum of money and told her to go. He continued his journey, and went direct to Berlin. Waldron says the money he raised was obtained in a perfectly legitimate way on good security, and that after paying it all back, which he says he will do, he will have $250,000 left unincumbered.

A NEW COURT OF PATENTS.

AN IMPORTANT PROPOSAL BY MR. GEORGE TICKNOR CURTIS.

To Improve the Administration of the Patent Laws and Relieve the Supreme Court.

The special topic of this paper is how to improve the administration of the patent laws, and at the same time to benefit other suitors in the Supreme Court of the United States. Improving the administration of the patent law is a different matter from improving the law itself. The statutes may, and I think they do, require revision; and there have been some decisions on questions of patent law by the Supreme Court which might be corrected by legislative construction or amendment of the statutes, or by making their provisions more clear as expressions of the legislative will. But the fundamental principles of the patent system are unchangeable. What constitutes patentability—novelty and utility—what constitutes an improvement, must remain as the underlying questions perpetually arising under a peculiar jurisprudence. But the administration of the patent laws, as they exist from time to time, is a branch of the subject that requires at the present day to be specially considered. It may be divided into the heads of granting patents, which is an executive function, but one involving to some extent the exercise of quasi-judicial powers, and the judicial administration of the remedies to restrain infringements after a patent has been granted.

Our American system of granting patents for useful inventions differs from that of some other countries in this: that we have always required the applicant to satisfy the proper office of the Government that he is both an original and the first inventor of the thing for which he asks a patent. This has necessitated an examination of his pretensions in the Patent Office; and it is because this examination has been had, or is assumed to have been had, that our courts have always treated the patent, when granted, as presumptive or *prima facie* evidence of novelty and utility, thereby throwing upon any one who questions its validity the burden of disproving it. It is obvious that this examination in the Patent Office, involving the question of original and first invention, in which there may be also embraced the rival claims of two applicants, between whom what is technically called an "interference" has to be declared and decided, may open a wide field of inquiry. The officials charged with this investigation should be not only proficients in the art or science to which the invention relates, but inasmuch as they have to decide mixed questions of fact and of law, and so to discharge a semi-judicial function, they should have no inconsiderable amount of knowledge of the system of law under which they act. It is quite certain that the Patent Office has never yet been organized in this respect as well as it ought to be and might be. Moreover, the successive Boards or functionaries through which an application for a patent has hitherto had to be carried, until it reaches the hands of the Patent Office, constitute a method susceptible of great improvement. But the chief reform that is needed now, and that will be effectuated by the measure that is to be explained in this paper, will consist in doing away with appeals from the Commissioner of Patents to the Supreme Court of the District of Columbia, and taking them before a court specially constituted as a Court of Patent Appeals.

There is needed, outside of the Patent Office, a special and permanent tribunal for the revision of decisions made in and by the office. Often times the rules of law which have been uniformly construed and administered, and in consequence of the periodical change of the Commissioner there has been very little steadiness in the discharge of its functions. A correcting and controlling tribunal, composed of men who will be specially fitted to such a peculiar duty, and whose decisions, properly reported, will be a guide to practitioners and inventors, is a matter of imperative necessity.

Let me not be understood, however, as recommending a court of "experts" in the narrow sense of that term. After an invention has passed through the Patent Office, whether a patent on it has been granted or refused, I would have no powers of determining anything lodged in a body of public officers to be composed of those who are commonly called "experts." A Court of Patent Appeals, such as is contemplated in the bill now pending, and which I propose to explain, is created, the Judges should be men who are good lawyers, of known ability, and judicial habits of mind; and the appointing power should be enabled and finding it easy to call up from Circuit or District Courts two or three Judges who have served on those courts with reputation, and have had experience in the trial of patent cases. The judicial administration of the patent law, although it involves a special branch of jurisprudence, requires for the best results a familiarity with the law in general as well as much knowledge of human nature, and an intimate acquaintance with the philosophy and rules of evidence. The more a man knows of other subjects of law the better patent lawyer he may become; for any man of well trained intellect and habits of close investigation, can master at will any mechanical or scientific subject, however abstruse. There have been some practitioners at the bar who have become eminent lawyers and have been much employed, but who have had a professional education as lawyers, and whose practice has been exclusively in patent cases. They may have been very useful to their clients, but they would not make good judges, unless their studies have been broader than any of this class whom I have known. It may be difficult to get the appointing power to pay no regard to political considerations in appointing Judges. On such a court as is now proposed, political opinions are not of the slightest consequence, and it ought not to be difficult to find lawyers fit to be placed on it who would be willing to accept a place on such a court as is now proposed, political opinions are not of the slightest consequence, and it ought not to be difficult to find lawyers fit to be placed on it who would be willing to accept such place, for the Patent Office courts men who have already been useful public servants, and who might be induced by a larger salary to accept such promotion.

