witnesses on the ground of interest, our contention being that on the whole more harm than good is done by rejecting hearsay.

We cannot state the case against ourselves more tersely or forcibly than by quoting a paragraph from Pitt Taylor's Evidence, 8th edition, vol. i. p. 509, which incorporates the expressions of the American Chief-Justice Marshall, in the case of *Mina Queen and Child* v. *Hepburn*, 7 Cranch's Reports, Supreme Court, U.S.:—

"That this species of evidence is not given upon oath, that it cannot be tested by cross-examination, that is supposes some better testimony, which might be adduced in the particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind as to the existence of the fact, and the frauds which may be practiced with impunity under its cover, combine to support the rule that hearsay is inadmissible."

To take these objections in their order:—

It is quite true that hearsay testimony is not *on oath*, in the sense that the witness does not swear to the truth of the statements made to him, but only to truth of his report of the statements. But it is this true report which the jury want, just the same as they want the true report of what the witness himself said, although at the time he was speaking he may not have spoken truly. If the statements be important, and the person who made them be called at another stage of the trial, the witness's account will corroborate or contradict that person's testimony, and if he cannot be called, very important points in the case may be excluded. Moreover, this objection cannot be of much practical value, as under the curious exception of "admissions" to the general rule excluding hearsay, these hearsay statements are constantly accepted, and are of the greatest value in checking the evidence of the opposing party and also of the witness himself.

Whether or no a true report is given of statements made to the witness is probably as easy a matter to *cross-examine* to as the statements of the witness himself, or his account of his doings. Certainly the witness himself will be more easily detected in falsehood if he is to give a continuous account of his conversations and doings, than if he be able to shelter himself by only disclosing a part.

It is only sometimes true that hearsay "*supposes some better evidence which might be adduced in the particular case.*" Frequently, through death, ill-health, or absence at a distance, or other cause, no other evidence of a particular fact is obtainable, and then great injustice may be done by its exclusion. But much turns on the word "better."

Possibly *A*'s own account in the witness-box of what he said or did is, if he be a reliable witness, of more value than *B*'s report of *A*'s account to him. But just as "admissions," that is, hearsay evidence of statements by the parties to the suit, are very valuable checks upon the evidence of the parties, so hearsay evidence from *B* of what *A* said may be of great value, especially if much turn upon *A*'s evidence. Moreover, *B*'s memory of what *A* said to him is just as likely to be accurate as his memory of what he himself said, and if *A* be absent through death, ill-health, or distance, or other cause, then *B*'s evidence of *A*'s