PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk, under the rule, and referred as stated:

By Mr. ALDRICH: The petition of W. F. Bayne, M. D., and 20 others, citizens of Macomb Illinois, for legislation to prevent the adulteration of sweets—to the Committee of Ways and Means.

Also, the petition of T. N. Marynis and 40 others, citizens of Watseka, Illinois, of similar import—to the same committee.

Also, the petition of George H. Kemp and 12 others, citizens of Barnesville, Ohio, of similar import—to the same committee.

Also, the petition of P. H. Davies and 26 others, citizens of Canton, Illinois, of similar import—to the same committee.

Also, the petition of John C. Kingston and 25 others, of the State of New York, manufacturers of lasts, against the extension of the shoe-last patent of Nathaniel Jones—to the Committee on Patents.

By Mr. ATKINS: The petition of citizens of Tennessee, for the improvement of the navigation of Duck River—to the Committee on Commerce.

Also, papers relating to the war claim of George W. Miffleton—to the Committee on War Claims.

Also, memorial of the American Public Health Association, asking the publication of an index to the medical library in the office of the Surgeon-General—to the Committee on Appropriations.

By Mr. BACON: The petition of John C. Kingston and others, against the extension of the shoe-last patent of Nathaniel Jones—to the Committee on Patents.

By Mr. BALLOU: The petition of John C. Kingston and others, of similar import—to the same committee.

Also, memorial of the sugar importers and dealers of Providence, Rhode Island, against the proposed change of duties on sugar—to the Committee of Ways and Means.

By Mr. BANNING: The petition of citizens of New York, against the extension of the shoe-last patent of Nathaniel Jones—to the Committee on Patents.

By Mr. BICKNELL: The petition of G. Westinghouse and others, against extending the Birdsell clover-huller patent—to the same committee.

Also, the petition of John C. Kingston and 25 others, manufacturers of lasts, against extending the shoe-last patent of Nathaniel Jones—to the same committee.

By Mr. BOUCK: The petition of citizens of Nekama, Wisconsin, for legislation to prevent the adulteration of sweets—to the Committee of Ways and Means.

By Mr. BOYD: The petition of S. H. Thompson & Co. and other firms, of Peoria, Illinois, for such a change of the tariff as will admit all raw sugars not above No. 16, Dutch standard in color, at one rate of duty—to the same committee.

Also, the petition of S. H. Thompson & Co. and other firms, of Peoria, Illinois, for legislation to prevent the adulteration of sweets—to the same committee.

By Mr. BRIDGES: The petition of citizens of Massachusetts, against the extension of the sewing-machine patent of McKay & Mathies—to the Committee on Patents.

By Mr. CARLISLE: The petition of the ladies of the Protestant Episcopal church at Dayton, Kentucky, for additional legislation to suppress the practice of polygamy—to the Committee on the Judiciary.

By Mr. CHITTENDEN: The petition of G. Westinghouse & Co. and others, against the extension of the Birdsell clover-huller patent—to the Committee on Patents.

Also, the petition of John C. Kingston and others, against the extension of the shoe-last patent of Nathaniel Jones—to the same committee.

Also, resolution of the senate of the New York Legislature, opposing the passage of the Army reorganization bill, or at least the portions of it relating to the ordnance department, United States arsenals, and ordnance stores—to the Committee on Military Affairs.

By Mr. COX, of New York: The petition of Ralph King, for compensation for services as United States consul at Bremen, Germany—to the Committee on Foreign Affairs.

By Mr. CRITTENDEN: The petition of Samuel S. Case, of Booneville, Missouri, for bounty for himself and others—to the Committee on Invalid Pensions.

By Mr. DEAN: The petition of Mrs. Horace Manning and 14 others, for legislation that will make effective the anti-polygamy law of 1862—to the Committee on the Judiciary.

By Mr. DEERING: The petition of citizens of New York and Ohio, against extending the Birdsell clover-huller patent—to the Committee on Patents.

Also, the petition of citizens of Buffalo, New York, against extending the shoe-last patent of Nathaniel Jones—to the same committee.

By Mr. FINLEY: The petition of Allen Campbell and 40 others, of Crawford County, Ohio, against the extension of the Birdsell clover-huller patent—to the same committee.

By Mr. FRYE: The petition of Elisha T. Totman and others, for the establishment of a life-saving station at Cape Small Point, Maine—to the Committee on Commerce.

By Mr. GUNTER: The petition of Joseph W. Estep, for the removal of the charge of desertion—to the Committee on Military Affairs.

By Mr. HASKELL: The petition of citizens of Pleasanton, Kansas, for a commission of inquiry concerning the alcoholic liquor traffic—to the Committee on the Judiciary.

By Mr. HOOKER: The petition of Henry Blackman, late postmaster at Brookhaven, Mississippi, to be relieved from accounting for money stolen from him by burglars—to the Committee of Claims.

By Mr. JONES, of Alabama: A paper relating to the establishment of a post-route from Grove Hill, via Winn's Mill, to Jackson, Alabama—to the Committee on the Post-Office and Post-Roads.

By Mr. MORSE: Memorial of the harbor commissioners of Boston, Massachusetts, relative to the improvement of Boston Harbor—to the Committee on Commerce.

By Mr. MULDROW: Papers relating to the war claim of Abner McCollum—to the Committee on War Claims.

By Mr. OVERTON: The petition of Stella Hillis and other women, of Rushville, Pennsylvania, for such legislation as will make effective the anti-polygamy law of 1862—to the Committee on the Judiciary.

Also, the petition of Mary E. Thomas and 42 other women, of Stevensville, Pennsylvania, of similar import—to the same committee.

By Mr. PRICE: The petition of the Women's Christian Temperance Union and 36 citizens of Malcolm, Iowa, for a commission of inquiry concerning the alcoholic liquor traffic—to the same committee.

Also, the petition of the Women's Temperance Union of the sixth congressional district of Iowa, of similar import—to the same committee.

Also, the petition of the Women's Christian Temperance Union and others of Keokuk, Iowa, of similar import—to the same committee.

By Mr. RICE, of Ohio: The petition of Sarah J. Rauch, Lucinda J. Maple, and 80 other ladies, of Columbus Grove, Ohio, for such legislation as will make effective the anti-polygamy law of 1862—to the same committee.

By Mr. RYAN: The petition of women of Reno County, Kansas, of similar import—to the same committee.

By Mr. SAMPSON: The petition of Mrs. E. B. Woodruff, Mrs. H. T. Cunningham, Mrs. B. Ewalt, Mrs. A. M. Bonebrake, Mrs. A. M. Weyers, Ellen McClelland, Emma Ball, Susan Lewis, Kate Sears, and 605 other women, of Knoxville, Iowa, of similar import—to the same committee.

By Mr. SHALLENBERGER: The petition of 32 women of Lawrence County, Pennsylvania, of similar import—to the same committee.

By Mr. SLEMONS: The petition of citizens of Pine Bluff, Arkansas, for an appropriation to protect the river front of said city—to the Committee on Commerce.

By Mr. STRAIT: The petition of Mrs. S. L. Sherred and 20 other ladies, of Shakopee, Minnesota, for legislation to make effective the anti-polygamy law of 1862—to the Committee on the Judiciary.

Also, memorial of Henry M. Rice, of St. Paul, Minnesota, and others, in reference to the improvement of lake navigation—to the Committee on Commerce.

By Mr. TUCKER: Memorial of citizens of Charlotte County, Virginia, asking relief from the present onerous tobacco tax—to the Committee of Ways and Means.

Also, the petition of John S. Barbour, receiver of the Washington City, Virginia Midland, and Great Southern Railroad Company, for legislation to enable the Post-Office Department to establish a double daily mail service over said line of road—to the Committee on the Post-Office and Post-Roads.

By Mr. WILLIAMS, of Alabama: The petition of citizens of Bullock County, Alabama, for a post-route from Mount Level to Indian Creek, in said county—to the same committee.

IN SENATE.

WEDNESDAY, *January* 15, 1879.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

Mr. WITHERS presented the resolutions of a public meeting of citizens of Powhatan County, Virginia, protesting against the injustice of the tobacco tax; which were referred to the Committee on Finance.

He also presented a memorial of a committee of the Public Health Association, appointed at its late meeting in Richmond, Virginia, in favor of such legislation as will secure national sanitary results; which was referred to the select committee to investigate and report the best means of preventing the introduction and spread of epidemic diseases.

Mr. BOOTH presented the petition of James Powell, of San Francisco, praying for such legislation by Congress as will enable him to present and prove his claim for damages caused by the capture of the whaling-ship Edward Cary by the rebel cruiser Shenandoah during the late war; which was referred to the Committee on the Judiciary.

Mr. CONKLING. I present a petition signed by a large number of soldiers whose regiments and companies are given, praying for legislation touching their bounties. This does not relate to the arrears

of pension bill, but prays for special legislation in special cases. I ask its reference to the Committee on Pensions.

Mr. INGALLS. It should go to the Committee on Military Affairs if it relates to bounty.

Mr. CONKLING. The chairman of the Committee on Pensions says it belongs rather to the Committee on Military Affairs, and I ask that it take that direction.

The VICE-PRESIDENT. The petition will be referred to the Committee on Military Affairs.

Mr. CONKLING. I present also the memorial of Samuel G. Wolcott, of Oneida County, New York, who represents himself as one of the *bona fide* purchasers of land through bonds issued for the Des Moines River improvement in Iowa, and remonstrating against the passage of a bill now on the Calendar of the Senate, which professes to quiet the title to those lands. I move that the memorial lie on the table.

The motion was agreed to.

Mr. CONKLING presented the petition of W. E. Webster and a large number of others, soldiers resident in Auburn, Cayuga County, New York, praying for the passage of the bill (H. R. No. 4234) granting arrears of pensions; which was ordered to lie on the table.

He also presented the petition of Van Ness Brothers and a number of others, merchants and shippers in the city of New York, praying for the passage of the bill (H. R. No. 3547) to regulate interstate commerce, and to prohibit unjust discriminations by common carriers; which was referred to the Committee on Commerce.

Mr. HOAR presented the petition of Mary L. Turner, widow of Sidney S. Turner, deceased, of Westborough, Massachusetts, praying for the extension of letters-patent granted to her late husband for an improvement in the wax-thread sewing-machine; which was referred to the Committee on Patents.

The VICE-PRESIDENT presented the petition of Abigail F. Voter and 101 other women, of New Vineyard, Maine, praying for the passage of a law prohibiting the sale of intoxicating liquors in the District of Columbia, except for medical, medicinal, and scientific purposes; which was referred to the Committee on the District of Columbia.

COURTS IN COLORADO.

Mr. EDMUNDS. I am instructed by the Committee on the Judiciary, to whom was referred the bill (S. No. 763) to provide for holding terms of the circuit and district courts in the district of Colorado, which passed the Senate at the last session and was sent to the House and was returned with an amendment and again referred to that committee, to report it with a recommendation that the amendment of the House of Representatives be disagreed to. I think, as I see the Senator from Colorado [Mr. TELLER] is not here, that I had better, although I am not authorized by the committee to do so, move also that the Senate ask a conference on the disagreeing votes of the two Houses, as that will keep the matter in hand where it can be taken up and disposed of. I make that motion, that the Senate disagree to the House amendment and ask a conference thereon.

The VICE-PRESIDENT. That order will be entered.

REPORTS OF COMMITTEES.

Mr. EDMUNDS. I am instructed by the Committee on the Judiciary, to whom was referred the bill (H. R. No. 5315) to restore the records and files in the district and circuit courts of the United States for the western district of Texas, lately destroyed by fire, to report it with an amendment striking out all after the enacting clause and insert what the committee report, and also an amendment to the title to conform to the amendment. The nature of the amendment simply is to make a general provision of law for restoring records and files that are lost instead of this special one for the State of Texas. I ask to have it printed.

The VICE-PRESIDENT. The bill will be placed on the Calendar.

Mr. McDONALD. To the Committee on Public Lands was referred the memorial of William McGarrahan, praying the correction of a clerical error in the record of a patent to the land grant known as the Rancho Panoche Grande, in California. That committee at the last session of the present Congress reported adversely to the prayer of the memorialist, but asked leave to prepare a more complete report on the subject to be submitted to the Senate. They respectfully submit their report, and I now present it.

The VICE-PRESIDENT. Does the Senator desire it to be read at length?

Mr. McDONALD. I ask to have it printed.

The VICE-PRESIDENT. It will be printed and laid on the table, subject to the call of the Senator from Indiana.

Mr. SARGENT, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 1098) to transfer Paymaster Robert Burton Rodney from the retired list to the active list of the Navy, reported adversely thereon; and the bill was postponed indefinitely.

Mr. SARGENT. I am instructed by the same committee, to whom was referred the bill (S. No. 900) for the relief of Egbert Thompson, to report it adversely, relief having been given in another form.

The VICE-PRESIDENT. The bill will be postponed indefinitely.

Mr. SARGENT. I am also directed by the same committee, to whom was referred the bill (H. R. No. 356) directing method of annual estimates of expenditures to be submitted from Navy Department, to report it adversely, for the reason that the mode of requiring these estimates seems to be too complicated in their judgment.

The VICE-PRESIDENT. The bill will be postponed indefinitely.

Mr. SARGENT. I am also directed by the same committee, to whom was referred the bill (S. No. 750) to provide for experiments and the purchase of movable torpedoes for military and naval defense, to report it adversely. The appropriation asked for is very large, and the committee thought they would not recommend it at this session.

The VICE-PRESIDENT. The bill will be postponed indefinitely.

Mr. SARGENT, from the Committee on Naval Affairs, to whom was referred the bill (H. R. No. 3344) to authorize the appointment of apothecaries as warrant officers in the United States Navy, reported adversely thereon, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the petition of certain seamen serving on the United States steamship Pawnee at Port Royal, South Carolina, praying for an increase of pay and rates, reported adversely thereon, and the committee were discharged from the further consideration of the petition.

He also, from the same committee, to whom was referred the petition of G. L. Dyer, master United States Navy, praying to be restored to his proper position on the Naval Register in the line of promotion, reported adversely thereon, and the committee were discharged from its further consideration.

He also, from the same committee, to whom was referred the petition of Hugo Osterhaus, United States Navy, asking that Master W. M. Wood, United States Navy, be restored to his proper rank, next after W. P. Ray, master United States Navy, reported adversely thereon.

Mr. COCKRELL. What action was had upon that by the committee?

Mr. SARGENT. It is reported adversely. The Senate disposed of the matter in another form, as the Senator from Missouri may be aware, at the last session, which makes this action proper.

The VICE-PRESIDENT. The committee will be discharged from the further consideration of the petition.