With regard to the strictly judicial administration of the patent system, it is apparent that however well conducted the proceedings in the Patent Office in the granting of patents may be, it is only when infringements, or what are supposed to be infringements, take place, that litigation in the courts can arise; and no regulations could well be made, that did not leave the validity of the patent in question open to be contested in the courts, notwithstanding the force of the presumption in favor of validity that arises out of the grant of the patent and is stamped upon it by the great seal of the Government. Our statutes have provided that any person who has sued for an infringement may make the defence of want of novelty, but that he must specify the persons and places by whom and at which he alleges that there was prior knowledge or prior public use of the thing contested; the book or other printed publication in which there was a prior description of it; and the prior patent or patents claimed to have covered the same invention. In these respects our present legislation needs little if any improvement. It is in the judicial system that the reform has to be made.

In respect to all rights that arise under the Constitution and the laws of the United States, the Supreme Court is the tribunal in which the law is to be finally and authoritatively applied to the facts. To withhold from any litigant the right to have the law of his case determined finally by the Supreme Court is not always wise. The only restriction that has been hitherto placed upon the exercise of this right is that the amount in controversy in the particular case shall exceed a certain value, when the controversy relates to interests of property and not to personal liberty. This restriction has been one of the consequences of an assumption—more or less necessary—that the time of the Supreme Court is too important to be occupied in deciding cases in which the pecuniary importance to the parties is comparatively inconsiderable. But this assumption, however necessary, leads to an increase in "the amount in controversy" in proportion as the time of the Supreme Court becomes more and more precious in consequence of the increase in its business. The amount has been gradually increased in practice in the court from $2,000 to $5,000, and it very often happens that a litigant will carry up his case and find complicated rules of decision which render it uncertain whether his appeal will be retained or dismissed.

In patent and copyright cases this requirement has not been made, because both questions, infringement and novelty, may often have to be settled, and often are settled, in cases in which the damages or pecuniary result of the litigation, independent of costs, is comparatively small. But while this ought to continue to be the rule in patent and copyright cases, so that the law of every case may be finally settled by the Supreme Court, it does not follow that the Supreme Court ought to be and can best be required to examine and decide the facts. The mass of litigation that accumulates at every term of the Supreme Court is very great. It relates to every conceivable kind of interest. It comes from State as well as from Federal courts, and if there are special classes of cases, originating under laws of the United States and in courts of the United States, in which the litigant is entitled to have the law applied to a conceively settled in a tribunal of inferior grade but of competent ability, there can be a great saving of the time of the Judges of the Supreme Court for the benefit of other suitors.

Experience has shown that there are such cases; as, for example, cases of admiralty and maritime jurisdiction, in which the facts involve technical matters, and in which they can be safely determined, and determined finally, before the cases reach the Supreme Court. Patent and copyright cases can be dealt with in the same way, without any disregard of constitutional rights, for no litigant has a constitutional right to insist that the nine Judges of the Supreme Court shall sit as a jury to determine the facts of his case, although he may well expect that they shall be required to determine the law.

