TRANSACTIONS

OF THE

NATIONAL ASSOCIATION

FOR THE

PROMOTION OF SOCIAL SCIENCE.

TRANSACTIONS

OF THE

NATIONAL ASSOCIATION

FOR THE

PROMOTION OF SOCIAL SCIENCE

MANCHESTER MEETING, 1866.

EDITED BY

GEORGE WOODYATT HASTINGS, LL.

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CONTENTS.

SELECT PAPERS, NOTICES OF PAPERS, ETC.

I.—JURISPRUDENCE AND THE AMENDMENT OF THE LAW.

Section A.—International Law.

International Copyright.

The Treatment of Subject Races.

III.—HEALTH.

The Smoke Nuisance.

The Pollution of Rivers.

Adulteration of Food.

The Health of Manchester and Salford.

Hospital Nursing.

Sanitary Law Amendment.

Summary of Proceedings.

IV.—ECONOMY AND TRADE.

PAGE

Summary of Proceedings

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Object and Organization.

I. The object of the Association is to aid the development of Social Science.

II. The Association comprises Four Departments: the first, for Jurisprudence and Amendment of the Law; the second, for Education; the third, for Health; and the fourth, for Economy and Trade.

III. The Association consists of Ordinary Members, Corporate Members, Foreign Corresponding Members, and Associates.

Terms of Membership.

IV. Any person who pays an Annual Subscription of One Guinea, or a Life Subscription of Ten Guineas, to the Funds of the Association, is an Ordinary Member.

V. Any Public Body paying to the funds of the Association an Annual Subscription of Two Guineas is a Corporate Member.

VI. Foreign Corresponding Members are elected by the Council, the number of such Members being limited by Bye-law. Foreign Corresponding Members are exempt from payment.

VII. Any person who pays Ten Shillings to the Funds of the Association is an Associate for the Annual Meeting for which such payment is made.

VIII. The Annual Subscription is payable in advance on the first day of August in each year.

Officers and Government.

IX. The Association has a President, Vice-Presidents, Presidents and Vice-Presidents of Departments, a General Secretary, a Secretary, a Treasurer or Treasurers, a Foreign Secretary, and Secretaries of Departments, who are all annually elected, and hold office until the appointments of the following year are made.

X. The Association is governed by a Council, and by an Executive Committee, subject to the directions of the Council.

XI. The Council consists of the following persons:—

1. The President, Vice-Presidents, Presidents and Vice-Presidents of Departments, General Secretary, Secretary, Treasurers, Foreign Secretary, and Secretaries of Departments.

2. Every Member who has filled the office of President, or President of a Department, or who has filled for two years the office of General Secretary, Secretary, Treasurer, Foreign Secretary, or Secretary of Department.

3. Every Member who, up to the 31st of July, 1862, had served for three years as a Member of Council.

4. Every Member of either House of Parliament who is also a Member of the Association.

5. Such Members, not exceeding fifteen in each Department, as shall be annually nominated by the Standing Committee of each Department.

6. Such Representatives of any Branch or Local Association, not exceeding two, as may be nominated from time to time by such Branch or Local Association.

7. Such Representative of any Society existing in connection with the Association as may be nominated from time to time by such Society.

8. Such Representative of any learned Society, or Chamber of Commerce, being a Corporate Member of the Association, as may from time to time be nominated by such Corporate Member.

9. Such Members as may be nominated by the Association, on the recommendation of the Council, for special services to the Association.

XII. The Executive Committee consists of the General Secretary, the Secretary, the Treasurers, the Foreign Secretary, one Secretary from each Department, nominated by the Council, and Twelve Members elected annually by the Council.

XIII. The Council meets at the time of the Annual Meeting of the Association, at three other times during the year, and also when specially summoned by the Executive Committee.

Annual and other Meetings.

XIV. An Annual Meeting for the reception of the Address of the President, and of the Reports of the Council and Standing Committees, and for the reading and discussion of papers, is held in such place, and at such time, as may be appointed by the Council.

