irrelevant is merely a disguised way of saying that hearsay is rejected because it is not considered sufficiently trustworthy or *competent* to be placed before the jury, in exactly the same way that formerly witnesses who had an interest in the verdict were not considered sufficiently trustworthy or competent for their evidence to be taken into consideration.

Sir Henry Maine, in his essay on the "Theory of Evidence," points out that the great bulk of the present rules of evidence "were gradually developed as exceptions to rules of the widest application which prevented large classes of testimony from being submitted to the jury. The chief of these were founded on general propositions of which the approximation to truth was but remote. Thus the assumptions were made that the statements of litigants as to the matter in dispute were not to be believed, that witnesses interested in the subject-matter of the suit were not credible, and that no trustworthy inference can be drawn from assertions which a man makes merely on the information of other men." All these objections rested upon the insufficient appreciation of the capacity of jurymen to discriminate between that testimony which was worthy of credit and that which was not; although by a very contradictory line of thought the jury has always been, and is to the present day, held to be pre-eminently the tribunal for determining the facts in cases of fraud or direct conflict of testimony.

The alleged reasons for the rejection of hearsay and of witnesses on the ground of interest being of the same general character, though possibly differing in degree, we will shortly remind our readers of the history of the gradual admission of interested persons as witnesses, and the objections formerly urged to these changes in the law. This will throw much light upon our present subject, and will, we think, form a strong argument in support of our contention that the rejection of hearsay is a mistake.

Prior to 1833 every person having an interest, however minute, in the result of the proceedings was absolutely barred from being a witness. The law had so little confidence in the capacity of jurymen to detect fraud, and so little faith in the integrity of witnesses, that lest any untruth should be presented to the jury, a law of evidence had gradually grown up the net result of which was that in the great majority of cases every one who knew most about a matter in dispute was rejected as incompetent. Yet this extraordinary state of affairs was not merely tolerated, but justified by many able lawyers; and the public, to some extent guided by and following the lawyers, acquiesced in this, to us, viewing it by the light of subsequent events, most iniquitous state of the law. The fearful havoc played with the fortunes of the litigants when in court can easily be imagined, and also the large proportion of cases where the parties had to submit in silence to wrongs because they knew or were advised they would have no evidence to produce which the court would hear.

In 1833 the first inroad upon the exclusion of evidence on the ground of interest was made by 3 & 4 Will. IV, c. 42, sec. 26, which enacted that "in order to render the rejection of witnesses on the ground of interest less frequent, if any witness should be objected to as incompetent on the ground that the verdict or judgment in the action would be admissible in evidence for or against him, he