I do not believe in the expediency of radically reconstructing the whole judicial system of the United States, even within the limits prescribed by the Constitution. The habits of the country have been formed upon the system as it has long existed. Many projects have been made, about which serious doubts may be entertained. The simplest and most feasible plan is to select those cases which are of a special and uniform character, on account of the special subjects in controversy, and to create a tribunal charged with the duty of settling the facts in each of those cases, reserving to the Supreme Court the application of the law to the facts so found. This is a mode of selection capable hereafter of being applied to other cases as well as to patent, copyright, and trade-mark cases; it avoids all constitutional difficulties, and it is what I understand Mr. Justice Miller to have meant, when he said of the proposed new Court of Patent Appeals that "It will do much to relieve the overburdened docket of our Supreme Court in a direction where it can best be done."

At the last term of the Supreme Court, which began in October, 1887, and ended in May, 1888, 325 cases were disposed of on oral arguments, or submitted on printed briefs. The whole number of cases of every description on the docket of the court at the beginning of the term was considerably more than 1,000, but the Judges worked as many days as it is possible for them to work, in sessions of four hours on each of five days in the week, Saturdays being devoted to consultations, which often last through the whole day. It has been found by long experience that even with the time rule allowing but two hours on each side for oral arguments, a greater number of cases cannot be properly heard, considered, and decided than an average of 350 or 400 during each term. Of the 325 cases acted on at the last term twenty-five were patent cases, and were argued orally, the oral argument being accompanied by printed briefs. It is very rarely that counsel can do justice to a patent case without occupying all the time allowed by the rule, so that 100 hours must be set down as the time consumed in the hearing of these twenty-five cases. It is difficult to estimate the time which each of the nine Judges must have given to the study of these cases and to the necessary conferences on them; but it would be quite within bounds to say that each Judge was occupied on each of those twenty-five cases for at least twelve hours after the hearing. Multiplied by 9, this amounts to 5,950 hours, and, calling twelve hours a day's work, which is certainly an excessive estimate, 412 days of public time were consumed in the study and determination of twenty-five patent cases by the nine Judges, excluding the time occupied by the Judge who wrote the opinion. Now, by far the larger part of this time must have been occupied in examining a mass of conflicting testimony relating to facts of a technical character and on a great variety of mechanical and scientific subjects. When the facts of a patent case have been settled, the application of the law to them is comparatively easy. I shall not say that the Judges of the Supreme Court are not as well qualified to decide the facts of a patent case as to decide the facts in other cases, when they have not been settled by the verdict of a jury, and when they come up in appeals in equity. But it is perfectly plain that there is no necessity for requiring them to do what can just as well and perhaps better be done by another tribunal. But, in order that the Judges of the Supreme Court may be able to decide correctly the facts in a complicated patent case, the facts must be presented to them, so that they can be understood. A printed brief, although useful and made necessary by a rule of the court, will not alone do the work. An oral argument is necessary; many models must be introduced and explained; a mass of conflicting testimony brought up in the record (supposing that it is a suit in equity, which it is nowadays in nine cases out of every ten) must be discussed. All this must be done in the space of two hours on each side, unless there is a special enlargement of the time; and this is always reluctantly granted, because it encroaches more or less on the time which other suitors may reasonably expect will be apportioned to them out of the whole time during which the court can sit for the term. Moreover, the presentation of a patent case to the Supreme Court has to be made to a bench of nine Judges, all of whom cannot interrupt counsel to ask for explanations, but every one of whom may find that he is getting but an unsatisfactory view of the subject if he sits entirely silent.

On the other hand, while it may become necessary for the proposed Court of Patent Appeals to have a time rule for the oral argument of the cases, the Judges will not be under the necessity of enforcing that rule as strictly as the Judges of the Supreme Court must enforce theirs. Further explanations by counsel can be called for; more time can be taken for examination of models, both during and after the argument; and as the litigants will know that the finding of facts by this court of appeals is to be final, they will be all the more careful and diligent in making their respective sides of the controversy fully understood.

It only remains for me to give a synopsis of the bill as reported from the Judiciary Committee to the House of Representatives.