Mr. SARGENT, from the Committee on Naval Affairs, to whom was referred the memorial of Henry Erben, United States Navy, praying to be allowed to appear before the proper naval board of officers for examination for promotion, reported adversely thereon, and the committee were discharged from its further consideration.

He also, from the same committee, to whom was referred the petition of H. O. Rittenhouse, master United States Navy, praying to be advanced to his proper rank in the Navy, reported adversely thereon, and the committee were discharged from the further consideration of the petition.

Mr. HEREFORD, from the Committee on Claims, to whom was referred the bill (H. R. No. 3186) for the relief of the Commercial Bank of Knoxville, Tennessee, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

BILLS INTRODUCED.

Mr. INGALLS (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1620) to extend the jurisdiction of justices of the peace of the District of Columbia, and to regulate proceedings before them; which was read twice by its title, and referred to the Committee on the District of Columbia.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1621) to establish the judicial district of the Indian Territory; which was read twice by its title, and referred to the Committee on Indian Affairs.

Mr. ANTHONY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1622) appropriating money for payment of bounty to officers and men of Flag-Officer Farragut's fleet; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. BURNSIDE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1623) authorizing the retirement of Brevet Major-General William W. Averill, United States Army, with the rank and pay of a brigadier-general; which was read twice by its title, and referred to the Committee on Military Affairs.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1624) to authorize the Secretary of the Treasury to purchase land adjacent to the custom-house in the city of Providence, Rhode Island; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. GROVER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1625) to remove the political disabilities of William T. Welcker, of California; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. DORSEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1626) providing for the payment of certain obligations of the District of Columbia; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. DORSEY. I present several communications to accompany the bill, which I move be referred to the Committee on the District of Columbia and printed.

The motion was agreed to.

Mr. MAXEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1627) making appropriation for the purchase of Fort Clark, Texas; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. GORDON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1628) to amend the act entitled "An act for

the relief of Robert Erwin;" which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. CONKLING. By request, and not understanding in full its merits, I ask leave to introduce a joint resolution for reference to the Committee on the District of Columbia.

By unanimous consent, leave was granted to introduce a joint resolution (S. No. 47) touching assessments of property in the District of Columbia; which was read the first time by its title.

Mr. DAVIS, of Illinois. Let it be read at length.

The joint resolution was read the second time at length, and referred to the Committee on the District of Columbia, as follows:

Resolved by the Senate and House of Representatives in Congress assembled, That no sale of any property for revised assessments shall be advertised until each citizen, or his agent, shall have received the revised statement and shall have an opportunity to have all proper credit for work done under "permit" credited upon said bills and all errors committed by the board of audit corrected, after which thirty days' notice shall be given to come forward and pay said balances, and wherever work has been done by the citizen himself, by permit or otherwise, the same shall be a credit upon his bill; that no brick walls, stone steps, nor coping wall shall be charged in the assessment bills against private property outside the building line, but shall be charged to the general fund, and no grading unless done immediately in front of said premises.

AMENDMENT TO POST-ROUTE BILL.

Mr. MITCHELL submitted an amendment intended to be proposed by him to the bill (H. R. No. 5218) to establish post-routes herein named; which was referred to the Committee on Post-Offices and Post-Roads.

MEMORIAL SERVICES TO PROFESSOR HENRY.

Mr. WITHERS. I offer the following resolution and ask that it lie on the table until to-morrow, when I shall call it up:

Resolved, That the Senate will now take a recess until 7.45 p. m., at which time they will meet in this Chamber and proceed to the Hall of the House of Representatives to participate in the ceremonies commemorative of the life and services of Professor Henry, late Secretary of the Smithsonian Institution.

The resolution was ordered to lie on the table.

CHEYENNE INDIANS.

Mr. VOORHEES. I offer the following resolution:

Resolved, That the Committee on Indian Affairs be, and is hereby, instructed to inquire into the circumstances which led to the recent escape of the Cheyenne Indians from Fort Robinson, and their subsequent slaughter by the United States forces who were charged with their custody; and that said committee report its findings to this body.

The Senate, by unanimous consent, proceeded to consider the resolution.

Mr. ALLISON. I do not know that I object to the inquiry, but I do not see how the committee can obtain any additional information unless some power is given to it other than that which is provided in the resolution.

Mr. VOORHEES. I know nothing about that; I only know, in view of statements that are appearing in the press, attributed to officers of the highest character in the Army, the affair ought to be investigated for our own credit and for the credit of the country.

Mr. CONKLING. If the Senator will hear me one moment——

Mr. VOORHEES. Certainly.

Mr. CONKLING. I will say to him that his resolution is all-sufficient for the present. If the committee find that they want more power they can ask for more power. This initiates the inquiry, and I think too it would be very well that the inquiry should be made.

Mr. ALLISON. I only wish to say to the Senators favoring this resolution, that the Commissioner of Indian Affairs has made a full report of his version of this matter, and there are reports in the War Department from the military officers. If the inquiry is to go beyond those two things, which are accessible of course at any time by a call for information, some additional power must be given to the committee. I have no objection to the resolution.

Mr. VOORHEES. I will only say in response that this matter will be referred to the Committee on Indian Affairs by the resolution, and if they are not satisfied with the information that is here and desire to obtain more, and think more ought to be obtained, they can ask for further powers to obtain it.

The resolution was agreed to.

MILITARY ACADEMY APPROPRIATION BILL.

Mr. ALLISON. I ask leave to make a report from the committee of conference on the Military Academy appropriation bill. It may not be necessary to read the report in full. There are only one or two subjects of conference, and the differences have been divided. I ask that the report be concurred in.

Mr. EDMUNDS. Let us hear what it is.

The report was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 5230) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1880, and for other purposes, having met, after full and free conference have agreed to recommend, and do recommend to their respective Houses, as follows:

That the Senate recede from its amendments numbered 1, 2, 3, and 4.

That the House recede from its disagreement to the amendment numbered 9, and agree to the same.

That the House recede from its disagreement to the amendment numbered 5, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$900;" and the Senate agree to the same.

That the House recede from its disagreement to the amendment numbered 7, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$1,500;" and the Senate agree to the same.

That the House recede from its disagreement to the amendment numbered 8, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$3,100;" and the Senate agree to the same.

W. B. ALLISON,
H. G. DAVIS,
Managers on the part of the Senate.
M. J. DURHAM,
A. HERR SMITH,
Managers on the part of the House.

Mr. EDMUNDS. I wish the Senator having the report in charge would be kind enough to explain exactly what all this means, so that we can understand it.

Mr. ALLISON. I will explain the report briefly. The first amendment inserted by the Senate provided for increasing the compensation to two professors on the ground that the First Comptroller of the Treasury had decided that they were entitled to compensation as colonels rather than as lieutenant-colonels, under a section of the Revised Statutes; but, inasmuch as that decision is in conflict with the estimates made by the Department the House insisted that we should appropriate according to the estimates, and we have so appropriated the present year.

The next point relates to a clerk of the treasurer at the academy. We inserted an amendment authorizing the treasurer to appoint a clerk at a salary of $1,200 a year. The other House agree to the clerk, but provide a salary of $900 instead of $1,200, to which the Senate conferees have assented.

The Senate also inserted an appropriation of $3,000 to provide electrical apparatus for making experiments in electricity. The House thought that was too much and agreed to the insertion of $1,500, which we have accepted.

I believe those are all the items included in the report.

The report was concurred in.

DISTRICT WATER RATES.

Mr. DORSEY. I ask the Senate to proceed to the consideration of Senate bill No. 1529.

Mr. DAVIS, of West Virginia. Let it be read for information.

The bill (S. No. 1529) to authorize the commissioners of the District of Columbia to adjust and fix the water rates within said District was read by its title.

The VICE-PRESIDENT. Is there objection to the present consideration of this bill?

Mr. ANTHONY. This bill will excite some discussion, I suppose, and I suggest to the Senator from Arkansas that we utilize the remainder of the morning hour by proceeding to the consideration of unobjected cases on the Calendar under the resolution that was passed yesterday for next Friday.

Mr. DORSEY. It is very important that this bill should be passed at the earliest day practicable, so that it may go to the House and become a law at the present session of Congress. It is represented by the District commissioners that the tax received from the water register now is wholly inadequate to pay the expenses of the department and the interest upon the water debt. I believe that under the present law the manner of levying the tax is simply absurd. The tax now is assessed according to the front of the lot upon the street, without any regard whatever to the amount of water used, the number of faucets in the house, or the size of the house generally. Of course one man may use one hundred times as much water in his dwelling as his neighbor and not pay half as much for it. I shall be very glad if the bill can be acted upon now. It is a very short one, and I doubt whether it will lead to discussion.

Mr. KERNAN. I wish to ask the chairman of the Committee on the District of Columbia how long the present law has been in force?

Mr. DORSEY. I think since the establishment of the water-works.

Mr. KERNAN. That was away back in 1869?

Mr. DORSEY. Yes, sir.

Mr. BECK. I hope that bill will lie over unless the Senator can answer me a question. I happen to live temporarily in a portion of the city where the neighbors all around me say they can get no water at all. Is there any provision made in the bill to supply them with water if they are to be taxed for it? Unless the Senator can answer that question I wish the bill to lie on the table for the present, for the people living on the hill object very much to an increase of tax for water which goes to the benefit of a few people in a particular neighborhood, and excludes, as is now practically done, all the people living in that part of the city from getting any water at all, although they pay as much tax as those who have an abundant supply of water. If the Senator cannot answer that question, I should like to look at the bill, and for that purpose have it go over until to-morrow.

Mr. DORSEY. This bill is intended to meet the objection which the Senator from Kentucky raises, and which I know to be a real objection. In a letter which I hold in my hand from the commissioners they say that "from the want of means the commissioners are now unable to lay a section of twelve-inch pipe, at a cost of $7,500, which would materially improve the supply of water upon the high grounds of Capitol Hill," where I think there is no supply at all in many of the houses, and the commissioners have no money with which to lay the mains to convey the water to the points necessary.

Mr. BECK. I desire to say, and my information is very vague I admit, that one of the great difficulties is that they have what is called a stand-pipe, drawing the water away from the hill to the navy-yard for Government operations; and but for this stand-pipe draw-

ing it away they could get water; but as long as it remains they cannot get any. I desire that those people may have water; that is all.

Mr. DORSEY. I understand that last year we erected a stand-pipe at a very large expense, and now the commissioners are without money to convey the water from that stand-pipe to the part of the city intended to be benefited by it.

The VICE-PRESIDENT. Is there objection to the present consideration of the bill?

Mr. DAVIS, of West Virginia. I should like to ask the Senator from Arkansas whether there is a printed report or any information by which the Senate can act upon this matter intelligently. This is a subject that needs some consideration, I have no doubt; but it must be borne in mind, as the Senator from Arkansas has just stated, that since 1869 the system has remained just as it is now. That being the case, and no petition having been presented here, there must be some special reason why we should move in the matter just at this time.

Again, my impression is that this matter should be well considered before the Senate takes final action upon it. I do not know how long or how thoroughly the Senator or his committee may have considered the subject, but it is one that needs attention.

Mr. DORSEY. I hold in my hand a report of the water commissioner of the District, and also a letter from the District commissioners, explaining in detail the reasons why this bill ought to pass. If the bill is taken up, of course I shall send these documents to the desk to be read.

Mr. BECK. I hope the Senator from Arkansas will have printed in the RECORD the information which he thinks we ought to have in reference to the bill. In that case I shall endeavor to get all the information possible in the course of to-night or in the morning and aid him in bringing up the bill in the morning after having an opportunity to read the documents to which he has referred. I should not like to be required to vote upon the bill now.

Mr. DORSEY. Then I ask leave to present the documents and to have them printed in the RECORD.

Mr. ANTHONY. They had better be printed for distribution to Senators in the usual way, and not be printed in the RECORD. Such a course cumbers the RECORD with a great deal of unnecessary matter.

Mr. DORSEY. The papers are very short.

Mr. DAVIS, of West Virginia. I agree with the Senator from Rhode Island, and think the papers ought to be printed in the usual manner.

Mr. DORSEY. They are very short communications. I have no choice as to the mode in which they are printed, whether in the RECORD or otherwise.

Mr. BECK. Is there objection to their being printed in the RECORD?

Mr. DAVIS, of West Virginia. Yes.

Mr. EDMUNDS. The matter of expense is all the objection.

The VICE-PRESIDENT. The papers will be printed, and the bill will go over, subject to the call of the Senator from Arkansas.

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. O. L. PRUDEN, one of his secretaries, announced that the President had this day approved and signed the act (S. No. 986) for the relief of William S. Morris, William S. Mann, Charles A. Oakman, George W. Hillman, the Union Transfer Company, all of Philadelphia, the Union Transfer Company of Baltimore, Maryland, and John R. Graham, late of Philadelphia, now of Washington, District of Columbia.

THE CALENDAR.

Mr. ANTHONY. I move that the Senate proceed during the residue of the morning hour to the consideration of unobjected cases on the Calendar, under the rule adopted yesterday.

The VICE-PRESIDENT. Is there objection to the suggestion of the Senator from Rhode Island? The Chair hears none, and the Calendar will be called under the resolution adopted yesterday. The Secretary will report the bills on the Calendar in their order.

The first business on the Calendar was the joint resolution (S. R. No. 8) authorizing Captain Jonathan Young, of the United States Navy, to accept a betel-nut box and silver medal from the Emperor of Siam.

Mr. SARGENT. I object to that joint resolution.

The VICE-PRESIDENT. Objection is made, and the Secretary will report the next bill on the Calendar.

The next bill on the Calendar was the bill (S. No. 263) to provide for a survey of an inland water-route and canal from the Mississippi River to the Atlantic Ocean.

Mr. INGALLS. Let that lie over, Mr. President.

The VICE-PRESIDENT. It is objected to, and the next bill will be reported.

EXTRA PAY TO SOLDIERS OF MEXICAN WAR.

The next bill on the Calendar was the bill (H. R. No. 376) for the payment to the officers and soldiers of the Mexican war of the three months' extra pay provided for by the act of July 19, 1848. It directs the Secretary of the Treasury to pay to the officers and soldiers "engaged in the military service of the United States in the war with Mexico, and who served out the time of their engagement or were honorably discharged," the three months' extra pay provided for by the act of July 19, 1848, and the limitations contained in that act, in all cases, upon the presentation of satisfactory evidence that such extra compensation has not been previously received.

The bill was reported from the Committee on Military Affairs with an amendment to insert at the end the following proviso:

Provided, That the provisions of this act shall include also the officers, petty officers, seamen, and marines of the United States Navy employed in the prosecution of said war.

Mr. EDMUNDS. Let us hear the report read.

