without damage to society—*injuria sine damno*—would be punished.

Let us now examine a few of the arguments of the learned judge, and some of his criticisms of Bentham.

1. In combatting the theory that crimes are only to be measured by the injury done to society, he puts the case of an attempted crime, which, had it not miscarried, would have shocked the sensibilities of the whole nation. Some years elapse and circumstances being changed, the necessity for an example to society has passed. The learned judge thinks that under such circumstances the punishment awarded should be according to the great evils which the culprit entertained, otherwise, "a great wickedness, which resulted in no harm to society, would go absolutely unpunished." We would like to have a more specific statement of the supposed facts before giving an opinion, but if it be absolutely true that no harm has been done to society, and that there is no possibility of any necessity for the exercise of preventive justice, either as regards the man or the community, we cannot understand what society has to do with the case any more than if the offender had coveted my horse but refrained from stealing him—in each case "a wickedness, which resulted in no harm to society, would go absolutely unpunished."

2. "If the prevention of future offences is the sole ground of punishment, why are punishments to be apportioned according to the malignity of the offences"? "Our sole concern is the balancing of future evils to be prevented, against the future evil to be produced by the punishment." The answer is simple, and we are surprised that Mr. Justice Fry should have missed it. Punishment must protect society; and the least punishment which will have this effect is the proper measure for each offence. It is plain that a week's imprisonment would not protect society from murder, and that hanging is unnecessary to protect against petty larceny. The measure is not marked off into inches, but the experience of centuries has brought about an approxi-