not twelve jurymen generally held to be collectively as able to detect falsehood and fraud in a witness as a judge?

We have always for simplicity spoken of the issues being decided by a jury, but our remarks apply equally to a trial before a judge alone; indeed, with even more force, if we accept the generally received view, as illustrated by the acceptance of hearsay in interlocutory applications, that the judge could reject those parts of the evidence which are not worthy of credence with more facility than a jury, a view in which we must, however, confess that we do not concur.

Sir Henry Maine's essay, from which we have already quoted, dwells principally upon the Indian Evidence Act of Sir James Stephen, and the historical influence of English rules of evidence upon Indian law, and does not direct itself, except incidentally, to the consideration of how far these rules are expedient in themselves. But he seems to regard these rules of more value as a guide to the mind in assessing testimony when given than in rejecting it. Thus he writes: "An Equity judge, an Admiralty judge, a Common Law judge trying an election petition, an historian, may employ the English rules of evidence, particularly when stated affirmatively, to steady and sober his judgment, but he cannot give general directions to his mind without running much risk of entangling or enfeebling it, and under the existing conditions of thought he cannot really prevent from influencing his decision any evidence which has been actually submitted to him, provided that he believes it." Again he writes: "The system of technical rules fails whenever the arbiter of facts—the person who has to draw inferences from or about them—has special qualifications for deciding on them, supplied to him by experience, study, or the peculiarities of his own character, which are of more value to him than would be any general direction from book or person. For this reason a policeman guiding himself by the strict rules of evidence would be chargeable with incapacity and a general would be guilty of a military crime." We think that the juryman has in his daily experience qualifications for the assessment of testimony which are of more value than "any general direction from book or person." Just as the policeman maytrack a thief by taking advantage of hearsay, when he would not do so if he followed the rules of judicial inquiries, so we think the jury would often scent the truth and real motives of the parties to a proceeding from testimony which is now not allowed to be submitted to them.

It is a noteworthy fact that nearly all the cases which are quoted as authorities for the rejection of hearsay, show upon the face of them that the whole question in dispute could not have been satisfactorily submitted to the jury without taking into consideration the very evidence which it is decided the law does not admit. In an inquiry outside a court of law the evidence rejected would have been considered most material and relevant, and in many cases the jury might have come to a different decision had the whole of the evidence been before them. Can it be seriously suggested in these cases, that the jury would have been deceived by hearsay evidence of no value, more than by other false testimony which may have been admitted? The indirectness of testimony, the interest of witnesses, the facility to perjure, are all circumstances which arouse the suspicion and watchfulness of the jury to the utmost.