Jeremy Bentham called attention to the absurdities of our system of evidence, and but 16 years have passed since complete justice in this respect has been done to that shrewdest of jurists. In 1833 interest ceased to be an objection to a witness; ten years later the person who had committed a crime was no longer excluded from the witness-box. In 1846 the English County Courts began to experiment on the evidence of plaintiffs and defendants and their wives, but it was not till 1851 that, the experiment having proved successful, Lord Brougham was able to induce Parliament to let in such evidence in almost all cases. Nor is the day now far distant when the mouth of a prisoner can any longer be kept closed. Yet, when Bentham's views began to be accepted, there were not wanting false prophets in abundance, who foretold the commital of the most dreadful perjuries.

Without entering into the various views as to what constitutes the essence of an oath, its supposed advantages cannot be more strongly stated than in the words of John Pitt Taylor. He says:—

"The wisdom of enforcing the rule, which requires witnesses to be sworn, cannot well be disputed; for although the ordinary definition of an oath—viz. 'a religious asseveration, by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth' may be open to comment, since the design of the oath is, not to call the attention of God to man, but the attention of man to God; not to call upon Him to punish the wrong-doer, but on the witness to remember that He will assuredly do so, still it must be admitted that by thus laying hold of the conscience of the witness the law best ensures the utterance of truth." (§ 1247.)

Again we are brought back to conscience as the something which is to be laid hold of for securing truth; it is the witness' conscience which is to be affected, and hence the meaning of the question—"Do you believe that oath binding on your conscience." We have seen, however, that the moral faculty is not supplied with new strength by the administration of an oath. It is our common experience that the religious sanction of the oath does not deter a dishonest witness, though the legal penalties for perjury undoubtedly frequently do. It is but seldom, too, that the witness pays any heed to the officer of the court who performs the duty of swearing the witnesses; his mind is full of other thoughts, and if perchance he should give marked attention to the hurried words spoken by the officer, the jury receives his evidence with caution. A witness is never shaken by being reminded that he is on his oath, nor does the question—the resort of the "powerful feebles"—"by the virtue of your sacred oath do you swear so and so?" at all frighten him. Litigants frequently know, frequently imagine, that certain witnesses could, if they would, give certain evidence; they have been unable in conversation to get the desired admissions, but they seem to think that the swearing book has a magic spell. Despite the advice to the contrary of their lawyers, they have these persons placed in the witness-box, and the result is the usual one. A too frequently recurring illustration of this is in the examination of defendants to prove shop-debts due by them to the representatives of deceased traders, where the deceased was the only other person who could have given evidence.

That it is the regard for truth itself, uncloth-ed with mystic rites, which secures reliable evidence in our tribunals, receives additional corroboration by resort to negative proof. For instance, we are often informed that the Judges of courts established by the British rule in various countries over the earth are continually puzzled to discover in those localities, where mendacity is the normal condition of the people, the real facts of the cases they are called upon to decide. Before a class-fellow from the halls of this college,* now a Judge in India, the following case was presented:—The plaintiff, a money-lender, complained that he had agreed with the defendant to lend him 100 rupees, that he had given him 20 on account, and that the remaining 80 were to be given on his coming and executing the bond for repayment, but the defendant never returned to execute the bond, and he refused to pay back the 20 rupees advanced. The defendant replied that he had required a loan for a few days, that he had signed a bond to the plaintiff for 100 rupees, but only received 20 on account, the plaintiff saying that he would give him the remainder on the following day, but, in the meantime, defendant discovered he could do without the loan, so he repaid the plaintiff the 20 rupees lent, and got back his bond, which he produced. Each party set forward witness after witness in support of his case, the Judge adjourned again and again, and, at the time I heard the story, was unable to come to any decision. Olden times would have suggested "wager of law," some ordeal, or the "decisory oath," and the Judge under the civil law would have exercised his discretion, and administered the "suppletory oath."† But who shall say that truth would any the more have been discovered? It is not a little remarkable that the great foreign jurist Pothier, in speaking of these additional oaths, said:—

"I would advise the Judges to be rather sparing in the use of these precautions, which occasion many perjuries. A man of integrity does not require the obligation of an oath to prevent his demanding what is not due to him, or disreputing the payment of what he owes; and a dishonest man is not afraid of incurring the guilt of perjury. In the exercise of my profession for more than forty years, I have often seen the oath deferred, and I have not more than twice known a party restrained by the sanctity of the oath from persisting in what he had before asserted."‡

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† The civil law permitted litigants to tender the "decisory oath," the one to the other, he who refused it lost his cause. It was the Judge's privilage in doubtful cases to administer the "suppletory oath" to either party.

‡ Obligations, by Evans, s. 831.