THE TELEPHONE CASE.

THE view we should take of Secretary Lamar's decision to have the validity of the Bell telephone patent tested in the courts depends very largely upon our standpoint. If, as the Secretary seems to assume, and as a lawyer might naturally assume, the mind of the judge in such a case is to be *tabula rasa* on which the contending parties may freely write their arguments and impress their evidence, it is quite possible that the judge might see only that conflict of evidence on which the Secretary's conclusion is based. The result of the Star-route trials is an example of how a long and tedious argument about very simple facts may confuse rather than inform the mind. If a man could secure a fortune by making it appear debatable whether the Washington Monument might not talk, he would undoubtedly succeed. Hardly would the hearing be commenced before scores of people would be found who, in the still of night or the hum of day, had heard aerial voices proceeding from the Monument, which could not be accounted for without supposing that object to possess the power of speech. A perfectly unbiassed judge, with no prejudices of his own on the subject, listening attentively for two months to the evidence and arguments on both sides, would undoubtedly find the views very conflicting; unless, indeed, he should reach the decision that the talking power of the Monument had been fully established. But if we suppose the judge to possess beforehand some common-sense ideas of physical principles, and some knowledge of the world, then Mr. Lamar's conclusion is simply amazing, and we apprehend has surprised no one more than the plaintiffs themselves.

What gives his decision interest is not merely the historical and personal question of priority of invention, but the fact that the conclusion insures the success of one of the worst stock-jobbing schemes now before the public. The stock in trade of the companies on whose motion the suit is brought consists of a paper capital of several millions of dollars, and a few patents, of insignificant value, which they probably never intend to use. Before the courts, a suit instituted by and in the name of the United States is invested with such dignity that all injunctions against infringements of Bell's patent may remain undecided or inoperative until the case is finally settled. The result is that the companies have a fair chance of getting the use of Bell's invention for a period of perhaps three years—as long, in fact, as they are able to stave off a final decision. This prospect will enable the projectors to dispose of their paper capital on terms extremely remunerative to themselves. The grounds on which they are allowed to enjoy this advantage on the motion and at the expense of the Government are therefore worthy of very careful consideration. What we have to say on the subject is founded mainly upon the bill of complaint filed by the prosecution, supplemented by the well-known facts of the case.

Stripping the bill of all its verbiage, repetition, and incongruities, we find its gravamen to be contained in the following propositions:

1. That the examiner who passed upon the patent did not know that the invention was to be claimed as a speaking telephone, but supposed it to be only a method of harmonic multiplex telegraphy.

2. That a caveat having been filed by Elisha Gray on the same day that Bell made his application, the latter was allowed to see the caveat, and, in consequence, changed his application so as to cover ground which belonged to Gray.

3. That the speaking telephone was really the invention of Philip Reis, and was therefore public property before Bell's patent was issued.

We omit the claim that Bell fraudulently neglected to instruct the examiner in electrical and telephonic science, as one tending only to make the plaintiff's case appear ridiculous. We also omit the question of Gray's rights in the case, because the suit is not brought for Gray's benefit, but only for that of the public.

The first claim of the prosecution might seem at the first glance to have some foundation, from the fact that the word "telephone" had not come into general use, and that Bell therefore described his invention as a system of telegraphy. But a reading of his description shows that the speaking telephone was described so plainly and fully as to admit of no possibility of doubt or mistake. Even had the examiner misapprehended the invention, that alone would not invalidate the patent. Where would litigation end if the validity of every patent depended upon the state of mind of the Patent Office officials when they passed upon the inventions?

The second point is that Bell made use of his fraudulently acquired knowledge of Gray's caveat to amend his own description. If any evidence to prove this was adduced by the prosecution, we have not seen or heard of it. All necessity for looking up any such evidence is, however, done away with by the fact that no essential change was made by Bell in his description, and no alteration in or addition to his claim. The addition consists only in a fuller explanation of the difference between what he called undulatory and pulsatory currents, and added absolutely nothing to the invention. It is one of the many singular inconsistencies in the plaintiff's case that in some passages this very distinction, which they claim to have been borrowed from Gray, is denounced as a worthless pretence.

We now come to what is really the main point of the prosecution, that there was nothing essentially new in Bell's invention, and that his claim of an improvement on Reis's instrument, by substituting an undulatory for a pulsatory current, was a fraudulent pretence. Here we reach the question whether common sense and understanding of the subject are to be presupposed in the judicial mind. If we presuppose them, then the claim that the Reis telephone could speak is hardly more tenable, and is not supported by any more evidence, than the speaking power of the Washington Monument would be if the question of its existence were before a court. The Reis telephone sent electric pulsations through a wire; but these pulsations were all of one kind, and could produce at the end of the wire only a musical note of high or low pitch, like the sound of a tuning-fork. Such an apparatus never could talk, unless by the merest accident. Bell's invention consisted in giving the electrical undulations the same form as the sound waves emitted in human speech. The difference between the two inventions was neither more nor less than the difference between speech and noise. The validity of Bell's patent as against previous claims of Reis has been so often sustained by the courts that it can no longer be considered an open question.