The VICE-PRESIDENT. The report will be read.

The Secretary read the following report submitted by Mr. MAXEY January 22, 1878:

The Committee on Military Affairs, to whom was referred the bill (H. R. No. 376) entitled "An act for payment to the officers and soldiers of the Mexican war," &c., have had the same under consideration, and submit the following report:

The act of July 19, 1848, which House bill No. 376 seeks to revive, was "repealed" by the act of July 12, 1870. (Sections 4, 5, chapter 251, volume 16, Statutes at Large, pages 250, 251.) According to the construction of that law by the accounting officers of the Treasury—though it will be observed that neither the act of July 19, 1848, granting extra pay to the men of the Army, nor the act of August 31, 1852, (chapter 109, volume 10, page 100,) granting extra pay to persons in the naval service on the coasts of Mexico and California (the same as had been allowed to the Army serving in California, see chapter 78, 1850, volume 9, pages 504, 505) are specifically mentioned as being included in the laws repealed by said act of July 12, 1870.

A proviso to House bill No. 376, on line 12, after the words "received," to wit—"*Provided*, That the provisions of said act shall include also the officers, petty officers, seamen, and marines of the United States Navy employed in the prosecution of said war"—

would perhaps be just and proper.

The debate in the House (see CONGRESSIONAL RECORD, January 19 instant) when the bill passed, will give some light on the subject.

The same bill passed the House June 30, 1876, and some remarks were made by Mr. RIDDLE and others on the merits of the case. (See RECORD, July 1, 1876.)

Your committee therefore recommend the passage of the bill, amended by the proviso.

Mr. WITHERS. I desire to offer an amendment adding the words "the revenue service."

The VICE-PRESIDENT. The first question is on the amendment of the Committee on Military Affairs.

Mr. EDMUNDS. Let us hear the amendment of the committee reported again.

The amendment was read.

Mr. EDMUNDS. I move to amend the amendment recommended by the committee by adding after the word "war," in the last line, the words "and the war for the suppression of the rebellion."

Mr. WITHERS. I should like to ask how that would follow? It is not germane to the bill.

Mr. EDMUNDS. I think it is very germane myself.

Mr. WITHERS. Let the amendment of the committee be reported as it is proposed to be amended.

The VICE-PRESIDENT. It will be reported.

The SECRETARY. The proviso as proposed to be amended would read:

Provided, That the provisions of this act shall include also the officers, petty officers, seamen, and marines of the United States Navy employed in the prosecution of said war and the war for the suppression of the rebellion.

Mr. ALLISON. It seems to me if the amendment is applied to seamen who were employed in the war of the rebellion, it ought also to be applied to soldiers.

Mr. EDMUNDS. So it ought, but this is the proviso of the committee. When we come to the body of the bill, we can endeavor to fix that.

Mr. MAXEY. The bill now under consideration came to the Senate from the House and was referred to the Committee on Military Affairs. It was acted on by that committee and reported favorably to this body. On a former occasion the bill was called up for consideration, under what was known as the Anthony rule, and some discussion then took place upon it. Being myself in charge of the bill, at the request of the Senator from Vermont, [Mr. EDMUNDS,] which was in the nature of an objection, the bill was passed over. The RECORD of that date will show the correspondence which led to the presentation of this bill and its passage by the House. The whole purpose and design of the bill is to equalize the three months' extra pay which was granted by legislation many years ago. I had the dates at that time, and by reference to the RECORD they will be seen, together with a reference to the volumes of the United States Statutes at Large. The whole purpose, as I say, is to equalize the three months' extra pay among all those who served in the Mexican war. The Secretary of War at that time construed the law to be that the three months' extra pay applied only to volunteers and did not apply to those in the regular Army. It was deemed by the committee, and I think it equitable and just, that all those who served their country in Mexico, a foreign country, should be equally entitled to this gratuity on the part of the Government; and therefore the provisions of the law should be extended to those who served in the Army of the United States equally. It was considered, and I think properly, that those who were in the marine service (and there were officers and soldiers in the marine service in Mexico) and who did active service there should be included, and so the bill was amended by the committee so as to include in like manner those of the Navy who served in the Mexican war.

The whole design and scope of the bill was simply to place those who had not received their three months' extra pay upon an equal footing with those who had and who had done no other or better service than those who did not receive it. That is all there is of it. I do not myself believe that the amendment offered by the Senator from Vermont is germane to the bill or could properly be attached to

it as part of the measure, because the bill relates only to one war—the Mexican war—and it has no reference whatever to the late war.

Mr. EDMUNDS. Mr. President, the officers and soldiers and sailors of the last war had provisions made for them that have not been carried out; and therefore, if we are going to undertake to readjust questions of bounty and extra pay, and so forth, for the soldiers of the Mexican war, let us do it for the soldiers of a war quite as important as that.

Now as to the bill itself, I should like to ask the honorable Senator from Texas if there is any official report in the possession of the Senate from the War Department or any other Department, which sets forth exactly what this three months' extra pay was, what the extent and application of the three months' extra pay alluded to in the bill, provided for by the act of July 19, 1848, was; how many have received it; how many have not received it, and how it happens that those who were entitled to it by the law and did not receive it, failed to receive it?

Mr. MAXEY. A correspondence was opened up by the Committee on Military Affairs with a view of arriving at the record referred to by the Senator from Vermont. A communication was presented from the Paymaster-General in that regard. It seems that the matter was referred to the Paymaster-General, through an auditor, for final settlement of those matters. Accompanying that came an official copy of a letter from Secretary Marcy, which the Senator may perhaps recollect; he read it at the time. All those papers were before the Senate at the time this matter came under discussion, and the Senator objected at the last session of Congress. I thought I could lay my hand upon the papers, but I had no thought that the bill was coming up this morning, and I have not got them now. Those papers showed the construction placed by Secretary Marcy on the act. The Senator examined them at the time, and the RECORD will show that he said to the Senate that he believed the Secretary was correct in his construction. Secretary Marcy construed that the legislation did not grant three months' extra pay to those in the Regular Army of the United States.

The object of this bill, as I stated before, is to place them on terms of equality with others, and let in all who have not heretofore received their pay—officers of the Army, Navy, and marines, and all soldiers who have not been paid this three months' extra pay—on the same footing as volunteers.

Mr. EDMUNDS. I am so unfortunate as not to be able, even with the clear explanation of the Senator from Texas, to understand precisely what the state of the law was in 1848 here referred to, and precisely what has occurred, and what were the difficulties or misconstructions then that led to anybody being debarred from his extra pay who by that act was entitled to it. Now if we have in the files of the Senate or anywhere else official information which shows exactly what that was, I shall be glad to see it. Are there any papers?

Mr. MAXEY. I will state to the Senator that I had those papers on the previous discussion. If I had the RECORD of the former debate, that would show the whole of them.

Mr. EDMUNDS. It may be that they are in the files of the Senate.

Mr. MAXEY. The Senator took part in that debate, and the whole of it came out there.

Mr. EDMUNDS. But it has entirely gone out of my mind; I do not remember anything about it.

The Senator from Texas speaks of this bill being intended to apply only, if I correctly understand him, to the officers and soldiers of the regular Army and the regular Navy of the United States. The bill does not say so. It speaks of all officers and soldiers engaged in the military service of the country in the Mexican war.

Mr. MAXEY. I stated that there were quite a number of persons who were entitled as volunteers to that three months' extra pay who had not drawn it; but under a statute which passed some time in 1870 or 1871 all these claims were barred.

Mr. EDMUNDS. How barred?

Mr. MAXEY. An act passed which prohibited payment of any further claims under this previous legislation.

Mr. EDMUNDS. Can the Senator refer me to that act?

Mr. MAXEY. I have sent for the RECORD. That will show the whole of it.

Mr. EDMUNDS. I do not remember any such act.

Mr. MAXEY. I have not got all the papers at my desk. The RECORD will show them, and I have sent for it. I made a minute of it at the time.

Mr. EDMUNDS. Can the Senator give me the title of the act of 1870 to which he refers, or the subject of it?

Mr. CONKLING. If I do not interrupt the Senator from Vermont in the midst of a sentence, I will make an observation about this matter while he is looking at the books.

It seems to me without the amendment of the Senator from Vermont this bill is involved in so much difficulty that I venture to suggest to the Senator from Texas it is hardly worth while to attempt to dispose of it in this morning hour.

The bill provides that certain persons described shall receive the pay allotted to certain other persons in an act referred to. I have that act before me, and, unless I have omitted something in reading it over two or three times, there is no provision in the act sustaining this reference. The only section applicable to it that I can find concludes in this way:

Or who died in service, or who having been honorably discharged have since died, or may hereafter die, without receiving the three months' pay herein provided for, shall be entitled to receive three months' extra pay.

Now, there is no "pay herein provided for" unless a provision shall be found in some one of the acts here referred to, which acts are not quoted or referred to except by their date. So I suggest to the honorable Senator from Texas that perhaps he will want on review to make this bill more explicit as to the provision to which it really does refer, this provision which I have read being as it seems to me inadequate to the purpose of the bill.

Then, to confuse still more the confusion that may be found, comes in the amendment of the Senator from Vermont, which it will be perceived provides that the sailors of the late war—confining it to the present amendment—shall receive the three months' extra pay which was provided in an act approved on the 19th of July, 1848. Well, that was inconveniently before the war for the suppression of the rebellion; and it so happened that all the acts which existed then fixed a rate of pay by the month for soldiers and sailors quite different from the rate applicable to the war of the rebellion. So that with the amendment we should have here a sort of compound comminutive confusion, and I think that the Senator from Texas perhaps had better let this bill lie over until he finds his memorandum and is able to refer to the act to which he means to refer more fully, so that we may all understand it alike.

Mr. MAXEY. I think the suggestion of the Senator from New York is correct. I will simply state that I did not call up this bill this morning. I supposed it would be reached on Friday under the order adopted yesterday, and I expected to be prepared on Friday to submit it to the Senate.

The VICE-PRESIDENT. Under the order adopted upon the suggestion of the Senator from New York, the bill will go over.

Mr. EDMUNDS. I should like to say one word before it goes over if there be no objection.

Mr. CONKLING. I withdraw the suggestion so that the Senator may be heard.

Mr. EDMUNDS. My amendment was drawn on the idea that this bill that it is proposed to pass into a law, in legal effect actually provides for giving three months' extra pay to the soldiers of the Mexican war when the present law, the law of 1848, did not give it to them. My amendment, therefore, was intended, if we are to give a bounty of three months' extra pay to the soldiers of the Mexican war, good, bad, and indifferent, to provide that we shall give a bounty of three months' extra pay to the soldiers and sailors in the war for the suppression of the rebellion. I think it will turn out when you come to examine the act of 1848 and the history of it, that the soldiers and sailors are to get this money, not because the act of 1848 provided it for them, but because this bill provides it for them; and so I say if this bill is to provide three months' extra pay for the soldiers of the Mexican war, then it ought to provide three months' extra pay for the soldiers in the war of the rebellion.

Mr. MAXEY. I have now the debate that I referred to, which is in the RECORD of April 18, 1878, and which shows precisely what was said then when the matter was entirely fresh, not only by the Senator from Vermont but by myself. It is all here and all the acts are referred to and given.

Mr. EDMUNDS. As the bill goes over, I will take that RECORD and look at it.

The VICE-PRESIDENT. The bill goes over. The Secretary will report the next bill.

NATIONAL OBSERVATORY.

The next business on the Calendar was the joint resolution (S. R. No. 16) authorizing the appointment of a commission of scientists to investigate and report upon the establishment and location of an additional national observatory.

Mr. EDMUNDS. That has never been referred, has it?

The VICE-PRESIDENT. It has not been referred.

Mr. PADDOCK. It may lie over.

The VICE-PRESIDENT. The resolution will be passed over.

WILLIAM B. WHITING.

The next bill on the Calendar was the bill (S. No. 647) granting a pension to William B. Whiting.

Mr. SARGENT. Unless the committee are ready to have that bill indefinitely postponed, I ask that it go over.

Mr. WITHERS. I should be glad to have it take effect.

The VICE-PRESIDENT. The bill will be passed over.

LAURENA C. P. HASKINS.

The next bill on the Calendar was the bill (S. No. 413) to increase the pension of Laurena C. P. Haskins, which was reported adversely from the Committee on Pensions.

Mr. INGALLS. Let it be indefinitely postponed.

The VICE-PRESIDENT. That order will be made if there be no objection.

THE MILITIA.

The next bill on the Calendar was the bill (S. No. 104) amending section 1661, title 16, (The Militia,) of the Revised Statutes of the United States.

The VICE-PRESIDENT. The hour of one o'clock has arrived. The Senate will proceed with the consideration of its unfinished business.

REVISION OF THE PATENT LAWS.

The Senate, as in Committee of the Whole, resumed the considera-

tion of the bill (S. No. 300) to amend the statutes in relation to patents, and for other purposes, the pending question being on the amendment of Mr. MATTHEWS to the second section.

Mr. CHRISTIANCY. If it be in order now, there being another amendment pending presented by the Senator from Ohio, I have his consent to move to make a verbal amendment in the fourth line of section 2, to remove the verbal ambiguity which he pointed out when he addressed the Senate yesterday. That is, to add after the word "pronounced," in line 4, the words "as well as in all such suits hereafter instituted." That will remove the ambiguity.

The VICE-PRESIDENT. Is there objection to this amendment? The Chair hears none, and it is agreed to. The question now is upon the amendment proposed by the Senator from Ohio, [Mr. MATTHEWS,] which will be read.

The SECRETARY. The proposed amendment is, in section 2, line 10, to strike out all after the word "cases," where it first occurs, down to and including the word "awarded," in line 23; in line 27, to strike out all after the word "case," down to and including the word "recovery," in line 29; to strike out lines 36, 37, 38, 39, down to and including the word "aforesaid," in line 40, and in lieu thereof to insert the following:

No account of profits or savings shall in any case be allowed; but evidence thereof may be admitted as tending to prove what shall be deemed a reasonable license fee as compensation for the infringement.

The VICE-PRESIDENT. The question is on this amendment.

Mr. WADLEIGH. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. WITHERS. I understand there are several amendments offered. Is it proposed to take the vote on all of them collectively?

Mr. DAVIS, of Illinois. It is necessary to take the question on the whole amendment of the Senator from Ohio. It embraces one subject.

Mr. MATTHEWS. It is all one amendment.

Mr. EDMUNDS. I should like to know, in the first place, whether this amendment—which I could not understand from the reading—is an amendment to the text of the bill, in section 2; or is it an amendment to the amendments of the committee?

Mr. MATTHEWS. It is an amendment to the text of the bill.

