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."†

Had it occurred to that great jurist, when he used these words, that oaths in general might be dispensed with altogether, the very same view he must have applied to the entire class, which he held with reference to the limited and extraordinary class then under his consideration. Perhaps, too, the earnest student of our great English jurist would discover that he questioned the utility of all oaths.‡

The opinions, however, of great jurists need hardly be quoted for judges and juries who are supposed, next after the witness, to be impressed with the oath taken by him, throw aside altogether the consideration that the evidence has been sworn to; and in their decisions they are wholly guided by the credibility of the facts, which, in their eyes, receive no additional confirmation from the oath, nor does the oath, on the other side, lend to the opposing statements any strength whatever. And this seems to have been always the case, for we find one of our oldest law books in ordinary use, speaking of the "demeanor of a witness and his manner of giving evidence as oftentimes not less material than the testimony itself."*

Our lives and properties are not protected by the oath, nor does its imposition affect the conscience; on grounds of expediency therefore it fails to be serviceable. Moreover, we have seen that the interests of truth generally are prejudiced by the fictitious importance attached to an oath. On an examination of the question, then, both negatively and positively, the conclusion is forced upon us that public policy demands an alteration in the swearing laws. There is hardly a sin against society which is not referable to a disregard of truth; society may make laws to punish and deter, but the root of the evil remains untouched; we lop off branches and hope to preserve the dying tree; it is useless, the old story repeats itself. Let us follow however in the footsteps of an enlightened religion, and proclaim the securing of truth to be the great object of earthly laws. By truth we do not mean the metaphysical mirage often discoursed

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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.

‡ Bentham, Evidence, bk. 2, c. 6.

* Starkie, Ev. 547, 822, 4th ed.