On what grounds was an application granted when the reasons for it were so entirely untenable? We look in vain for an answer to this question in Mr. Lamar's communication. He enters into no discussion of the arguments, the law, or the evidence so far as this particular case is concerned, and indeed expressly excuses himself from forming or expressing any opinion upon the merits of the case. He does not even say what fraudulent act or what kind of collusion seems to him to have been possible, nor explain how ignorance on the part of the Patent Office could have made fraud on the part of a patentee. Granting all the facts claimed by the prosecution, except the incident of Gray's caveat, of which we have shown the utter groundlessness, no case would be made out except that the Commissioner of Patents blundered into issuing a patent for a well-known invention; a wrong which can be speedily corrected by ordinary legal proceedings. The amusing attempt to show that this supposed blunder was due to fraud on Bell's part is of a kind which would be laughed out of any court in the world; the fraud, consisting not only in neglecting to give the examiner scientific information, but in describing to the Commissioner of Patents a crude and worthless device in order to evade his vigilance, and, when the patent was granted, claiming that the device was a telephone. Mr. Cleveland's Administration has made no greater mistake than that of giving Government support to this ridiculous pretence.

THE SENATE AND THE REMOVALS.

IF the report of the Washington correspondent of the *Herald* is to be believed, the Republican Senators agreed, in their consultation on Friday, to subpœna the Cabinet officers to bring with them any papers they may have which will aid in the inquiries about removals which they are setting on foot, but admitted that if the Cabinet officers said the President had the papers, the Senate would be powerless as against him. This is comprehensible. What is not comprehensible is the following further report of the correspondent:

> "It was the general opinion in this consultation that, as the President had publicly and often professed a determination to retain in office during their regular terms all capable and proper men and to remove only improper men, these public engagements gave the Senate the right and duty to see to it that proper and capable men are not removed—that, in fact, the President has been and remains faithful to his engagements. If the President will say publicly that he has not found it expedient or possible to keep his promises in this regard, but has, in fact, removed Republicans because they were Republicans, and appointed in their places Democrats because they were Democrats, and for political reasons, in that case the Republican Senators will, they say, at once confirm every nomination he has made. But they say that their object is, and their determination is, to ascertain whether the President has lived up to his public promises in regard to the civil service, or whether—while still professing

loudly—he has in practice violated these promises and become no better than a publican and a sinner. Republican Senators assert that he has so broken his public promises; and they say that it is important to the cause of public morality to show this."

According to this story, the Senate is, in doing its work in the matter of confirmation, to take its cue from the President himself. If he says he is trying to put fit men in office, and no others, it is going to overhaul all his nominations with much severity; but if he says that he is appointing men to office because they are Democrats simply, and without caring whether they are fit or not, then it is going to confirm every nomination he sends in without question. In other words, the Senators are not going to force the President to raise the standard in making selections for office one inch higher than he pleases. On the contrary, they encourage him, according to this story, to keep it as low as possible by assuring him that the lower he makes it, the more completely he disregards the interests of the public service in making his nominations, the easier will he find it to get them confirmed.

We are reluctant to believe that the Republican Senators have taken any such ground. A more degrading proposal to prostitute their office was probably never made by any portion, however small, of a respectable public body, than the foregoing would be. The Senators are bound to have a theory of their own about the proper mode of filling public offices. They have a duty in the matter as well as the President. The more openly he declares that he is filling them on partisan grounds, the more careful should they be to see that, nominating on such grounds, he is not disregarding the public interests. They are not charged with the duty of seeing that the President is consistent, or that his practice accords with his professions unless the professions show that the efficiency of the public service is his first concern. The Constitution did not bestow the power of confirmation on the Senate to be used in exposing the President's weakness or folly, but for the purpose of protecting the public against its consequences.

The Senate, in exercising its share in the appointing power, is bound, we take it, by every consideration of duty and policy, to assume that the President means to live up to the professions of his letter to the Civil-Service Reform League, and to examine his nominations from that standpoint. To demand from him his reasons for making removals they have plainly no right. He may give them if he pleases, but if he refuses, the Senators cannot complain. But it is their bounden duty to see that his nominees are fit for the places to which they are nominated. About this they can learn all they please through their constitutional powers of investigation. They can send for the man who has been removed, and find out how he did his work, and all he knows about the causes of his removal. They can send for the man nominated and learn all he has to say in support of his claims to the place, and they have a perfect right to be guided in acting on the nominations by the information thus acquired.