XV. A Business Meeting of the Members is held in each year at the Office of the Association, at such time as may be appointed by the Council, to receive a Report from the Council on the financial and other business of the Association, to elect the Officers and Standing Committees for the ensuing year, and to enact such Laws as may from time to time be required.

XVI. The Council has the power of summoning a General Meeting of Members, on fourteen days' notice, for such purpose and at such time and place as it thinks fit.

XVII. The General Secretary, on receiving a requisition signed by twenty Members, summons, at such time being within thirty days, and at such place as he thinks fit, a General Meeting of the Members, for the purposes stated in such requisition.

XVIII. Special Meetings are held in London, under the regulation of the Executive Committee, for reading papers, and for discussion, on specific questions.

Rights and Privileges of Members.

XIX. Every Ordinary Member has the rights of attending and voting at the Annual Meeting, the Business Meeting of Members, and all other General Meetings of the Association, of being eligible to any of its offices, and of receiving gratuitously its *Transactions*.

XX. Any Ordinary Member, whose name has been submitted for that purpose to and approved by the Executive Committee, and who pays an additional annual subscription of One Guinea, or an additional life subscription of Ten Guineas, has the privileges of attending and voting at the Special Meetings mentioned in Law XVIII., of receiving all publications issued in connection with such Meetings, and of the using of the Library at the Office of the Association.

XXI. Every Corporate Member receives gratuitously a copy of the *Transactions*, and may nominate two representatives to attend the Meetings of the Association.

XXII. Every Foreign Corresponding Member has all the rights of an Ordinary Member, except that of eligibility to the Council.

XXIII. Every Associate has the right of attending and voting at the Annual Meeting, held under Law XIV.

Standing and other Committees.

XXIV. A Standing Committee for each Department is annually elected at the Business Meeting of Members. A Standing Committee has the power of appointing Sub-committees.

XXV. Special Committees are appointed by the Association or by the Council, to consider and report on specific subjects of reference.

XXVI. The General Secretary, the Secretary, and the Foreign Secretary are, *ex officio*, Members of every Committee and Sub-committee. The Secretary of each Department is, *ex officio*, a Member of every Committee and Sub-committee of such Department.

Constitution and Conduct of Meetings.

XXVII. For General Meetings of the Association twenty Members, for Meetings of the Council seven Members, for those of the Executive Committee five Members, and for those of other Committees and Sub-committees three Members, form a quorum.

XXVIII. At all the aforesaid Meetings the Chairman has a vote; if the votes be equal he has also a casting vote.

XXIX. No original motion of which previous notice has not been given is put from the Chair at any Meeting of the Association held under Laws XIV., XV., or XVI.

Finances.

XXX. The funds of the Association are kept in its name at a Bank. All sums received on account of the Association are paid into the Bank; and all cheques on the Bank are drawn by order of the Council or of the Executive Committee, signed by the Treasurer, and countersigned by the General Secretary.

XXXI. At the Business Meeting of Members two Auditors, not being Members of the Council, are appointed on motion, by show of hands, to audit the accounts for the ensuing year.

XXXII. The accounts of the Association are made up to the end of July in each year; and, after being duly audited, are appended to the Annual Report of the Council.

Vacancies in Offices.

XXXIII. The Council fills up any vacancy occurring during the year in any of the offices named in Law IX.

REGULATIONS FOR BRANCH AND LOCAL ASSOCIATIONS.

The Association recognises two classes of Provincial Associations.

I. *Branch Associations*, of which the conditions are—

Their Members to be Members of the General Association, and to subscribe £1 1*s.* annually, or £10 10*s.* as a life payment.

All the subscriptions to be paid to the Central Office, but a part to be allowed by the Council towards the expenses of the Branch, in addition to any special grants that may be made.

The Branch Association to elect its own President, Secretary, and other Officers.

The Branch Association to elect annually not more than two members of the General Council.