Mr. EDMUNDS. Do I understand the Senator from Ohio to mean by this amendment that in case of an infringement of a patent, and a recovery and establishment of that patent in a court of equity, no account of profits is to be taken, but that the whole measure of redress shall be a license fee?

Mr. MATTHEWS. The precise effect of the amendment, if adopted, would be first to make the rule and measure of damages in equity and at law the same, and then to make that rule what shall be considered a fair compensation for the loss to the plaintiff by way of damages for the injury which he complains of, excluding any computation or account of either profits or savings as such a measure of damages, but allowing evidence of them as tending to prove what the damages consist of.

Mr. EDMUNDS. As I heard it read, I understand that the license fee is the test of how much the party is to recover, "what would be a fair license fee," according to the reading from the desk; and if that is the sole rule in a matter where the Constitution recognizes such property, if Congress chooses to do so, as being an exclusive right to its use, if anybody may invade this exclusive right which the Constitution speaks of, and may pay the average license fee, then you have disposed of the whole value of your patent laws. If you are to say to the owner of a patent that he shall not have any exclusive use of it, but everybody is free to infringe it at the only risk of paying the ordinary license fee for use and occupation, then you had better say in terms that everybody shall be at liberty to invade a patent, whether by accident or by design and have absolute freedom of use, and that the owner shall collect of the party who uses it what a jury would say is a fair sum for use and occupation; that is, what he would have been willing, if he had wanted to rent it out, to take as a fair compensation for the use of his machine or the right to make it.

It appears to me that such an amendment would overthrow the whole patent system and the whole value of the patent system.

Mr. HOAR. You have an injunction left.

Mr. EDMUNDS. You have an injunction left, but it is too late usually.

Mr. CHRISTIANCY. With an amendment which might be made at the end of this section, and which I presume, if this amendment shall be adopted, the committee will accept, though I am not authorized to speak for it, I should be in favor of this amendment proposed by the Senator from Ohio unless the Committee on Patents object to it. They have given a great deal of consideration to this subject; they have had all the various interests in the country represented, both those of patentees and those of alleged infringers, and have spent a great deal of time getting up a bill to harmonize all interests and the views of all parties. I am therefore very loath myself to offer any amendment to the work of the committee; but there is one class of cases in which it seems to me justice requires that the patentee should be allowed to recover profits, and but one class, and that class is where the invention from its very nature is such that it would be for the interests of the patentee to retain the entire monopoly of his patent; such, for instance, as Mr. Edison's telephone. If he chose to retain the entire monopoly of the manufacture of that instrument I can see no good reason why any man who should violate that patent should not respond in profits, why he should not pay all the profits which he might make from the manufacture or sale. There the profits would in justice and equity measure a fair compensation, and it is only in that class of cases that profits do measure a fair compensation.

In the class of cases to which I have alluded profits constitute a proper measure of a fair compensation for the injury done to the patentee. Why? Because but for the act of the defendant the owner of the patent might have made the same. But in most patents, in ninety-nine out of one hundred at least, and probably a larger proportion, it is for the interest of the patentee that others should use his invention and should pay him a royalty or a license fee, and therefore, in all that large class of cases I see no reason for allowing any profits at all as profits. The evidence of profits, however, I think, ought to be allowed to be given as one of the items to show what would be a proper measure of damages as it tends to show what is the value of the patent which has been infringed. It would be one of the elements to show what would constitute a proper license fee.

But as to the first class of cases which I have mentioned, I confess that I have great difficulty in voting for the bill without a provision allowing profits to be recovered; that is, where it is for the interest of the patentee to retain his monopoly. It is an exclusive right, and it does seem to me that we are taking a very high position when we undertake to say that he shall sell it at whatever a jury may assess it to be worth when it would clearly be for his interest not to sell it at all, and therefore, if I could have my own way in reference to this bill—for I am discussing it in rather a discursive manner—I would adopt the amendment proposed by the Senator from Ohio, and then add an amendment taking out of the operation of this section the first class of cases which I alluded to, and I propose that now to the committee. The measure is one for which they are responsible more than I. I only make this as a suggestion, and I am very unwilling to antagonize the committee in anything pertaining to a bill over which they have spent so much time, and to which they have given so much consideration.

Mr. WADLEIGH. Mr. President, the amendment proposed by the Senator from Ohio abolishes any account for profits in all cases. It seems to me that the remarks of my friend the Senator from Michigan upon that point are correct: that it would be unjust to the patentee to abolish profits in all cases, because in some cases he may wish to have the exclusive use of his invention. Take, for instance, a pin-machine by which the patentee may be able to manufacture pins to supply the whole market. It is for his interest that there should be no use of it by others, and under the theory of the Constitution, and under the law, he has the right to manufacture pins for the market himself, and to allow no one else to do so under his patent. It seems to me that in such a case as that—and there are many cases of that kind—to compel him to sell his invention at such a price as any jury may say he ought to have for it is a violation of the exclusive right granted to him by the Constitution and the law.

Now, Mr. President, this bill has been the result of very much care and deliberation on the part of the committee. There have appeared before the committee all parties interested in patents. The bill, to a certain extent, is a compromise between those conflicting interests. To amend it materially and vitally, as this amendment proposes to do, will affect to a great extent the interests of people who have not been heard upon any question of this kind. I think that before any material amendment of the patent laws is adopted that amendment should be discussed, the parties who are to be affected by it should be heard before Congress; and for that reason, if for no other, I should be compelled to oppose the amendment of the Senator from Ohio, because no man came before the committee and proposed to abolish profits entirely, no one asks for that; and the Senator from Ohio in his opposition to this bill asks what no person asked, so far as I know, before the Committee on Patents, and he asks it, too, upon grounds which seem to me—and I say it with all due deference to him—to be absurd. One of these grounds is that the appointment of an auditor to take an account in a matter which no jury can possibly understand is unconstitutional, a violation of the constitutional right of trial by jury.

Why, Mr. President, in the New England States auditors have been appointed from time immemorial under laws like this. All complicated accounts go to an auditor appointed by the court. He examines them, and no jury could properly examine them. He makes a report upon them, and that report being adopted by the court goes before the jury as *prima facie* evidence of that account. The question of the constitutionality of such laws has again and again been brought before the courts of those States, and they have been decided to be constitutional. There is not a decision opposed to them in the United States that I am aware of. Are we to presume that the courts of the United States, against the decisions of all those courts which have considered similar questions, are to decide that such a law is unconstitutional?

Mr. President, it being vastly for the advantage of courts and for the advantage of justice that matters of this kind which cannot possibly be understood by a jury should in the first place be sent to an auditor, I prefer to leave that question in this law to the courts of the United States. If this is an unconstitutional provision let them so decide. But inasmuch as whenever the question has arisen before the State courts the State courts have decided such laws to be con-

stitutional, I prefer to treat such laws as constitutional until the Supreme Court of the United States shall have decided the question.

Then, too, it is said that any fixing of the measurement of damages is unheard of. Why, Mr. President, if the fixing of the measure of damages is not unjust, nobody has a right to complain; it is in violation of nobody's rights. The Senator from Ohio makes no complaint that the measurement of damages is unjust to anybody, as I understand.

Mr. MATTHEWS. The Senator is entirely mistaken. I did make that specific objection, that it was not the rightful measure of damages. I shall endeavor to explain it when the Senator concludes.

Mr. WADLEIGH. Then I will speak upon that question. The bill simply provides that an account of profits shall be taken in a case where the infringer manufactures and sells the machine itself or sells the product thereof. In such cases there is no difficulty or but very little difficulty in fixing the amount of profit which the party has received. That profit he has made from the property of the plaintiff. In most cases it would be the true measure of damages. So it seems to me, and so it appeared to the committee.

But I do not desire to multiply words upon this bill. As I have said before, the bill has been before the committee for a long time; the whole matter has been the subject of earnest consideration on the part of the committee, a full consideration; and all interests have appeared before the committee. As I said before, nobody proposed to go so far as the Senator from Ohio now proposes.

Mr. CONKLING. Will the Senator let me ask him a question and make a remark?

Mr. WADLEIGH. Certainly.

Mr. CONKLING. The Senator aims, I think, a serious blow at the pending amendment when he says that it affects interests which have never been heard before the committee or here. I want to inquire whether it is not true that, dismissing the amendment and taking the bill as it would stand without it, interests are then affected which have never been heard? For example, have all the men or all the interests been heard which are to be not only affected, but, as I understand it, altogether denied by this second section? I mean, among others, those whose inventions have been employed without profit ascertained by sales, but merely as elements of economy, of saving in processes. I mean those whose inventions have been adopted by extensive mill-owners, by corporations manufacturing goods, fabrics of various sorts, by railway companies, and by others who, utilizing the invention in the manufacture of apparatus and implements which they construct themselves, have saved very largely, but who, as I cannot help understanding this section, are given virtual impunity against all inventors. Now, I inquire whether all the men or all the interests thus to be affected were heard before the committee, and if it was after a hearing in behalf of those interests that the committee has proposed a section, which, it seems to me,—I may be mistaken about that, the Senator is much more intelligent about it,—leaves them remediless?

Mr. WADLEIGH. The bill thus affecting those who claim to have savings allowed as profits was printed more than a year ago. Five thousand copies of it were printed for distribution. Those copies have been furnished to every patentee or every user of a patent who desired one. The arguments before the committee upon this very point have been circulated broadcast among those interested in patents; and the question as to whether savings should be considered as profits and the abuses growing out of that rule have been fully considered by the committee, and everybody who was interested in having savings thus treated has had an opportunity to be heard, and, so far as I know, has been heard before the committee, if he desired. When my friend, the Senator from New York, asks me if every man in the United States who is interested in this matter has been heard, I am forced to answer, probably not.

Mr. HOAR. I should like to inquire of the Senator from New Hampshire whether the view in favor of allowing savings to be computed was not presented to the committee by very able counsel, representing clients who were interested in favor of that view, both orally and by correspondence very fully?

Mr. WADLEIGH. Certainly, and fully considered by the committee, and those parties have had a full opportunity to be heard, and have been heard, so far as I know. And the committee came to the unanimous conclusion that the abuses which grew up under that rule required the adoption of a different one.

Mr. CONKLING. The Senator says five thousand copies of this bill were printed and sent broadcast. That explains to me the great number of letters which come daily to me and which have been coming for a long time, not only from patentees and inventors, but from other persons, some of whom I know to be discerning and believe to be just persons, who think that this is a mistake, an experiment which will be regretted, an injustice sure to be experienced if it becomes a law and continues.

The Senator says that having heard, not every man—of course I did not mean to ask such a question, but having heard arguments in behalf of the idea that a man whose machine saves money was entitled to some consideration at least, the committee deemed it necessary to adopt a different rule, and he leaves us to infer that they selected the rule here adopted as the appropriate one to substitute. I venture, then, to ask the Senator to state in brief,—it may have been stated before, but I have not heard it,—the argument which answers a case like this: here is a man who confessedly did invent a useful and a novel thing which you cannot use, which I cannot use, but which can be used only by those conducting special kinds of business on a large scale. They, without license or authority, appropriate it. They carry it as an increment of value and an element of cost, and advantage, into vast quantities of productions which they make and use in their own affairs, selling none of them, for there is no market except to others engaged in like business, and they for themselves respectively manufacture also. Now, when this inventor comes to complain, unless the case happens to be one in which not merely saving, not merely economy, not merely advantage has been achieved by appropriating his invention, but also profit over and above all the gross expenses involved in the business, the answer this law makes to him is, as I understand it, "We know you not; you are an inventor; you are a meritorious inventor; your invention is one exceedingly useful, but it is not applicable to general and promiscuous use; the farmer on his farm, the dairyman in his dairy, the plowman in the field, does not use this invention. If he did, you might have a remedy. It is only used by large aggregated capitalists; they use it, and they make it, and therefore there is no answer for you except that answer which Marshal Ney is said to have made on his return from Moscow when a friend, freezing in the snow, appealed to him by the memory of early friendship to do something for him, and turning his head he said, "You are one of the victims of war," and passed along.

If that be true of this section, as many of these correspondents say it is, I submit to the Senate that in a forum in which justice is sought it is worthy of inquiry, and particularly so when we are dealing with a statute which in all its sections assumes that you have only to transfer the illustration to some man who uses a stove-damper, or a door-latch, or a window-fastener, or some one of the innumerable trifles that enter into the economy of life, and he may be prosecuted, not only the vendor but the purchaser, because there in the manufacture in detail of this article and its sale there are ostensibly profits above the cost of producing it. There the inventor has his remedy after some measure (and the Senator from New Hampshire tells us it is a just measure) for the infringement.

Now, I say that to utter together these two provisions, leveling the severe provision at all the people individually who are buyers and users, and aiming the provision for impunity and immunity at the strong, the powerful, the able, the intelligent, the organized, seems to me to furnish ground for the allegation that there is a two-fold injustice: first, an injustice toward the one class whom I have described; and, second, an aggravation of that injustice because in respect to another class the provisions fail.

I did not mean, Mr. President, certainly at this moment, to say anything about this bill. I wish to vote for the bill if I can, and certainly I do not wish to fail to vote for it if it is likely, if it is very likely, plainly likely to improve the patent system; but I confess I have some hesitation about a leap in the dark, and although I have no doubt the committee has performed conscientiously and carefully its duty, I have not seen until very recently evidence of the fact that the bench or the bar of the country had been sufficiently aroused on this subject to give the aid that they could give and which I must think from communications sent to me they are now in the act of giving in this regard. It is a very old saying that everybody knows more than anybody; and the ablest committee in this body or any other, may sit and listen to attorneys representing one interest and counsel representing somebody else and come to a most conscientious and intelligent conclusion, and still in a matter so complex as this it is more than likely that when the converging rays of a great many minds are turned upon that subject new considerations and new thoughts may be suggested which it is well worth while to utilize

Now I beg to say again that I did not rise to criticise this bill: but in reading the second section again and again and reading it by the light of complaining communications that come to me, I confess that if I sat to-morrow in my office and a client were to come and consult me about his rights under this section, as I now understand it I should be compelled to make a statement to him which would enable him to put to me a very awkward question, which he would put if he were to say, "why then did you vote for such a law as that?" So that I should be glad in voting for it, for one, to be able to justify it here and to be able to justify it when it comes to be a statute if it shall, and to operate in the cases which it is intended to cover.

Mr. WADLEIGH. Mr. President, the communications to which my friend, the Senator from New York, refers, are not of modern date. I have been receiving them by bushels, I may say, ever since this bill was introduced into Congress. They and their arguments have been fully considered before the committee, and after considering them, and after hearing these complaints by the bushel, the committee has unanimously decided that this bill should pass. I do not undertake to say that every member of this committee prefers all the provisions of this bill to any provision which he might get up or make; but what I do say is, that the committee has unanimously come to the conclusion that this bill as it stands, if it passes, will be for the interest not only of patentees, but of the public.