Moreover, there can be only one reason for their reluctance or failure to adopt this course—and that is their fear that, in setting up a high standard of Presidential selection, they would be dealing a death-blow to the system of Senatorial bargaining and log-rolling which is a large part of all the corruption there is in the Federal service. To insist on the President's treating public office as a public trust, is to bind the Senate to support him in so doing, and this for only too many Senators would be robbing their office of more than half its sweetness. But this is what the public now expect of it. They want the Senate to see as far as in it lies that the President lives up to his brave words. They will not object to his being plagued or harried by the Senate for this purpose, but they will strongly object to his being plagued or harried for any other. The time has long gone by when people would witness with equanimity a struggle between the Senators and the President over a division of the spoils. The Republicans cannot get back into power on that tack. They can only get back, in these days, by promising purer administration, and in such a way that the country will believe them.

FEDERAL AID TO EDUCATION.

THE revelations of illiteracy in the South made by the last national census produced a profound impression upon the country. Government in the United States is wielded by millions of voters, and the success of such a system obviously depends upon the intelligence of these voters. Every ignorant ballot is a threat to the community, and government by suffrage, where a majority of those who enjoy the suffrage cannot read the ballots which they cast, violates the very theory upon which our whole system is based.

Yet it was shown in 1880 that in a number of Southern States nearly or quite half of the voters were illiterate. About three-fifths of South Carolina's population are negroes, and 78 per cent. of the male negroes were unable to write their own names, while 16 per cent. of the male whites were as badly off, making 52 per cent. of the whole number of both races. Mississippi, with nearly as large a proportion of negroes, was in almost as alarming a condition, 76 per cent. of her male negroes and nearly 12 per cent. of her male whites being unable to write, or about 47 per cent. of all her voters. Louisiana's population is almost equally divided between the two races; of her negro voters 80 per cent. and of her white voters 15 per cent., being 47 per cent of all of both colors, were illiterate. In Alabama the proportion reached 46 per cent., and in Georgia 45, while there was not a single State of the States in the "black belt" where the ratio of ignorant voters was not so large as to justify the most serious apprehensions. Of course such a state of things could not continue permanently without grave danger to the republic.

As they emerged from the destitution in which they were left by the war, and the only less disheartening period of corrupt carpet-bag rule, and consequent race hostility, the Southern States began to develop a public-school system. But the States were still poor, the mass of ignorance was vast, and progress was slow. It was plausibly urged that the exigency was so pressing that outside assistance must be furnished, and that the Federal Government ought to come to the rescue of the South. The assertion that such action would be unconstitutional was to be met by allowing all the States to share in the appropriations, while the expenditure of the largest share in the South was to be insured by making the amount allowed each State depend upon the number of illiterates. These arguments proved effectual to secure the passage by the Senate in the Forty-eighth Congress of what is known as the Blair bill, proposing to appropriate over $100,000,000 during a period of ten years for distribution among the States upon this basis. The bill went through the upper branch by a vote of 3 to 1, 20 Republicans and 13 Democrats supporting the measure and 9 Democrats and 2 Republicans opposing it; but it was never taken up in the House, and lapsed with the end of the session.

Senator Blair has reintroduced the bill, and another strong effort will be made to secure its enactment in the present Congress. The majority in its favor was so strong in the last Senate that there is little question of its passing the upper branch again, and its friends profess confidence that a majority can be secured for it in the House. Not only for its immediate consequences, but also, and much more, for its far-reaching bearing upon the relations of the Government to the States, the proposition is perhaps the most important which will come before the present Congress.

The plea in favor of the bill, as we have said, is plausible, but we believe that it is fallacious, because it takes a short-sighted view of the future. Illiteracy is a bad thing for a community, but it is not the worst thing. It is important for the South that its present ignorance should be dispelled as soon as possible, but that is not the most important thing for the South. The vital element of any success that is worth achieving in this world is self-reliance. The man who works his own way to an education may not acquire it as soon or get as good an education as one who receives it at the hands of charity, but it will be worth a great deal more to him, and he will be worth a great deal more to the community. The same principle holds as true for the State as for the individual. The American colonies developed into infinitely stronger commonwealths by reason of having to make their own way in the world than they ever could have become by the most fostering care of the mother country.

What was true a hundred years ago is true to-day. Illiteracy in the South is a terrible evil, and its removal will be a vast work. The burden must be a heavy one for the South to bear, and it would be temporarily a great relief to unload a share of it upon the broad shoulders of the general Government, but the education of its coming voters is the first duty of an American commonwealth. It is not the business of the general Government, and nothing could be more demoralizing to a State than the assumption of its own duty, in whole or in part, by the authorities at Washington. Undoubtedly more Southern voters will be able to read ten years hence if the Federal Government expends $100,000,000 upon Southern schools, but the South can much better afford to have fewer intelligent voters ten years hence than to have purchased their education at the expense of its own self-reliance and self-respect.

The truth is that the Southern States are