II. *Local Associations*, of which the conditions are—

That the Local Association shall regulate the amount of its own subscriptions, but that every Member on whose behalf 10*s.* shall be paid yearly into the general funds of the Association shall have the privilege at his option—

1. Of a copy of the *Transactions*.

2. Of attending the Annual Meeting of the Association, and of procuring a copy of the *Transactions* at a reduced price, to be annually fixed by the Council.

INCOME AND EXPENDITURE ACCOUNT, 1865-6.

For the year ending July 31st, 1866.

EXPENDITURE.

1866.		£	s.	d.
July 3.	To Publishing *Transactions* of 1864 (Balance)	27	1	4
	Editing and Publishing *Transactions* of 1865, (on account)	355	12	0
	Rent	200	1	6
	Salaries	250	0	0
	Wages	32	16	0
	Office Expenses ...	112	0	10
	Library—Books, &c., for	51	19	
	Printing, Balances for 1864-5:—			
	General	12	1	0
	Sessional	98	16	4
	Supplementary	28	4	1
	Printing, on Account for 1865-6:—			
	General	34	19	6
	Sessional	10	7	0
	Supplementary	1	5	0
	Stationery	18	12	6
	Transactions, Delivery ...	25	0	0
	Postage	58	7	9
	Collector	38	0	0
	Travelling Expenses	74	10	0
	Journal of Social Science	80	2	0
	Furniture	44	11	9
	Interest	7	10	0
	Reporting Proceedings at Sheffield Meeting	55	5	6
	Annual Dinner (1865)	56	17	0
	Balance at London and Westminster Bank ... 14 6 2			
	Ransom & Co. ... 14 4 6			
	Petty Cash 1 7 5			
		29	18	1
		£1,704	1	7

INCOME.

1866.		£	s.	d.
July 3.	By Balance at London and Westminster Bank ... 51 13 11			
	Ransom & Co. 10 10 0			
	Petty Cash 2 10 2			
		64	14	1
	Subscriptions received in Office and at Bankers	951	7	6
	Sheffield Meeting, remittance from Local Treasurer...	589	8	6
	Transactions, &c., sold	50	13	6
	Rent of Rooms on the Ground Floor ...	37	10	0
	Sale of Tickets for the Annual Dinner (1865) 41 18 0			
	Less amount entered in last Year's Account 31 10 0			
		10	8	0
		£1,704	1	7

Audited and found correct.

July 6th, 1866. JOHN HOWELL.

INTRODUCTION.

THE Tenth Annual Congress was opened at Manchester on Wednesday, the 3rd of October, 1866, with a service in the Cathedral and a sermon preached by the Rev. Canon Richson, one of the original members of the Association. On the evening of that day the customary Address was delivered in the Free Trade Hall by the Earl of Shaftesbury, K.G., who for the second time filled the office of President. A vote of thanks to his Lordship was moved by Lord Brougham, seconded by Mr. Edward James, M.P. for Manchester, supported by Sir James Bardsley, and carried by acclamation. A resolution conveying to Lord Brougham the thanks of the Association for his services as President during the past year, and for his unremitting support of its public objects, was proposed by the Right Hon. Joseph Napier, seconded by Mr. Bazley, M.P. for Manchester, and also carried by acclamation.

The address of Lord Brougham, as President of the Council, was delivered next morning in the Nisi Prius Court, where the Presidents of Departments also addressed the Association, as usual, on successive mornings before the daily business of the Departments commenced. On the Friday morning Mr. David Dudley Field, the Chairman of the International Section, read, at the request of the Council, to the whole body of members and associates, the address on an International Code, which he had originally prepared for his section. This arrange-

ment was made by the Council, not merely as a mark of respect to a distinguished American jurist, but from a conviction of the importance of the subject thus brought to the notice of the Congress.

On the evening of Friday, the 5th, a Working Men's Meeting was held in the Free Trade Hall, when the thousands who crowded the building in every part were addressed by the Earl of Shaftesbury, Lord Brougham, and other members of the Association.