Now, what kind of a right is it that is taken away from these suffering patentees? And in that connection I must say that patentees or combinations owning patent-rights are sometimes as powerful as anybody else. There are in this country combinations of capitalists

who own large numbers of patents and who do business upon those patents, and they are strong enough under the law as it is now to crush any patentee at their will; and that is one thing which the committee was desirous to get rid of, and I will tell my friend the Senator from New York how and why. Take, for instance, the invention of some improvement in a loom which is used by a manufacturing company in a factory. It may be a very small invention, but a desirable one, and it goes into general use. Looms are made embodying that invention. The manufacturers who buy these looms know nothing about the invention; they cannot know anything about it. They do not suppose they are infringing anybody's right; but they buy these looms with this little invention, which is perhaps imperceptible to anybody who is not particularly skilled in patent-rights, and who has not examined the whole subject. They put the looms into their mill and operate the improvement in their looms. Under the law as it is now, after fifteen or sixteen or seventeen years, along comes a gigantic combination or company owning numerous patents, of which this is one, and it calls upon the manufacturing company for what? For damages? Oh, no, not at all; but that it shall account for the profits it has made by that invention during that whole time. They demand an account of profits. Consequently this corporation, this mill company, this manufacturing company has to go into all its books, go over all its accounts for those years, ascertain how much profit has been made each year, and at the end of all they have a computation that may last months or years to find out how large a part of all they have made for seventeen years is due to that little thing in the loom. Of course everybody knows that no one can find it out; it is a matter of guess after all; but under the law as it is now that goes into the account of profits in many cases. Now, what I say is that if that patent is in the hands of a powerful combination, that power which they have enables them to crush their adversary. What manufacturing company would not pay almost any amount rather than be subjected to an inquisition of that kind? Who can tell what the result is to be?

Mr. President, the results of this rule have been as absurd as might be expected. Take the swedge-block cases, where it was proved that the machine was of no use whatever, because after all had been done by it that could be done, it did not produce a result that was profitable. The rails which had been operated by it were not worth enough more after the operation to pay the cost of the operation.

Mr. EDMUNDS. Why did they resort to the operation, then?

Mr. WADLEIGH. They did not know anything about the patent; that is, they did not know who were the parties who claimed it. It was claimed that they must account for the difference in cost between doing that by hand and doing it by that machine, and a decree was entered against them for $1,700,000 for what was of no value whatever. The court finally arbitrarily reduced it to $400,000, which was enormously unjust and oppressive.

Mr. DAVIS, of Illinois. The Senator is mistaken as to the swedge-block cases. This was a process, a mode of mending exfoliated rails, protected by a patent. The old manner of doing it was by hammer, and the rule adopted was how much the railroad company saved between that old mode and the mode which was invented by Turrill. That was it; nothing else. It was susceptible of positive demonstration, there was no guessing about it at all, that the company had done this; but it was too much, of course; it was too large an amount. That, however, was the rule adopted.

Mr. WADLEIGH. In that case there was no guessing. My friend, the Senator from Illinois, is right. The court said that the defendants must pay just what had been saved between the cost of doing what they had done by hammer or by hand and doing it by that machine, when the truth was that what they had done was of no benefit to them whatever. The rails might better have been left as they were; they had better have cut off the rails and thrown away the ends.

Mr. DAVIS, of Illinois. They discovered that after they had used the process of Turrill for years and would not pay him anything. Then they discovered that by a new process they could do it a great deal cheaper.

Mr. CONKLING. May I ask a question in that connection?

Mr. WADLEIGH. Certainly.

Mr. CONKLING. I understand the honorable Senator from New Hampshire to commend these provisions now because they protect manufacturers from what he calls an inquisition, and he asks what would not a manufacturing company rather pay than submit its books and accounts to be pried into. Feeling the force of that, I call attention to the section at line 36——

Mr. WADLEIGH. I did not intend to make that the main point against this system at all.

Mr. CONKLING. I was so much impressed by it myself that I thought it was a capital point in the Senator's argument. I feel the force of it very much, and I speak seriously.

Mr. WADLEIGH. The terrors of that inquisition were as nothing compared to the decrees which might follow it and compared to the amounts which might be wrung from parties for the use of inventions nearly or absolutely worthless.

Mr. CONKLING. I think the Senator disparages his own point and treats unkindly his own offspring; and I repeat it struck me with a great deal of force when he said that there were grave objections to investigating all the accounts of manufacturing corporations. Therefore I was about to bring to his attention a provision of the bill that the committee proposes and to ask him what was the view of the committee at that moment in this regard:

> No account of savings shall in any case be allowed; and no evidence or account of the defendant's profits shall in any case be admitted, except as to actual profits resulting from making for sale or selling the thing patented, or the product thereof as aforesaid.

And I inquire whether it is more onerous for a corporation to submit to an inquiry how much it has saved in its operations than to submit to an inquisition of all its books and accounts provided the case is one in which it appears that it has made a profit? Why is it that those who have made a profit out of "the product thereof as aforesaid" should be subjected to an inquisition any more than the people who have done the same thing but realized their profit by the saving which has nourished and made profitable the other branches of their business?

I thought, if the Senator will pardon me a moment further, that one of the greatest objections to the income tax was the very thing at which he now levels his remark, the prying, snuffing inquisition to which it subjected the private affairs of persons, natural and artificial; and therefore as I said and said seriously, his remark in that respect struck me. But when I find in the bill that fish is to be made of one and flesh of another, and by no means the distinction in favor of the most meritorious persons, I am unable to see entirely why one man should be treated in one way and another man should be treated in a different way in the same bill and upon the allegation that the way in which the one man is to be treated is unfit treatment for any man.

Mr. WADLEIGH. Mr. President, if, for instance, my friend the Senator from New York, invents and patents a machine and I make that machine and sell it, it is a very easy matter to take an account to ascertain what I make upon it. The price for which I sell each machine can be ascertained as a matter of course, and it is easy to compute the cost of each machine in that manufacture. That can be easily arrived at. It does no injustice. The profit is an actual profit, if any is made; and the inquisition is no such inquisition as follows the taking of an account where the machine is simply used in a business.

Mr. CONKLING. If the Senator will pardon me, he does not understand me or I do not understand him.

Mr. WADLEIGH. Let me get through, Mr. President. Now take the other case. Suppose that instead of manufacturing that machine for sale, or manufacturing its product and selling that, I put that machine into a factory as a small part of a complicated business; I go along in that business, under the present law, for seventeen years or nearly seventeen years, and then I am called upon to render an account of profits. What is the amount of profits? All the profits that I have made in the business for seventeen years; and then it is for the court to decide how much of those profits is due to the single machine of my friend the Senator from New York.

What the committee have said is that in view of the fact of the inconvenience of taking an account of that kind, and because the expense was enormously great, so that a powerful patent combination could crush any adversary by it, and in view of the fact that it is absolutely impossible to arrive at any correct result in such a case as that, for it must be merely guess-work, as anybody can see, it is inexpedient to continue that rule, especially as decrees made under it have been exorbitant and unjust.

Now, as to savings, there is not only the objection which I have stated to a certain extent, though not to so large an extent as I have named, against the rule of allowing savings to be considered in an account as profits, but there is a further objection. My friend the Senator from New York says that it is easier to ascertain what the saving or the economy is of using a patented machine than to take this account of profits. That is undoubtedly true. But under the present law where an account of savings is taken, those savings thus ascertained are regarded as profits, and the plaintiff has a right to a decree for those profits and for the amount thus found.

What has proved to be the practical operation of this rule? Let me cite an instance. There appeared before the Committee on Patents the other day a very ingenious machine for sewing on the bottoms of shoes—for bottoming sewed shoes. I think it was shown that before the invention of that machine the cost of bottoming a pair of shoes was about forty cents; but the royalty which the proprietors of that machine exact from the parties who use it is something less than two cents a pair, I think. We will call it two cents. When that machine goes into use it immediately reduces the price of shoes, and that was proved to us. The price went down so that the cost of bottoming a pair of shoes in the selling price, where two cents royalty was paid to the owner of the patent, would not be more than about five cents. Now suppose that an innocent infringer—and, by the way, at least nine-tenths of the infringements are, I think, innocent—uses the machine. There is a controversy in many cases as to who owns the patent-right or who was the inventor. A man buys one of these machines. He uses it. He uses it for seventeen years, and then comes a patent combination which has proved that it is the owner of the patent, and requires him to account, and requires him to account under the rule of savings. Under that rule he would have to account for the difference between the cost of the old way of making, which is forty cents, and the new way, which is two cents. He would have to pay for each pair of shoes bottomed by that machine the sum of

thirty-eight cents, when he could not in any market have got more than five cents. That is the practical operation of this rule.

The case which I have given is not a real case; but the evidence before your committee shows that under this rule by which savings must be accounted for as profits, such to some extent would invariably be its operation. That is unjust, and patentees cannot afford to have a law under which such wrongs may be committed.

The danger is, Mr. President, that if the law is not amended it will be repealed, and that was one of the arguments which induced the committee of the Senate to propose to change the rule.

Mr. CONKLING. May I ask the Senator to state to the Senate a case or refer us to an authority in which any court ever held that the rule of damages would be, not the difference in fact, not the saving in fact, but the saving as it would have been if the market could have been held up as it was before, and the man could have put in his pocket the thirty-eight cents not one of which he ever did put there? Will the Senator refer us to a case in which the courts have held that that is the present rule of damages?

Mr. WADLEIGH. The courts have decided generally that under this rule of savings the difference between the cost of the old way of doing a thing and the new way by the invented machine is the profits.

Mr. CONKLING. But decided it in cases where the infringer did not sell, but where for example a railway company had been in the habit of repairing no matter what in a certain way;—there are many illustrations—adopting the new way there was a net saving of so much, and the court said that was the measure of damages? Now will the Senator refer me to a case where the courts have said in the case of a manufacturer for sale, that although in point of fact he did not save a cent, although there was no appreciable saving at all, the measure of damages would be the difference between what it used to cost him and what would have been his saving if he had been able after applying the new process to sell at what he got before? That is the case as he states it, and I want to know what court ever decided that?

Mr. WADLEIGH. No court has laid down any such specific rule as my friend the Senator from New York has suggested; but the courts have generally laid down rules covering the cases which I have named, and the operation of those rules laid down by the courts has been such as I have stated.

Mr. CONKLING. I did not state the rule. The Senator stated it. He stated, if he will pardon me, that it used to cost to bottom a pair of sewed shoes forty cents; that a man made an invention which after deducting the two cents royalty cheapened the bottoming of those shoes thirty-three cents; but the man did not sell the shoes for any more than he did before. The market price immediately graduated itself accordingly. Having stated these as his premises, the Senator stated that under the present rule of law the courts would say that the measure of damages was the difference between nothing and forty cents a pair, less the royalty and the actual remaining cost at three additional cents, five cents in all. Now, if there is any such case as that, I should like to know what court ever so decided.

Mr. WADLEIGH. The Supreme Court of the United States decided in the case of Mowry *vs.* Whitney that the difference between the cost of the old method and the cost of the new was the profits in that case.

Mr. CONKLING. In the case of a vendor, in the case of a man manufacturing for sale or selling, or in the case of a railway company repairing its track?

Mr. WADLEIGH. There was no railway company in the case.

Mr. CONKLING. No, in that case; but I put it for the sake of the distinction.

Mr. WADLEIGH. Inasmuch as there was no railway company in the case, it is a little unfair to ask me what the court would have done if there had been one in it.

Mr. CONKLING. I do not ask that.

Mr. WADLEIGH. Let me state another case. A machine was invented for splitting wood, and the defendant used that machine for splitting wood. It was proved that he made no profits whatever. It was proved that the use of that machine lowered the price of wood per cord so that although the use of the machine saved some forty cents a cord in the wood, yet that the market price of the wood prepared by the machine did not begin to cover the forty cents. The court held in that case—the case of Meys *vs.* Conover, I think—that the profits were the difference between the cost of splitting wood by hand and the cost of splitting it by that machine, and a very large decree was entered against the defendant although he had made nothing at all.

Mr. CONKLING. Mr. President, some moments ago the Senator from New Hampshire commented, if I understood him, upon the ease with which segregated savings could be determined in one case and the difficulty or impossibility of finding them out in another. He said that if a man manufactured a machine for sale it was easy to determine the saving to him if he made profit by doing so, while if he manufactured the same machine and used it in his business it was likely to be guess-work to determine the advantage there. I should like to state two or three familiar cases to the Senator, and see what he would do with them, because I think he fitted his case to his theory and not his theory to the practical case.

Here is a man, for example, manufacturing wagons. If one will go into the neighborhood of Newark, New Jersey, he will find a fruitful field of illustration. Here are men making wagons and selling them, not in parts, but a wagon as an entirety. The simplest wagon one makes involves the use of a number, I might almost say a great number, of patented inventions. There are patents on the skein, there are patents on the threads of the screws which he may use; there are patents on the process by which a deposition of one metal upon another takes place so as to make plate or electrotyping; in short from the top of the wagon to the tire which rests on the ground nearly every incident has been the invention of somebody, and, unless the patent has died, is covered by a patent. That is a very familiar case moderately stated. It is a case the like of which occurs in every center of industry this country owns. Some man wakes up calling himself a patentee; he is sixteen years old and he has a patent in respect of the shape of a bolt or in respect of one of the links of the elliptic springs which are placed under this wagon. Now, will the Senator from New Hampshire tell me that the mode of ascertaining and segregating the profit derived from the use of that little thing, as he said in his other case, is easier or simpler than the mode of ascertaining the saving from the use of that same article by a man who used it in his business, instead of putting it on a great variety of other things and offering the whole for sale?

Mr. WADLEIGH. If my friend the Senator from New York desires an answer now, I will say that in the case he names I think it would be exceedingly difficult to ascertain what share of the defendant's profits were due to the plaintiff's invention; but great as would be that difficulty, it would be nothing as compared with the difficulty of deciding what proportion of the profits of the defendant were in a large and extensive business in which he used that wagon and what proportion of the profits of that whole business in which he used the wagon was due to the particular thing that my friend the Senator from New York speaks of. There is a vast difference between the two. Great as the difficulty is in the one case, it is nothing compared to the difficulty in the other.