The court to be established is to consist of a Chief Justice and two Associate Justices, with a salary of $6,000 for each. They are to be appointed by the President, by and with the advice and consent of the Senate, and the tenure of office is to be for life and during good behavior, like that of other Judges of courts of the United States. The following provision explains itself, and is, in my judgment, very important:

SEC. 18.—When any Judge of the Court of Patent Appeals resigns his office after having held his commission as such at least ten years, or is found to have held his commission as such for no less than five years, having previously held a commission as a Judge of Circuit or District Court of the United States for a period sufficiently long to make up ten years' service as a Judge of a United States court, and having attained the age of 70 years, he shall, during the residue of his natural life, receive the same salary which was by law payable to him at the time of his resignation.

All the proper officers of a court of record, a clerk and deputy clerk, a marshal, a reporter of decisions and the distribution of the reports, are provided for in the bill. The court is to hold at the seat of government one term annually, commencing on the second Monday in October, and an adjourned or special term, as it may find necessary. Its jurisdiction is to be appellate only, and is defined as follows:

SEC. 14.—The Court of Patent Appeals of the United States shall have appellate jurisdiction in the cases hereafter specially provided for without regard to the sum in controversy.

2. From the courts of the United States having original jurisdiction of cases touching patents, copyrights, trade marks, and labels, in all cases involving these subjects.

3. From the Commissioner of Patents in all cases touching the patentability of inventions, priority of invention among several claimants or patent upon the same invention, and in all other matters affecting the legal practice of the Patent Office, also all cases touching the registration of trade marks or labels and the rights of conflicting claimants therefor.

SEC. 15. From and after the passage of this act there shall be no appeal from the Circuit Courts of the United States, or any territorial or district court or court of the District of Columbia, in cases touching patents, trade marks, copyrights, or labels, to the Supreme Court of the United States directly, but all such cases formerly appealable to the Supreme Court shall be heard on appeal by the Court of Patent Appeals.

SEC. 16.—There shall be a right of appeal from the Court of Patent Appeals to the Supreme Court of the United States in all cases, irrespective of the amount in controversy, subject to the same regulations, however, as now exist with regard to appeals to the Supreme Court from the courts of admiralty and maritime jurisdiction, and to such further regulations as the Supreme Court of the United States may make.

SEC. 17. All cases touching patents, trade marks, copyrights or labels now pending before the Supreme Court of the United States awaiting trial shall be transferred to and heard by the Court of Patent Appeals.

The proposed Court of Patent Appeals has received the unqualified approval of the Judges of the Supreme Court, who, at my request, went over all the details of the bill, section by section. They look to it as the best means of affording relief to their overcrowded docket. I have their permission to print the following notes. That from the late excellent and lamented Chief Justice was written shortly before the illness which ended his useful life. He did not see the details of the bill, and it was not submitted to the other Judges until after his death:

FROM THE LATE CHIEF JUSTICE WAITE.

1,115 L STREET, March 10, 1888.

MY DEAR MR. CURTIS: I have read carefully your letter to Mr. Gorham, a copy of which some one has been good enough to send me, and I agree with you cordially in all your suggestions, but especially that which relates to the finding of facts by the Court of Patent Appeals. There is no more reason why the facts should come before us in this class of cases, after the trials below, than there is in cases in admiralty. Sincerely yours,

GEORGE T. CURTIS, ESQ. M. R. WAITE.

FROM MR. JUSTICE MILLER.

WASHINGTON, May 25, 1888.

Mr. Geo. Ticknor Curtis.

MY DEAR SIR: It gives me pleasure to say that after going over the bill of the H. R. No. 9,984, to establish a Court of Patent Appeals, with a few suggestions, which you accepted, I approve the bill entirely.

It will do much to relieve the overburdened docket of our Supreme Court in a direction where it can best be done.

Although the bill has been amended to meet the views of the members of the Court, it has been considered by them all, and I feel sure I express their concurrent opinion when I say that they all desire the passage of the bill, and will be much gratified if it shall become a law.

I am, very truly yours,

SAM. F. MILLER.