A soirée was held in the central hall of the Assize Courts on two evenings during the meeting; and on each occasion the opportunity was taken for the discussion in the adjoining rooms of some topics of special interest. Mr. D. D. Field explained in the Nisi Prius Court the nature of the New York Codes, and the method by which they had been framed, in which he himself bore so prominent a part. On the same evening *comparative descriptions of the rise and progress* of the reformatory *system in Scotland, Ireland, and New York* were given in the Criminal Court by Mr. Sheriff Watson, Dr. Neilson Hancock, and the Rev. W. C. Van Meter. A discussion on the best mode of preventing bribery and corruption in parliamentary elections, took place on the second evening, and Mr. Henry Ashworth also read a paper, which has since been published, on "The Progress of Lancashire," containing a most interesting record of the rise of the cotton manufacture, and the history of Lancashire industry.

A Conference of masters and matrons of Reformatory Schools was also held during the Congress, under the chairmanship of Mr. Robert Hanbury, M.P., whose sudden loss the Association has since had to deplore; and the Earl of Shaftesbury presided over a meeting to promote the formation in Manchester of a Society for the Employment of Women, similar to those existing in London and Dublin.

A banquet took place in the central hall of the Assize Courts, on the evening of Tuesday the 9th, the Earl of

Shaftesbury in the Chair, which was attended by upwards of 200 members and associates.

The work of the Departments was conducted by the Secretaries with their customary ability and zeal, and the results were summed up in the following Report from the Council which was presented to the concluding Meeting on Wednesday, the 10th.

"The Council have much pleasure in congratulating the Association on the success of the Tenth Annual Meeting.

"The number of members and associates present has been 1,656. The papers and discussions have been more than ordinarily valuable and interesting; and the noble edifice in which we are assembled has afforded peculiar facilities for the accommodation of members, and the transaction of business.

"The Council desire to record their gratitude to the citizens of Manchester for the hospitality and kindness with which they have received the Association: to the magistrates of the Hundreds of Salford for the use of the Assize Courts: to the Rev. Canon Richson for his sermon at the Cathedral: to the local press for the publicity which it has given to the proceedings: to the Railways for the facilities they have afforded: to the Local Officers and Committees for the strenuous exertions which have led to such successful results.

"The various meetings have throughout been well attended, and the business, as arranged by the Committees of Departments, has been satisfactorily concluded. The Council allude with peculiar pleasure to the great gathering of working men on Friday evening last, distinguished by its orderly character and the interest manifested in the proceedings. Such meetings can hardly fail to be productive of good, because they tend to increase the sympathy between different classes, and to quicken the interest of the Association in those questions which more peculiarly affect the condition of the great bulk of our population. The Council will always bear such questions in mind; they wish to see them impartially and dispassionately considered, with due weight given to the opinions of the class most nearly interested in their solution; and to this end they hope to adopt at future meetings some plan by which working men may be admitted in greater numbers to the discussions of the Congress. They take this opportunity of expressing their hope that the existing law for enforcing contracts between master and servant may be so modified by Parliament, as to remove the imputation of harshness and injustice from our legislature on this head. This question will be brought before the Association by Mr. Edgar, one of the secretaries of the Economical Department, at an early period in the approaching session.

"The Association has had the advantage on this occasion of the presence of a distinguished American lawyer, who has conferred on his own State the signal benefit of a philosophical Code of Law. Mr. David Dudley Field, in the address which he delivered as Chairman of the International Section of our Jurisprudence Department, advocated in eloquent terms, the promulgation of an International Code, for the settlement of any disputes which may arise between

civilized States; and he suggested that this Association might make a commencement of this great work. The Council, after due consideration, have resolved to accede to Mr. Field's proposal, and they have this day appointed a Committee, charged with the preparation of the outline of an International Code, who will report to the Association at its next Annual Meeting.