Mr. President, the Committee on Patents found the law as it stands requiring an account to be taken in both these cases. They did not go so far as my friend the Senator from New York suggests, not so far as they might have gone, not so far as some of the committee wished they should go, if I may properly say so, but they did abolish the rule as to the most difficult and the least satisfactory class of cases. I am aware that what remains of the rule in this bill will be exceedingly difficult in many cases to carry out; but, as I said, the difficulty in those cases of carrying out this rule is as nothing compared to the difficulty of deciding in an extensive business in which that wagon might be used the particular proportion and share of the profits of that whole business due to that little thing in the wagon.

Mr. CONKLING. Nobody can doubt, Mr. President, who has listened to the Senator from New Hampshire, that he says that, in his own language; that he has said it; and we have every reason to believe that he will continue to say it. I was seeking for reasons. Logicians sometimes speak of a *petitio principii;* they sometimes call assertion "begging the question;" and whether the Senator is right about this or not, perhaps we shall see more clearly when we look further into it.

Now let me state another case that I was in the act of stating when the Senator made his last remarks. Here is a manufacturer of steam-engines, locomotives for railway companies. Probably somebody knows the number of patents or patented articles employed in constructing a locomotive-engine; I do not; but the number is very great.

Mr. WADLEIGH. Very large.

Mr. CONKLING. Very large indeed. Now it is quite familiar to all of us (and a good many States whose Senators I see here are fields in which illustrations can be found) that concerns are engaged in constructing locomotive-engines; they make a great number of them, and every one of them represents a large sum of money, so that every concern engaged in producing locomotive-engines in considerable quantities has a great total of annual business, and their accounts of course are very diversified and perhaps in some cases complicated. Here comes a man with a patent which relates to something or other to be used on a Yankee bonnet to catch sparks on an engine. It is one small thing, smaller than the bit of watch-spring which goes somewhere into an article of dress, a hat, or a cravat, or whatever it may be; it is almost infinitesimal in its bulk or importance when compared with this great iron horse in making which it is used. Now the Senator asserts that it is comparatively easy to ransack the accounts of this locomotive-engine company, to go through all of them, to add and subtract and divide and analyze and find out what proportion of the profits of this great concern comes from the use of a particular mode of bending a wire or securing an angle in a Yankee bonnet used on the spark-arrester of a locomotive-engine. I deny it, and I should be willing to rest my denial upon the uninstructed intelligence of any man. It is not so; it cannot be so. On the contrary it would be much easier for an uninstructed man to calculate an eclipse than it would be to take such accounts as I am speaking of, and from them deduce the aliquot part, segregated from all this wilderness of items and of elements, referable to the use of this one little trifling thing. And yet the bill provides in substance, changing the language from negative to affirmative, that accounts and evidence of profits may be gone into in respect of all persons who make profits and who are engaged in making for sale or selling "the thing patented or the product thereof as aforesaid." What those words "the product thereof as aforesaid" are intended to mean, I should like to ask the Senator

from New Hampshire. "Or the product thereof as aforesaid"—does that mean the article produced by the use of the machine?

Mr. WADLEIGH. Of course.

Mr. CONKLING. The Senator says "of course." Then I have made a very inadequate statement of my objection; then I have fallen short, as I think, entirely in stating the whole of the objection to this. Now we are told that, notwithstanding the objection, notwithstanding the impossibilities (for they amount to those) stated by the Senator from New Hampshire, we are to enact that in the case of all persons whatever engaged in any business, no matter how complicated and extensive, an account may be required and evidence may search and analyze their accounts for all purposes whatever known to the law now, if they have made profits and if they manufacture machines for sale, in respect of all the outcome, all the facts of every name and nature of the use of any patented article in the production of anything whatever. If that is the design of it, I venture to say with more confidence than that with which I began, that, instead of abolishing the rule in the more offensive and less meritorious cases and preserving only so much of it as the committee thought, or as the Senate might think, was comparatively harmless, we are perpetuating and reasserting a part of the rule which has in it every element of vice to be found in the rule as it now stands, and which applies it arbitrarily in instances no more meritorious, no more compassable, no more easy of judicial ascertainment as distinguished from guesswork than the other cases to be excluded by this section. I venture to say that, after learning the meaning attributed to these words, which I was at first in doubt about, and to say it with considerable confidence that I am not mistaken about it.

Let me put the third case I was going to put. I take now the instance of men not engaged in making railway-carriages for sale, (as many concerns are whose names I might mention,) but the instance of railway companies which manufacture their own carriages, if they are only rubble cars, or platform cars, or burden cars of some sort. Here is a man who has a patent for the manufacture of axles in such a way as to avoid the possibility of a sand-crack in the iron; and I take that particular case because of a very leading instance to which the railroad between Albany and Boston was a party, the case of Hagerman vs. The Great Western Railway Company, where a man sued for an injury that befell him, which injury grew out, as it seemed, of a sand-crack in an iron axle, which the experts said there was no mode of detecting, no mode known to science in which the buyer could find it out. The court of last resort in my own State said "that is no answer to this action; there is a process in its manufacture by which it can be prevented, whether there be a process that will discover it afterward or not; and a common carrier of passengers, acting at his peril, if need be, must himself manufacture the apparatus with which he engages in this dangerous business; he must himself see to it that he applies all the precautions; but there is a mode of making iron axles by which sand-cracks will not occur." That railway company, admonished by the court, manufactures its own iron axles, and manufactures them by a process patented, not because it is a machine, but because it is a chemical process patentable by law. This company resorts to that process, and it makes axles all of which are good and stanch and reliable; and it is sued. Will it be said even in that case—and I have taken it because it is a much more difficult one and much more open to objection than many another I might have put—will it be said in that case that it is not as easy to ascertain the savings to the railway company from the use of this process as it would be had that railway company been the manufacturers of cars for sale, and used this mode of making the axles which it put in its cars and sold the whole as an entirety like the wagon with which I began as an illustration? And if that is to be said, why will it be said, and how can it be proved by reason? I do not know. I cannot see after hearing the Senator. On the contrary, it seems to me that if a man were to invent a process by which one of the eight or nine tenths of the fuel which now goes utterly to waste in the use of the steam-engine might be saved, the man who adopts that process and runs his engine with it in his own business is one as to whom you could ascertain and weigh in golden scales the advantage to him just as well as in the case of his next-door neighbor who adopts the same adjustment or apparatus for his engine and sells it to somebody else. If not, why not?

Mr. President, I incline to think that the argument against giving evidence of savings—I do not speak of an account in the technical sense—and looking at the books of defendants for that purpose, proves too much for this section. If it be sound as stated, then I say that I see little excuse and no justification for the provisions here made. If the argument is unsound or if it may be answered, then I do not see why it is not answerable as well in respect of one defendant as another, and I do not see why this section as it stands does not make, more than I supposed in the beginning, arbitrary and therefore unjust discriminations between different persons.

Mr. HOAR. Mr. President, I suppose in dealing with any rule of damages in patent causes, whether the rule is to be declared from the bench or enacted in legislation, it is easy to state in the vast multitude of contrivances which are the subject of patents cases in which the rule would work injustice, cases in which another rule would be more just; but all that can be done, whether by the courts or by legislation, is to provide a simple, practical, general rule which will work justice, according to the experience of men, in a majority of cases. Now, undoubtedly, a Senator may take an hour, as an hour has been taken, a Senator may take a day, a Senator may take a week, and he would not have exhausted the list of supposable cases in which it is more difficult to take an account of the profits than it is to take an account of the savings in other supposable cases. But still the fact remains that the section as reported by the committee excludes accounts in cases in which as a rule they are more burdensome to parties and less likely to contribute to doing practical justice in the cause, and admits accounts in the class of cases in which as a rule they are more likely to do practical justice in the cause, and less (according to the experience of persons conversant in such trials) likely to be instruments of injustice and oppression.

Now what is the rule as the committee have left it? The Senate will remember that the rule of law permitting the account of the saving to the particular individual by reason of the trespass upon the patent-right of a patentee is a departure from the general practice adopted in damages in all other cases, and the admitting evidence of the price for which the thing sold on the other hand is precisely in correspondence with the rule of damages in all other cases where the common law prevails as a system. Suppose a person by force and without right takes possession of my dwelling-house, or my mill, and maintains against me the occupation of that dwelling-house or of that mill for a considerable period of time. The injury to me by the deprivation of the use of my property, the jury get at as well as they can upon the evidence; but the special fact whether the man saved in his business by having the occupation of that property so tortiously gotten into his possession is a fact which would be excluded from the consideration of the jury, and in regard to which evidence would not be admitted. The answer would be, "it is the remote, and not the proximate result; it is a result which might have happened, or might not;" and therefore, as I said, the old rule which admits an account or evidence of savings in any case in patent causes is an exception to the almost universal rule of damages applied in all other cases by the tribunals of this country.

Mr. EDMUNDS. Does the Senator (if I do not interrupt him) remember any instance in which any statute of the United States or of any State has regulated a rule of damages in an action at law?

Mr. HOAR. That is another proposition altogether. It is not a question, I submit respectfully to the Senator from Vermont, pertinent to the particular point with which I am now dealing.

Mr. EDMUNDS. I thought it was, or I would not have asked it. Probably I am mistaken.

Mr. HOAR. I do not mean that it is not pertinent to the general question we are discussing, but I am dealing now with the question of the wisdom of this rule, not with the question what the reason is for enacting a rule of damages by statute.

In the next place, in regard to the sale of the thing, the profit for which the party has sold it, that is the regular, and ordinary, and usual test of damage. A man is deprived of a horse, or his dwelling-house is tortiously burned up, or any other property is destroyed; its market value is one, and ordinarily the true, test of the damage, and the market value ascertained by a sale of the very thing in dispute is of course evidence admissible. The committee therefore restore the rule of damages in patent causes as nearly as may be to an analogy with that rule which the universal sense of justice, where justice is administered according to the forms of the common law, has established in all similar cases.

The Senate will observe in the cases which have been put by the Senator from New York and the Senator from Ohio, how ample and extensive the remedy is left. In the first place the remedy by injunction remains untouched, so that whatever expenditure may have been made by the infringer in his business, however inconvenient the abandonment of a manufacture or a use being an infringement may be to the defendant, the inexorable injunction comes down and protects the plaintiff absolutely for the future; the statute only deals with damages for the past. It leaves open in the first place where the owner of the patent is himself using it, making it profitable to himself as an article, the use of which is to be licensed, and in that case the license fee which he has established by a number of transactions is the measure of damages. Nobody, I suppose, will question the justice of that, so that if he has held it open to mankind and has established his price, that price which the defendant shall pay, with the addition of a special award to be made by the court in a case of willful infringement, is to be the remedy. In the case supposed by the Senator from Michigan, and I think by the Senator from New York, where the owner of the patent does not propose to open it to public use but proposes to avail himself of his constitutional property by a use made by himself, there a license fee not having been established, the reasonable compensation or license fee for the use is to be determined by all competent evidence an abundant and ample compensation in such cases. If the use by the infringement would be a destruction of the purpose to which the owner of the patent had applied it by the destruction of his business, then of course the jury in determining what it would have been reasonable for him to impose as a condition to that use would have regard to that important circumstance.

It seems to me, therefore, Mr. President, that as the practical and general rule, the rule of damages which the committee have reported in the bill is the sound and correct one.

And now I propose to answer the question put by my honorable

friend, the Senator from Vermont, whether it has ever been known that the rule of damages has been established by legislation. There are very many instances in our legislation where legislatures and parliaments have been compelled to interfere to alter the rule of law established by the courts in regard to this matter of damages. The matter of highway damages is a familiar instance in the New England States. We have from time immemorial had special statutes on that subject on our statute-book and have made a new one within the last twelve months in Massachusetts.

Mr. EDMUNDS. If my honorable friend thinks that the case of what he calls highway damages meets the inquiry I made to him, I respectfully submit that I think he did not understand it. I inquired whether he knew of any statute which undertook to regulate the rule of damages in an action at law between man and man for property. I suppose what he means by "highway damages," as that seems to be a general New England system, is where property is appropriated for the public use under the power of eminent domain.

Mr. HOAR. No, I speak of injuries to travelers—damages sustained by travelers.

Mr. EDMUNDS. That they shall not get over $5,000 damages?

Mr. HOAR. Or may have double damages in certain cases.

Mr. EDMUNDS. That does not regulate the principle on which damages are to be assessed. It only says there shall be a maximum limit.

Mr. HOAR. It seems to be a pretty sharp limitation on the principle on which they were to be assessed.

Mr. EDMUNDS. Not on the principle, but on the degree of its application.

Mr. HOAR. But, Mr. President, the whole patent law is the creature, the property in the incorporeal and intangible thing called an invention or discovery is itself the creature of that paramount act of legislation, the Constitution of the United States. The whole law is entirely not the result of common-law principles, but the result of special statute enactment at every step—both law and the remedy. Now, it is found by a complaint coming from the great agricultural interest of the country, coming from the great railroad interest of the country, coming from the great manufacturing interest of the country, that the power which the patent law puts in the hands of complainants who desire to oppress innocent defendants, and of defendants who desire to resist meritorious honest complainants requires of them the abandonment of their legal rights or the incurring of the expense of costly, protracted, burdensome investigations, lasting often years and years—there was one case referred to before the Patent Committee which had lasted some twelve or fifteen years if I mistake not—into the details of vast businesses and great occupations. I say the complaint came that that was a grievance which rather than to further endure, these great interests were prepared, if necessary, to sacrifice the entire patent system itself; and the committee found and believed that that complaint from those great classes of our citizens endangered the entire patent system, and that to endanger the patent system of the country was to endanger its manufacturing supremacy and its place in the ranks of civilization among the nations of the earth. The committee under these circumstances adopted the best practical method of remedying this grievance that they could devise. They left the right to the account of profits open in the cases whereas as a rule they believed that account of profits could be made practicable cheaply and was required by the justice of the cause. They destroyed the right to the account of savings in cases where as a rule they believed that to leave it open would be burdensome, costly, tend to enormous delays, and would be to overthrow as a rule and as a general practice the administration of justice between the parties in such causes.

Now, the committee believe, in spite of the thousand ingenious cases which may be put of exceptions, that to require in a simple litigation in regard to some slight patented article an account of the vast business and an inspection of the vast books of the person who may use that article in one of his processes, as a general rule is unjust and unwise, and that on the other hand to leave open to parties the right to require an account of the profits for which the thing has actually been sold which the infringer has purloined from the owner, is wise, reasonable, and just; and although you can undoubtedly put cases where the latter may be more burdensome than the former, yet as a general rule it will not be the case.

Mr. WADLEIGH. Mr. President, I do not desire to delay action upon this bill, because if it is to pass, action must be had upon it soon, and I shall add but a single remark to what has been said by my friend, the Senator from Massachusetts.