It will thus be seen that there will be interposed between the Patent Office and the Supreme Court, and between the courts of original jurisdiction and the Supreme Court, a new court of appellate jurisdiction, with a right of appeal therefrom to the Supreme Court in all patent, copyright, and trade mark cases, without regard to the amount in controversy; but that it will be left to the Supreme Court to be the judge of the proper rules of practice in the court, and to prescribe the rules of practice in the court from $2,000 to $5,000, and it very often happens that a litigant will carry up his case and find complicated rules of decision which render it uncertain whether his appeal will be retained or dismissed.

In patent and copyright cases this requirement has not been made, because both questions, infringement and novelty, may often have to be settled, and often are settled, in cases in which the damages or pecuniary result of the litigation, independent of costs, is comparatively small. But while this ought to continue to be the rule in patent and copyright cases, so that the law of every case may be finally settled by the Supreme Court, it does not follow that the Supreme Court ought to be and can best be required to examine and decide the facts. The mass of litigation that accumulates at every term of the Supreme Court is very great. It relates to every conceivable kind of interest. It comes from State as well as from Federal courts, and if there are special classes of cases, originating under laws of the United States and in courts of the United States, in which the litigant is entitled to have the law applied to a conceively settled in a tribunal of inferior grade but of competent ability, there can be a great saving of the time of the Judges of the Supreme Court for the benefit of other suitors.

Experience has shown that there are such cases; as, for example, cases of admiralty and maritime jurisdiction, in which the facts involve technical matters, and in which they can be safely determined, and determined finally, before the cases reach the Supreme Court. Patent and copyright cases can be dealt with in the same way, without any disregard of constitutional rights, for no litigant has a constitutional right to insist that the nine Judges of the Supreme Court shall sit as a jury to determine the facts of his case, although he may well expect that they shall be required to determine the law.

I do not believe in the expediency of radically reconstructing the whole judicial system of the United States, even within the limits prescribed by the Constitution. The habits of the country have been formed upon the system as it has long existed. Many projects have been made, about which serious doubts may be entertained. The simplest and most feasible plan is to select those cases which are of a special and uniform character, on account of the special subjects in controversy, and to create a tribunal charged with the duty of settling the facts in each of those cases, reserving to the Supreme Court the application of the law to the facts so found. This is a mode of selection capable hereafter of being applied to other cases as well as to patent, copyright, and trade-mark cases; it avoids all constitutional difficulties, and it is what I understand Mr. Justice Miller to have meant, when he said of the proposed new Court of Patent Appeals that "It will do much to relieve the overburdened docket of our Supreme Court in a direction where it can best be done."

At the last term of the Supreme Court, which began in October, 1887, and ended in May, 1888, 325 cases were disposed of on oral arguments, or submitted on printed briefs. The whole number of cases of every description on the docket of the court at the beginning of the term was considerably more than 1,000, but the Judges worked as many days as it is possible for them to work, in sessions of four hours on each of five days in the week, Saturdays being devoted to consultations, which often last through the whole day. It has been found by long experience that even with the time rule allowing but two hours on each side for oral arguments, a greater number of cases cannot be properly heard, considered, and decided than an average of 350 or 400 during each term. Of the 325 cases acted on at the last term twenty-five were patent cases, and were argued orally, the oral argument being accompanied by printed briefs. It is very rarely that counsel can do justice to a patent case without occupying all the time allowed by the rule, so that 100 hours must be set down as the time consumed in the hearing of these twenty-five cases. It is difficult to estimate the time which each of the nine Judges must have given to the study of these cases and to the necessary conferences on them; but it would be quite within bounds to say that each Judge was occupied on each of those twenty-five cases for at least twelve hours after the hearing. Multiplied by 9, this amounts to 5,950 hours, and, calling twelve hours a day's work, which is certainly an excessive estimate, 412 days of public time were consumed in the study and determination of twenty-five patent cases by the nine Judges, excluding the time occupied by the Judge who wrote the opinion. Now, by far the larger part of this time must have been occupied in examining a mass of conflicting testimony relating to facts of a technical character and on a great variety of mechanical and scientific subjects. When the facts of a patent case have been settled, the application of the law to them is comparatively easy. I shall not say that the Judges of the Supreme Court are not as well qualified to decide the facts of a patent case as to decide the facts in other cases, when they have not been settled by the verdict of a jury, and when they come up in appeals in equity. But it is perfectly plain that there is no necessity for requiring them to do what can just as well and perhaps better be done by another tribunal. But, in order that the Judges of the Supreme Court may be able to decide correctly the facts in a complicated patent case, the facts must be presented to them, so that they can be understood. A printed brief, although useful and made necessary by a rule of the court, will not alone do the work. An oral argument is necessary; many models must be introduced and explained; a mass of conflicting testimony brought up in the record (supposing that it is a suit in equity, which it is nowadays in nine cases out of every ten) must be discussed. All this must be done in the space of two hours on each side, unless there is a special enlargement of the time; and this is always reluctantly granted, because it encroaches more or less on the time which other suitors may reasonably expect will be apportioned to them out of the whole time during which the court can sit for the term. Moreover, the presentation of a patent case to the Supreme Court has to be made to a bench of nine Judges, all of whom cannot interrupt counsel to ask for explanations, but every one of whom may find that he is getting but an unsatisfactory view of the subject if he sits entirely silent.