JURISPRUDENCE AND AMENDMENT OF THE LAW.

"In Section A (International Law) of this Department, the valuable paper of Mr. Anthony Trollope, on International Copyright, led to an instructive discussion, during which the Chairman (Mr. David Dudley Field), expressed his opinion that if the matter were properly brought before the people and the legislature of the United States, the question would be satisfactorily adjusted.

"*In the same Section* the duty of the Mother Country towards inferior races in the Colonies was considered, and a strong opinion was expressed that judicial appointments in all our dependencies, inhabited by mixed races, should be placed in the hands of the Imperial Government, in order to secure that first requisite for the due administration of justice, an impartial an independent bench.

"In another debate in the same Section, the weight of opinion was in favour of a system of international extradition for non-political offences, guarded by the provision that the prisoner so given up should be within a certain time put on his trial before the tribunal of his own country for the offence alleged against him at the time of his extradition and for no other, and that failing the fulfilment of these conditions, the state that had given him up should have the right to reclaim him. It was further suggested that a high officer of state might be constituted, before whom the *primâ facie* evidence of guilt in such cases might be laid, for his opinion whether the charge was *bonâ fide* made or fabricated for the purpose of getting possession of the alleged criminal, and that the decisions of such an officer, under the express provisions of an International Code, would be invoked with as much good faith and received with as great confidence by foreign nations as those of Prize Courts.

"In Section B (Municipal Law) of the same Department, the necessity for an entire change in the existing law of Bankruptcy, and the adoption of the principle that the creditors of an insolvent debtor are entitled to the exclusive control over his estate, were urged with much force. This principle it was thought would be most effectually carried out—

"(1) By abolishing the existing courts and machinery of bankruptcy.

"(2) By enabling the creditors, as a body corporate and extra-judicially, to possess themselves of and realize the estate of their insolvent debtor, and to grant him acquittance from any future liability in any way they should decide upon.

"(3) By leaving the ordinary criminal courts to deal with such acts of the debtor as are of a penal nature; and—

"(4) By leaving all litigation relating to the winding-up to the ordinary civil courts, superior and local.

"It was unanimously agreed that the Committee of the Department be recommended to prepare a full report on the papers and discussion, and submit the same to an early meeting of the Department in London.

"The discussion as to the best method of reducing the law of England to a compendious form was preceded by an evening address from Mr. David Dudley Field, one of the three Commissioners entrusted with the work of codifying the Law of the State of New York. In popular and lucid language he described to a large audience the origin of this great undertaking, and explained the method by which the code was compiled, corrected with infinite pains, and finally completed. On that occasion and on the following morning Mr. Field met all the main practical difficulties attending the work; showed how they had been dealt with and disposed of by himself and his colleagues, and recommended in the most emphatic manner the adoption by this country of a plan substantially in accordance with that which they had successfully tried. The able and convincing statement of Mr. Field made a very striking impression. The discussion indicated a strong feeling on the part of the Section that there should be no longer delay in beginning the work, and in accordance with this opinion the Council have to-day resolved that they will urge upon the Government either the immediate appointment of a Royal Commission, or such other step as may be best calculated to lead to the early adoption of the most practical and efficient method for reducing the law of England to a compendious form.

"The subject of bribery at elections was brought before the notice of the Association. Various remedies were proposed, all, or most of which are deserving of consideration; but the Council lean to the opinion that the crime of electoral corruption should be the subject of some measure of penal legislation which would affix to the offence, especially as against the person corrupting, the social degradation it deserves.

"Mr. Hare's paper led to a careful and closely-reasoned discussion on his proposed arrangement for giving full expression to the thought and intellect of the constituencies.

"Section C (Repression of Crime). The mode in which life sentences should be carried out to the utmost was fully discussed, and the following resolutions, on the motion of the Rt. Hon. Joseph Napier, were unanimously adopted:—

"'1st. That the altered circumstances of this country with regard to Transportation renders it necessary that the treatment of 'Life Sentenced Convicts' should be revised, and that such steps be taken for the protection of Society as will cause their liberation to be the exception, and not, as heretofore, the rule.'