The Senator from New York in his last remarks took it for granted that this bill abolished all evidence of what savings could be effected by a patented invention, as I understood him. That the committee did not understand to be the case. The bill provides:

> That nothing herein contained shall exclude other evidence as to the utility and advantage of the invention as one element to aid in determining a license fee where none has been established.

What is "the utility and advantage" of an invention if it be not the saving that that invention will effect in the business or manufacture in which it is used? Your committee believe that under that provision of this bill evidence can be admitted showing what saving the invention will effect, and that is all the provision there need be upon that subject.

Then we are told that the committee made this and the committee made that provision. Mr. President, those provisions exist in the present practice of the court. The committee makes nothing. It abolishes a certain rule to a certain extent where the committee believed that rule has been most unsatisfactory and most unjust in its operation. It does not wholly abolish it. And the committee do not make that portion of the rule which they leave unmolested. The committee believe that far as this bill goes it is an improvement upon the present law, and that if passed, as my friend the Senator from Massachusetts has stated, it will benefit not only the public but patentees as well.

Mr. CONKLING. Mr. President, whatever errors we may fall into, we shall be inexcusable if we do not avoid any mistake upon this bill while there is yet a misunderstanding of the meaning. The Senator from New Hampshire thinks such a misunderstanding is mine; and to ascertain how that is, I want to submit an actual case to him and get him to tell me, if he will, what becomes of it under this bill. I will take now the instance of an iron concern whose business it is to carry on puddling. That concern is losing a hundred dollars a day. I wish the case I am putting were an imaginary one; but it is not. An invention is made for puddling iron, and the concern supposed adopts that invention, and it is so valuable that, instead of carrying on business at a loss of one hundred dollars a day as before, they save ninety dollars and the loss per day is only ten dollars. Will the Senator from New Hampshire tell me would the inventor in that case be able to recover or not, and, if he would be able to recover, under which one of the clauses of this proposed statute?

Mr. WADLEIGH. In the case supposed by my friend, the Senator from New York, evidence could be presented showing what advantage the patented invention had been, the effects that it had produced, the saving that it had made——

Mr. DAVIS, of Illinois. I do not understand that.

Mr. CONKLING. Nor do I either.

Mr. WADLEIGH. I ask that I shall not be interrupted by my friend, the Senator from Illinois.

I say so because in that case what the invention can do in the way of savings is "the utility and advantage of the invention." Now what cannot be done, what this bill prevents from being done, is going into an account of all the business in which that invention has been used to ascertain in the first place what the profits of that invention have been, and then what proportion of the profits is due to the invention, or compelling the defendant in such a case to account for savings as profits when these savings in no case would be his profits, but almost always, from the natural operation of the laws of trade, would be very many times greater than those profits.

Mr. CONKLING. Before the Senator from New Hampshire sits down, will he be good enough to look at some of the lines of this section between line 1 and line 15, and tell me whether he means to leave standing what he has now said, in spite of the provisions there found?

Mr. WADLEIGH. What is the particular point?

Mr. CONKLING. I call the Senator's attention especially to line 10, beginning with the word "except." Certainly his understanding is so unlike mine about a matter which seems to me pretty plain that one of us must have read this very carelessly.

Mr. WADLEIGH. I answered the question of the Senator from New York so far as it relates to evidence of savings being admitted in the case to which he referred that it can be admitted. No account of savings can be required, but they may be proved in certain cases to establish what the damages of the plaintiff are, what the advantage derived from the use of that invention is, what the invention will do in the way of saving.

Now, in answer to the question of my friend the Senator from New York just put, it is true that this bill abolishes all accounts for profits where no profits have been made——

Mr. CONKLING. Does the Senator mean what he says now?

Mr. WADLEIGH. Where no actual profits have been made.

Mr. CONKLING. That it abolishes all recoveries for profits where no profits have been made?

Mr. WADLEIGH. No; all accounts for profits. That is, the account for profits in all other cases is based upon actual profits which the defendant has received. A rule has been adopted in patent causes which compels a defendant to account for profits where he has made none, and to account for profits where there have been simply savings, although he has made a loss in his business and no profit at all. Now, the view of the committee was, that where there had been no profits at all, nobody ought to be required to account for profits which were simply imaginary; that in all such cases the plaintiff should show what injury he had suffered from the use of his invention; that he should not compel the defendant to pay profits when there had been none, but that in all such cases he should show by evidence the utility and advantage of his invention, and by all other competent and material evidence just what he was entitled to.

Mr. DAVIS, of Illinois. Now, Mr. President, I will say a word, as the Senator from Ohio [Mr. MATTHEWS] does not seem to be in his seat. I certainly did not wish to be offensive to the Senator from New Hampshire in rising at the time that I did. I thought he supposed I was offensive to him.

Mr. WADLEIGH. I did not think of such a thing.

Mr. DAVIS, of Illinois. I did not mean to be so at all. I simply

meant to state that that was not the understanding I had of the section, nor is it the understanding of very many abler men than myself.

Mr. HOAR. There are not many abler.

Mr. DAVIS, of Illinois. I consider that there are. It seems to me that clearly this section proposes to do two things: to abolish all account of profits in a chancery suit, unless profits have been made. Now, the case cited by the Senator from New York when he last sat down——

Mr. WADLEIGH. That is the intention of the committee.

Mr. DAVIS, of Illinois. I will go on a little while. I know that we say this man who is engaged in the manufacture of iron and is losing $100 a day gets hold of a patent invented by somebody and uses it and loses $10 a day; and is not that man richer in consequence of using that invention, and should he not pay for it? Is not that the true measure? It is the net advantage to that man which he has in the business.

Mr. CHRISTIANCY. I ask the Senator from Illinois whether it is fair to presume that a man who is losing $100 a day will constantly keep on in any business?

Mr. DAVIS, of Illinois. Yes, sir; many manufacturers who are losing that amount do it to keep their hands together. They do it to keep in such a position that when better times come they can manufacture at a profit. That is the answer to that question.

This bill proposes that there shall be no account of savings, that is, there shall be no account of profits where no profits have been made. It cuts off savings entirely. The Senator from New Hampshire thinks that the proviso, which I shall read, allows the court to receive an account of savings. Why not put it in plainly?

Provided, That nothing herein contained shall exclude other evidence as to the utility and advantage of the invention as one element to aid in determining a license fee where none has been established.

The Senator from Ohio wants evidence touching the subject of profits and savings to be considered by the court in determining what is the proper license fee to be established in that case. You cannot establish a license fee in all cases alike. It depends upon the utility of the invention, the magnitude of it. It is very small in some cases, and very large in others.

Mr. WADLEIGH. Will my friend, the Senator from Illinois, let me state right here my answer to that?

Mr. DAVIS, of Illinois. Oh, yes.

Mr. WADLEIGH. I believe that the bill abolishes the technical account for savings, and in the case which the Senator supposes the court would not decree that an account should be taken showing the savings which the defendant had made in his particular business, going over his books and all his business affairs, ascertaining the whole amount of his savings and then deciding how much was due to this particular machine, and thereby ascertaining the savings which the invention had effected. But what does it authorize? It authorizes the plaintiff, by any evidence he may see fit, except by an account going over all the business matters of the defendant or going over his savings, to prove the saving his machine will effect, what is its utility and its advantages; and that can be done without any taking of a technical account at all.

Mr. DAVIS, of Illinois. When you say that the court shall not allow a patentee to take an account of profits you cut him off from everything in the world that is available to him. When you say that the advantage to the infringer of the patent cannot be estimated inside of the profit you take it away entirely. The Senator says it is a great hardship to have the books of a manufacturer opened up for investigation. You have that done when you allow an account for profits. You are to investigate for years and years to ascertain whether there have been any profits or not, when it is very difficult to prove that; but it is very easy to prove that this man has been advantaged $100 a day or $500 a day by the use of a particular machine.

Then, again, Mr. President, if all account of profits is to be disallowed unless profits are actually made by the infringer, why confine this case to the thing actually patented or the product thereof? As I said the other day, this excludes a large class of cases where service is performed. It excludes a spoke in a wagon-wheel if it has been patented; it excludes machinery in a mine; it excludes machinery by which houses are built; it excludes the brake by which a railroad train is run, and a thousand other things of that kind. Where service is performed it certainly should be put on the same footing as "the thing patented or the product thereof." I simply rose because the Senator from Ohio [Mr. MATTHEWS] was not in his seat at the time.

Mr. CONKLING. While the Senator from Ohio is rising, I ask him to allow me to get a piece of information. The Senator from New Hampshire—and I was about to reply to that, but I was very glad that the Senator from Illinois proceeded—called attention to these words:

Provided, That nothing herein contained shall exclude other evidence as to the utility and advantage of the invention as one element—

I ask the Senate to observe this—

to aid in determining a license fee where none has been established.

Not to aid in determining the damages; not to aid in informing the court or jury how much the one man is entitled to recover of the other on the question of profits or savings; but simply to make an adjustment, to fix a standard of the royalty which the one man should pay to the other for the use of his invention. I ask the Senator from New Hampshire to tell me whether this bill, should it become a law, is at that point to speak both backwards and forwards, or whether it is to speak only of the future; in other words, in a given case, when this license fee has been established, whether the decree is to be one under which this license fee would be paid as of a past time, running from the beginning of the patent down to the date of the decree, or whether it is to be a license fee fixed as the rate at which for the future the infringer is to pay?

Mr. DAVIS, of Illinois. The past use, of course.

Mr. CONKLING. I want to see as to that, because I am informed by one member of the committee that it is not "of course;" that the reverse is the meaning. Will the Senator from New Hampshire be good enough to tell me which of these two meanings the committee does ascribe to this language?

Mr. WADLEIGH. What copy of the bill has the Senator?

Mr. CONKLING. The words are on page 5, at line 40, and so on. It is the proviso that the Senator read; and I want to know whether after a man succeeds in establishing by this proof what the license fee should be he is to be entitled to recover for the past infringement at that rate, or whether it is a license fee to be established for future proceeding.

Mr. WADLEIGH. The copy of the bill which the Senator from New York has in his hands is not the copy I have; and consequently——

Mr. CONKLING. But I have called the Senator's attention to the proviso which he read in the Senate, which is in all the copies of the bill, and which I will read to him again, as he read it to me:

Provided, That nothing herein contained shall exclude other evidence as to the utility and advantage of the invention as one element to aid in determining a license fee where none has been established.

My question is whether it is the intention that that determination shall be one under which for the future the infringer is to pay, or whether the meaning is that the complainant may recover for all the past time this license fee per annum?

Mr. WADLEIGH. The chairman of the Committee on Patents [Mr. BOOTH] has in his hands a similar copy of the bill that the Senator from New York has.

Mr. CONKLING. I did not hear the Senator from New Hampshire.

Mr. WADLEIGH. That part of the bill which answers the question of the Senator from New York is found from the twenty-fourth to the twenty-ninth line of section 2, and it is as follows:

If a license fee has not already been established by a reasonable number of transactions applicable to the case at bar, a license fee for the use actually made shall be determined from all the evidence in the case.

If that language is not plain, I do not know what is plain language.

Mr. CONKLING. Will the Senator be kind enough to those who like me have difficulty about the clause, to tell me whether the language I have read to him means that the license fee is to be established for the future, or whether it means from the beginning of the patent a recovery is to be had for the amount of this license fee for each elapsed year?

Mr. WADLEIGH. If the license fee is to be "for the use actually made," the Senator from New York can answer the question as well as I can. I apprehend that no use of the patent could have been made in the future, and consequently the license fee would not cover its future use.

Mr. CONKLING. If the Senator from New Hampshire, who is managing this bill, is content with that answer and that statement, I am; and if it benefits the prospects of the bill I think it benefits them in the estimation of those who have not listened to his statement.

Mr. WADLEIGH. The establishment of a license fee by a patentee is undoubtedly in one case evidence of what he should receive in other cases. The establishment of a license fee in one case may be some evidence in another case to show what the patentee should receive. But as I understand the language of the bill it applies to the use actually made; it does not apply to any use that may hereafter be made.

Mr. HOAR. The whole section is a section in regard to a measure of damages for past transactions. There is nothing else in it.

Mr. CHRISTIANCY. I wish to refer to the subject of savings, which was alluded to by the Senator from Illinois [Mr. DAVIS] and illustrated by him as he seemed to think in a way which showed the soundness of the doctrine of allowing savings as profits. The instance which he cited was that of a man engaged in business losing a hundred dollars a day without using the invention and losing only $10 a day with the invention. I then put the question whether it was to be presumed that such a man would continue to do business at a loss of a hundred dollars a day. The reply was that there were many instances in which he would do so, looking to future operations. Now I wish to put the question in a little different form; but I will not call on the Senator to answer it at this instant. Here is a man losing a hundred dollars a day, and under certain circumstances he loses but $10. Is it to be presumed that when the man is losing the $100 a day he would be likely to continue to do business at that losing rate as long as the man who was losing only $10 a day, in looking to future operations?

Let me put one other question. Ought not a man who is doing a losing business to be at liberty to stop that business whenever he

pleases? If so, then the rules of equity established at present by the Federal courts are wrong. Why? Because they go upon the assumption that such a man would continue through all time, so far as that is concerned, to do business at that particular losing rate, and they give him no chance to stop. That is illustrated in a number of cases which I cited here the other day, and to which I will not now refer. Therefore the idea of accounting for savings as profits rests entirely upon assuming as true what we know is not true.

I did not rise mainly for the purpose of replying to that portion of the argument. I wish to say here once for all that I look upon the rights of a patentee as sacred as the rights of any other man; that I look upon the property of a patent as sacred as property of any other kind; but no more sacred. Such property is entitled to the same protection but to no greater protection. What should be the rule where any man has been injured? What is the rule of justice and equity? It is that the person injured shall recover a fair and just and adequate compensation, and no more. The rule which is complained of is a fiction of equity which holds the infringer of a patent in all cases as a trustee. It is a pure fiction of law in all cases except where the amount of profits would tend to fix a just compensation; but where the amount of profits has no relation whatever to what would be a just compensation, then it ought not to be taken as the measure of recovery, because in that case the rule always must produce injustice.

The argument made by the Senator from New York in illustrating the difficulties and I will say the absurdities of carrying out this fiction of law in accounting for profits where a patent has been given for one little item in a machine, is one of the strongest arguments in my opinion that could be made against the justice and propriety of keeping up this mere fiction of law where it can result in nothing but injustice, where the profits do not even tend to show what is a just compensation. There is just the one class of cases which I mentioned where the profits do tend to show, and where they do measure, a just compensation, and that is where the patentee has chosen to retain the entire monopoly of his invention and to manufacture and supply the market himself. Then when an infringer comes in and manufactures, the profits ought to be allowed, because but for that infringement the patentee would have made that amount, or at least he was prevented from making it. But that is not the case with one patent in a hundred. The objection which the Senator from New York makes to the bill is not so strong when made to the bill as it is when made to the entire system as it now stands. The very difficulties, the very absurdities, which he has illustrated here are those existing in the present course of adjudication in the law as it now stands; and the bill is objected to because it does not cure the law.