On the other hand, while it may become necessary for the proposed Court of Patent Appeals to have a time rule for the oral argument of the cases, the Judges will not be under the necessity of enforcing that rule as strictly as the Judges of the Supreme Court must enforce theirs. Further explanations by counsel can be called for; more time can be taken for examination of models, both during and after the argument; and as the litigants will know that the finding of facts by this court of appeals is to be final, they will be all the more careful and diligent in making their respective sides of the controversy fully understood.

It only remains for me to give a synopsis of the bill as reported from the Judiciary Committee to the House of Representatives.

The court to be established is to consist of a Chief Justice and two Associate Justices, with a salary of $6,000 for each. They are to be appointed by the President, by and with the advice and consent of the Senate, and the tenure of office is to be for life and during good behavior, like that of other Judges of courts of the United States. The following provision explains itself, and is, in my judgment, very important:

SEC. 18.—When any Judge of the Court of Patent Appeals resigns his office after having held his commission as such at least ten years, or is found to have held his commission as such for no less than five years, having previously held a commission as a Judge of Circuit or District Court of the United States for a period sufficiently long to make up ten years' service as a Judge of a United States court, and having attained the age of 70 years, he shall, during the residue of his natural life, receive the same salary which was by law payable to him at the time of his resignation.

All the proper officers of a court of record, a clerk and deputy clerk, a marshal, a reporter of decisions and the distribution of the reports, are provided for in the bill. The court is to hold at the seat of government one term annually, commencing on the second Monday in October, and an adjourned or special term, as it may find necessary. Its jurisdiction is to be appellate only, and is defined as follows:

SEC. 14.—The Court of Patent Appeals of the United States shall have appellate jurisdiction in the cases hereafter specially provided for without regard to the sum in controversy.

2. From the courts of the United States having original jurisdiction of cases touching patents, copyrights, trade marks, and labels, in all cases involving these subjects.

3. From the Commissioner of Patents in all cases touching the patentability of inventions, priority of invention among several claimants or patent upon the same invention, and in all other matters affecting the legal practice of the Patent Office, also all cases touching the registration of trade marks or labels and the rights of conflicting claimants therefor.

SEC. 15. From and after the passage of this act there shall be no appeal from the Circuit Courts of the United States, or any territorial or district court or court of the District of Columbia, in cases touching patents, trade marks, copyrights, or labels, to the Supreme Court of the United States directly, but all such cases formerly appealable to the Supreme Court shall be heard on appeal by the Court of Patent Appeals.

SEC. 16.—There shall be a right of appeal from the Court of Patent Appeals to the Supreme Court of the United States in all cases, irrespective of the amount in controversy, subject to the same regulations, however, as now exist with regard to appeals to the Supreme Court from the courts of admiralty and maritime jurisdiction, and to such further regul