"'2nd. That the opinion of those qualified to judge induces the conclusion that the retention of this class of prisoners under the circumstances, in the Ordinary Convict Prisons would be attended with danger to those Establishments and be detrimental to the prisoners; and that it therefore appears to be absolutely necessary to institute a Special Prison for the purpose, if possible on some island near our own shores, in which a special treatment could be carried on suitable to the peculiar position of the inmates.'"

"On the question of Infanticide the necessity of further legislative action was insisted on, so as to cast the burden of illegitimate children on both parents according to their means. It was also agreed on all hands that capital punishment for this crime should be abolished, and that the modification of the law proposed in the 12th, 13th, and 14th clauses of the Report of the Commission on Capital Punishment ought to be adopted

"With regard to the special question proposed relative to Coroners' inquests, it was the general opinion in the Section that they should be held compulsorily in workhouses, reformatories, and lunatic asylums, as they now are in gaols. It was at the same time urged that Coroners'

courts, as at present constituted, need much improvement if they are to fulfil adequately the ends of justice.

"The Council learn with much satisfaction from the proceedings in this Section that the exertions recently made for the reformation and future employment of female convicts have met with much success through the operations of "The Carlisle Memorial Refuge," and other Refuges of a similar nature."

EDUCATION.

"The discussion in the Second Department on the best means of removing the impediments to education in the manual-labour class brought out a strong (though not unanimous) expression of opinion in favour both of legally obligatory education, and of an education rate. It was evidently not the wish of the Department that such measures should lead to the abandonment of the present denominational system; and a deep-seated repugnance to the surrender of religious teaching manifestly prevailed. Provided the parents had a free choice of schools such a surrender, it was thought, might, in large towns at any rate, be avoided; and the experience of the Manchester Education Aid Society had evidently a great influence in leading the meeting to this conclusion.

"It would be impossible to epitomize here Sir James Kay Shuttleworth's masterly paper on the administration of educational endowments. It can hardly fail to exercise, when published in our *Transactions*, a considerable influence on the decision of Parliament in this matter. In this paper he has renewed a proposal for the formation of a Department of Public Charities in connection with the Privy Council, and acting in harmony with the Executive Committee. This proposal obtained the approbation of influential members of Lord Aberdeen's Government in 1853, and was, in many of its details, the basis on which the present Charity Commission was constituted. That Commission might have its powers extended, and its relations so altered as to occupy the place which it did in the original scheme.

"On the Religious Difficulty the resultant opinion of the Department seemed to be that it was of paramount importance to secure the exemption of children in state-aided schools from teaching out of harmony with the convictions of their parents. Whether this was to be effected *on the principle of the Conscience Clause; or by the adoption of a secular system, was a point on which the meeting seemed to be about equally divided, though the feeling was strong that if the former plan* unhappily proved to be inadequate, then a secular scheme must be adopted. There was a unanimous expression of opinion, in which the President concurred, that the matter was ripe for immediate parliamentary treatment.

"The conditions on which pecuniary assistance by the State should be extended so as to reach classes of schools hitherto either inadequately or completely unaided formed the subject of a lengthy discussion. Against the lightening of the conditions it was argued that to lower, in any case, the standard on which grants might be given was to infringe on the main purpose of the present system, which was the extension of popular education so long as it did not fall below a certain standard of efficiency; that it would be very difficult to grant assistance on different terms to schools standing side by side; and it was better to wait for some thorough scheme of education, rather than adopt make-shift alleviations in the interval. But the feeling of the Department inclined towards the belief that the necessities of the classes shut out from the present system were so urgent as to outweigh

such considerations, and the following resolutions were accordingly adopted:—

"'That this Department, while strongly affirming that complete provision for national education must be made by Act of Parliament, are nevertheless convinced that much might be done in the meantime by relaxing in some points the Privy Council rules, and therefore earnestly request the Council of the Association to press on the Committee of Council on Education the necessity for modifying the Revised Code in the following particulars in the case of elementary schools, where the average attendance is below 70, or where the school fees do not reach one-sixth of the total annual expenses:

"'1. That a certificated teacher be not necessarily required.