Mr. CONKLING. If the Senator will pardon me, the bill is objectionable for another reason.

Mr. CHRISTIANCY. There may be other reasons.

Mr. CONKLING. If the Senator will pardon me, there is something beyond that. The bill is objectionable because the distinction the Senator now points out is made, and made not in favor of the innocent, the defenseless, the people who need protection, but made in favor of exactly those persons who do not need it. It is an exemption of aggregated capital, of powerful combinations, of intelligent persons from a rule of law which in the same bill we propose to visit upon the ignorant, the weak, and those who accidentally become subject to it.

Mr. CHRISTIANCY. I do not so understand it.

Mr. CONKLING. I do.

Mr. CHRISTIANCY. In the first place the bill does exempt from this rule of profits all mere users of a machine, where the user, that is, the innocent owner, does not make or sell the machine or its product. The manufacturer is the one who does it willfully, if anybody does, and those who manufacture with a machine and sell its products are the parties who ought to be bound, for before they do that they inquire more than the man who simply purchases a mowing-machine or a reaper or anything of that kind. I think the bill is just, as far as it goes, but I do not think it goes far enough. I think it should not allow an account of profits to be taken in any case except in the single class of cases where the patentee retains the entire monopoly of the patent and refuses to make sale of his license.

Mr. MATTHEWS. I apologized yesterday, Mr. President, for assuming to criticise the work of the Committee on Patents, because I was perfectly aware of what the committee itself has since advised us in open Senate, that it had bestowed unusual care and reflection and consideration upon the questions involved in this section of the bill in reference to the establishment of the rule and measure of damages which should apply in all suits, both at law and in equity, for the recovery of damages for the infringement of patent-rights. But I am certainly not mistaken, as the debate which has sprung up to-day proves, as to the importance of viewing critically every legislative attempt to introduce a new rule of decision in cases to be submitted to the arbitrament of judicial tribunals. I doubt whether in the history of legislative improvement, from the time of the statute of frauds to the present, any statute seeking to do that has not introduced more new questions difficult of solution than it has settled old ones, the evils of which were hard to be borne. I venture to make the prediction here that if this bill becomes a law it will give rise to more, and more expensive, litigation than it will compose strifes which have arisen under the existing rules. It is with a view of simplifying its provisions and removing ambiguities that I have moved the amendment which is now pending; and as the vote is to be taken upon it, I desire to call the attention of Senators to the precise effect of the section as it stands compared with what will be the effect in case the proposed amendment should be adopted.

Let me, in the first place, say a word in passing in reply to the Senator from Vermont, [Mr. EDMUNDS,] who seemed to think that in contrast with the provisions of the bill as they now stand, the adoption of the amendment would sweep away the exclusive right which by the Constitution of the United States is guaranteed to inventors. That is a misconception, for the reason that the actual enjoyment of the exclusive right does not depend upon the application of any rule of damages. It depends upon the proper, prompt, and effective administration of equity jurisprudence in wielding the power of the injunction. It is that writ of prohibition which secures by its possession the owner of such a right in the enjoyment of all its privileges; and that is not disturbed either by the bill in its present form or in the form which it will assume in case the amendment proposed shall be adopted.

Mr. EDMUNDS. Yes, Mr. President, if the Senator will pardon me, but he seems to leave out of view, when he speaks of the redress by injunction, what I suppose he will agree is a well-established principle of equity jurisprudence, that if the answer of the defendant in an infringement case totally denies the equity of the bill, by denying that the thing complained of is an infringement of an acknowledged patent, or denying the validity of the patent itself, it having not before been established in some court, then a preliminary injunction cannot go, and the patentee must wait until the end of a long litigation before he can get his injunction at all. Then, the Senator says, when you come to that, he shall not have any exclusive right at all, but all this man shall be obliged to account for is exactly what, if the patentee had been willing to hire him out the right, would have been a fair price.

Mr. MATTHEWS. To be sure the case exists, because there is a period during which there would be an unauthorized and illegal usurpation and use of the exclusive right; and in that case, as in all other cases, there would be an award by the proper process of an equity court of damages by way of compensation which the complainant has in the mean time suffered, as ascertained by the final decree.

Mr. EDMUNDS. Yes, but you say that the damages shall only be a license fee.

Mr. MATTHEWS. I say the damages shall be the market price of the property used, the market value, that which anybody in the market would give; and that is all that can be given appropriately under the name of damages, except in those cases where the infringement has been willful, as to which special provision is made for an extra allowance to cover the costs and expenses of asserting, maintaining, and defending the right.

Let us see what the propositions contained in the bill, as reported, are. They are, first, that very thing of which the Senator from Vermont complains, namely, that the old principle of awarding compensation in equity cases is abolished.

Mr. EDMUNDS. They still leave actual profits.

Mr. MATTHEWS. Let us see. It is declared in the very first sentence of the section that the rule and measure of damages shall be the same, both in actions at law and in suits in equity. The distinction between law and equity in that very particular (in which it has been supposed that equity was more conservative of the property rights than a court of law would be) is taken away, and the complainant is compelled to rely upon and resort to only that measure and rule of compensation which he can obtain by a verdict or award of damages as a compensation for the injury which has been inflicted upon him. I agree that in every case of a violation of the right the complainant ought to have that much. He ought to have a fair, full, adequate, and complete compensation for the loss to him of the enjoyment of his property, just as if it had been visible and tangible personal property, just as if it had been real property on which a trespass had been committed. Further, I am of opinion that every avenue of evidence ought to be kept open for proof in each individual case according to its circumstances, and the amount in such a case should be reasonable and fair, and that that should be left absolutely upon that evidence to the discretion of the tribunal charged by law with the finding of such a verdict or the making of such a decree, without any restraint, without any artificial rules to bind that discretion, without shutting out any light; so that every fact and every circumstance which is material and important to the determination of the question shall be permitted to be proved.

In undertaking to specify the various cases in which rules for the apportionment of this compensation shall be adopted, the bill of the committee first takes the case where it is the design and the desire of the patentee to put his patent upon the market to make it a subject of sale to other persons. In that case it is said by the Senator from New Hampshire in advocacy of the bill that no one can object to the application of the rule of the market price, where the vendor seeks a market for his wares. The very object he has in view in obtaining his patent is to use it in that way, that he may by sales of the right to any one in the community who desires it obtain a revenue and income from it. It is said that is a fair rule; that it gives a full equivalent, and that when the party sues for damages for the recovery of that compensation, the very fact that he is seeking that and not the enjoyment and possession of his exclusive right by means of an in-

junction, shows that he is willing to give a license to the defendant and will be satisfied with a proper, usual, reasonable license fee. Yet the bill immediately makes an exception from that rule, after establishing it as a fair and just rule. After establishing the principle that that is all that ought to be claimed, where the patentee desires to go into the market for the purpose of sale, they except it in all cases where the defendant has made an actual profit from making for sale, or selling, or using the thing patented, or the product thereof. Why should that exception be made. If the plaintiff gets all that he would have asked from others for a license to do the thing, why should he as against a party unlicensed recover any greater amount? If it be said that he ought to be permitted to do so because the defendant may have willfully and knowingly violated the plaintiff's right, and so put him to the necessity and expense of maintaining it and asserting it, the answer is that in another clause of the same section that case is provided for by the committee's bill, for in that case the court is authorized to award against the defeated party such sum, by way of counsel fees and expenses of suit, as it shall deem just and reasonable in order to punish the defendant, if he be the one in default, for the willfulness, maliciousness, and vexatiousness of his conduct. But if any exception is to be made at all, why not, as inquired by several Senators, make the exception as broad as the fact, instead of confining it only to those cases where an actual profit has been made from the manufacture or sale of the thing patented or the product thereof? For it is manifest, as has been already so fully pointed out as to obviate the necessity of dwelling upon it again, that actual profits may be made just as much in violation of the rights of a patentee by those who do not manufacture for sale or sell the thing patented or the product thereof, but who use it merely in their own business and for their own purposes.

The next proposition of the bill is to deal with those cases where by a reasonable number of transactions in the market no market price has been established for the use of the patented article, and there the provision of the bill seems to be perfectly fair; for it declares that in such a case a license fee for the use actually made shall be determined from all the evidence in the case. If it had stopped there, it would have stopped just where I desire it to stop, for then there would be no limitation upon the kind and the character and the amount and the degree of the evidence which would be admissible for the purpose of proving what was a fair compensation for this use. But the bill does not stop there. It goes on and in that connection declares that—

No account of savings shall in any case be allowed; and no evidence or account of the defendant's profits shall in any case be admitted, except as to actual profits resulting from making for sale or selling the thing patented, or the product thereof as aforesaid.

We exclude the evidence of such profits, and I take it that evidence of savings would be excluded under the same head, although perhaps not technically embraced in the words that introduce the sentence, where only an account of savings is forbidden. But how can you prove the actual profits made by reason of the use of the invention without showing the saving and economy in the manufacture which have been produced by the use of the invented thing? Yet not only is an account of such profits forbidden, but proof by way of evidence to establish what would be a fair amount for the defendant to pay is forbidden. The other language which admits other evidence as to the utility and advantage of the invention as one element only strengthens the conclusion which excludes the evidence of profits and of savings.

Mr. BOOTH. Will the Senator from Ohio allow me to interrupt him for one moment?

Mr. MATTHEWS. Certainly, sir.

Mr. BOOTH. In line 36, on the fifth page, does the Senator construe the word "account" in the phrase "no account of savings shall in any case be allowed" as excluding from the testimony the amount the machine itself has saved over any other known device? I know the intention of the committee was simply to shut out the account technically of the savings and the making of that the measure of damages; but certainly it was intended that the saving that the machine made should be one of the elements that should determine its value and enter into the determination of the license fee.

Mr. MATTHEWS. My answer to the Senator would be that perhaps the conclusion which he combats might not be deduced from that language alone. Taking the section altogether, as a court would do it, by the four corners, the inference is to my mind strong that when the offer was made upon an actual trial of a cause to show the economy by the use of the particular machine in the manufacture in which it was used, it would be excluded, not because that was an attempt to take an account between the parties, but because it was an attempt to show what were the actual profits, which is excluded by the succeeding language.

Mr. CONKLING. Will the Senator allow me to remind him that he speaks of the whole section? I suggest to him that he need not deal with anything more than the paragraph at which the Senator from California points his question to be able to say all that he has said, because following the words to which the Senator from California alluded are these:

And no evidence or account of the defendant's profits shall in any case be admitted, except as to actual profits resulting from making for sale or selling the thing patented, or the product thereof as aforesaid.

How can there be any doubt, as to the cases thus excluded, that the effect of that paragraph is exactly that for which the Senator from Ohio insists?

Mr. MATTHEWS. I think there can be no doubt about it, that in the very offer which I supposed, where a party litigant by his counsel proposes to show that there were profits made in the manufacture by the use of a patented article, which consisted simply in saving and in economy, that would be excluded by the court on the ground that no proof or evidence could be submitted on the point, unless it went to the length of establishing "actual profits resulting from the making for sale or selling the thing patented or the product thereof as aforesaid."

The effect of the amendment which I propose as a substitute for that language is to remove at least any doubt that may arise upon that by declaring:

But evidence thereof may be admitted as tending to prove what shall be deemed a reasonable license fee as compensation for the infringement.

I would be better satisfied, greatly better, to dispense with the use of the words "a reasonable license fee" throughout the entire section, and to leave the rights of patentees, both in equity and at law, so far as the question of compensating them for infringement is concerned, to the general rule which now establishes the proper measure of damages in every other case of violations of the rights of property, giving to the patentee that in its fullest extent, with all the benefit of common-law rules and common-law evidence, and upon that, and beside it, and beyond it, and above it, the extraordinary relief by the writ of injunction to secure him in the possession and enjoyment of his exclusive right; for after that has been broken and during the time the cause is pending, and when he is endeavoring to establish by evidence the fact of the infringement or the fact of his exclusive right, he is like every other litigant in court under similar circumstances; he is compelled from the nature of the case to accept that which the law gives him in lieu of his exclusive right, and that is a compensation in money for the temporary loss of it. It might as well be said that it was a violation of the right of property to allow as is done in my own State, and I believe in most others, in actions of replevin for personal property, where it is open to the plaintiff, if he chooses to make an affidavit which establishes in the first instance his right to the writ, to take the defendant's personal property into his possession and acquire a title to it as against the defendant and all the world, and by virtue of a transfer merely produced and wrought by the bringing of his suit, leaving to the defendant not the right of being restored to the possession of the identical property which in the mean time may have been destroyed, but only to such compensation as a jury may award, based upon those rules of law and those rules of evidence which in all other cases of violations of the rights of property have been established by the common law for the protection not only of that plaintiff and defendant, but of us all. I agree that the right of a patentee under his patent is a right of property which is secured by the Constitution, and it ought to be protected and enforced by the law, but exactly upon the same principles and upon the same rules of evidence, and his damages measured by the same principles of law, as in other similar cases.

Mr. EDMUNDS. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After one hour and twenty-two minutes spent in executive session the doors were reopened, and (at four o'clock and fifty-seven minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January* 15, 1879.

The House met at twelve o'clock m. Prayer by Rev. W. V. TUDOR, Methodist Episcopal Church South, Saint Louis, Missouri.

The Journal of yesterday was read and approved.

MANAGEMENT OF INDIAN AFFAIRS.

Mr. O'NEILL, by unanimous consent, presented a memorial of the representatives of the Religious Society of Friends in Pennsylvania, New Jersey, and Delaware, remonstrating against the transfer of the management of the Indians from the Interior Department to the War Department; which was referred to the Committee on Military Affairs, and ordered to be printed in the RECORD.

The memorial is as follows:

To the Senate and House of Representatives
of the United States in Congress assembled:

The memorial of the representatives of the Religious Society of Friends in Pennsylvania, New Jersey, and Delaware, respectfully represents that your memorialists have regarded with deep interest and anxiety the proposition now pending before your body, to transfer the management of the Indians within the United States from the Interior Department to the War Department, and they would respectfully but earnestly remonstrate against such transfer for the following reasons:

The past history of the Indian nations of this continent proves that they are susceptible to the softening influences of kindly Christian treatment, and the European discoverers found that as they were thus approached they almost invariably responded in a friendly and even generous spirit. The peaceable policy pursued by William Penn and the early settlers of Pennsylvania and New Jersey avoided