"'2. That the age at which children present at the inspection become entitled to the grant of 6*s.* 6*d.*, without individual examination, be raised from six to eight years.

"'3. That supplementary rules 8 and 9, which fix the standard higher than the schools in view can attain be not enforced.

"'4. That where an additional expense is incurred by industrial teaching a grant in aid be given.

"'5. That when the schools are held in rented premises no reduction be made for endowment, unless to the extent of the excess (if any) of the endowment over the rent.'"

"A discussion on Mr. Nassau Molesworth's paper on "The Half-time System, brought out the expression of a very strong feeling in favour of the extension of that system to all branches of labour."

HEALTH.

"In the Department of Health the suggestion of the Standing Committee that a Royal Commission ought to be issued to frame a measure for the consolidation and better administration of the laws relating to the public health, was unanimously approved. It was the general feeling that in any such revision of legislation, many sanitary enactments which are now permissive, should be made compulsory; and that the area of sanitary administration should be extended so as to embrace considerable population.

"The evil effects of smoke on health, vegetation, and on certain manufactured goods, as well as on the spirits and comfort of the people, were insisted on in another paper by Dr. Angus Smith. It was considered that small, certain, and cumulative fines would be more effectual for the prevention of this nuisance than heavy fines, which are seldom imposed and are therefore inoperative. It was thought that the duty of inspection and of enforcing penalties should be in the hands of Government, rather than of parties locally interested. Cases in Cornwall were cited of the prevention of smoke for nearly 50 years past by the careful use of coal, and with great saving of fuel; and it was the predominant opinion that smoke *could* be consumed, and that measures ought at once to be taken to secure this most desirable end.

"In the debate on the pollution of rivers, opened by Dr. Stevenson Macadam, the following resolution was unanimously adopted on the motion of Lord Robert Montagu:—

"'That while it is necessary to remove, as speedily as possible, excreta and refuse from houses, it is advisable to procure eventually compulsory legislation against the pollution of rivers by the sewage of towns, and that the Council be requested to petition Parliament to compel towns and manufactories to use all practicable means for arresting such pollution.'"

"On the question of the adulteration of food, it was considered that the present Act requires amendment. It was suggested that the law should be in some degree assimilated to that relating to weights and

measures, and that the penalties for offences should be chiefly in the nature of publication and exposure.

"The subject of volunteer nurses was dealt with in an able paper by Miss Garrett, and her opinion that the best permanent security for obtaining good nursing is to give a higher status and more liberal pay to those employed, met with the approbation of the audience.

"The excellent water supply of Manchester was noticed more than once in the Department with hearty commendation, and a valuable paper on the health of the city was contributed by Mr. Ransome and Mr. Royston.

"A suggestion was made to the Department, which seemed to meet with general approval, that the relations of Dr. Snow would be fitting recipients of a pension in the civil list in requital of the service rendered to humanity by his discovery of the mode of the propagation of cholera by impure water."

ECONOMY AND TRADE.

"In Section A of the Department of Economy and Trade a resolution was passed, after a long discussion, affirming that the necessities of the country call loudly upon the Legislature to pass a general measure to amend the law regulating the sale of intoxicating liquors; and requesting the Council to memorialize the Government for the enactment of such a measure, and for the insertion therein of clauses enabling the inhabitants of townships and parishes entirely to prohibit the granting or renewing licences whenever a large majority so desire.

"On the subject of the dwellings of the labouring classes an important discussion took place, the general result of which seemed to be rather in favour of buying up blocks of old buildings, and putting them in a condition suitable for human habitation, than of attempting much at present in the way of new erections. A strong feeling was expressed in favor of Parliament granting compulsory powers for obtaining possession of such buildings.

"The subject of Co-operation was also fully discussed. Much valuable information was obtained, and while the difficulties which lie in the way were stated by various speakers, there was a general agreement in the hope of final success.

"In Section B of the same Department the question of Taxation was discussed, and a general opinion was expressed that the number of articles subject to duties of custom and excise should be further diminished, in the social interests of a people still heavily burdened with imposts, whose industrial resources and bodily comforts have multiplied so marvellously under successive reductions of indirect taxes, and seem to promise an almost unlimited expansion under a wise fiscal policy.

"The question of the Bank Charter Act and of the reduction of the National Debt also occupied the attention of the Section.

"The important questions alluded to above, and others which have occupied the Congress, will receive the earnest attention of the Council and the different Committees during the ensuing session; while the forthcoming volume of *Transactions*, which will be as usual supplied gratuitously to each guinea-member, will contain an accurate and permanent record of the papers and discussions at this Manchester Meeting.

"The Council have only further to add that they have accepted, on behalf of the Association, an invitation from the Town Council of Belfast to hold the Eleventh Annual Meeting in that city in the

month of September, 1867. They trust that they may be then able to congratulate the members on a Congress as successful and instructive as that which is now about to close."

The thanks of the Association are expressed in the foregoing Report for the hospitality and kindness shewn by the Local Committee, and the inhabitants of Manchester; but it may be mentioned that the principal manufactories, and a number of public institutions were thrown open to the members and associates, and that the accommodation supplied to all the officers of the Association, was unusually liberal. For the highly successful arrangements of the Congress, we were especially indebted to the Local Secretaries, Mr. J. W. Maclure, Mr. Herbert Philips, and the Rev. A. S. Steinthal. The total proceeds of the tickets sold at the Meeting, amounting to the sum of £1,072 10s. were transmitted to the Association by the Local Treasurer, Mr. Oliver Heywood, on the 29th day of November last, and were acknowledged by a resolution of that date expressing the cordial thanks of the Council, for the success of the Manchester Congress.

Since the publication of the Sheffield volume of *Transactions* the Council received from Lord Brougham an intimation that he could not again undertake to fill the office of President of the Association; and therefore the following resolution, moved by Sir James Kay Shuttleworth, was unanimously adopted:—

"That this Council have heard with great regret the announcement made by Lord Brougham, that he feels it indispensable to decline to preside at the ensuing Annual Meeting at Manchester; and they cannot receive this announcement without putting on record their grateful sense of the great services which his Lordship has rendered to the Association as its President from its commencement, and by his presence and addresses at every Annual Meeting, as well as by the exertions of his personal influence to promote the success of all the objects which the Association has had in view."

With respect to resolutions passed by the Departments at Manchester, an inquiry addressed to the Government elicited the information that her Majesty had been advised to issue a Royal Commission on the expediency of forming a Code or Digest of the Law of England; and under these circumstances

the Council did not think it necessary to send another deputation to the Premier on this subject.* This Commission has recently made its first report, proposing that some portions of a Digest should be made tentatively, a recommendation which unfortunately falls far short of the hopes entertained by the Association.

The Council determined to leave the resolutions concerning the treatment of life-sentenced convicts in the hands of Sir Walter Crofton, who has been consulted by the Home Office on the subject.

The following Memorial was presented by a deputation to the Duke of Buckingham, then President of the Privy Council, on the 15th of January last.

"The Council of the National Association for the Promotion of Social Science desires to submit to your Grace the propriety of somewhat relaxing the requirements of the Revised Code in the case of urban Schools intended for very poor children. They propose to define these schools as "town schools in which the fees in the aggregate do not amount to more than one-ninth of the total annual expenses. This definition would keep down the payments to an average of about 1*d.* a week.

"Much evidence has been accumulated which proves that a very large proportion of the children now absent from the schools aided by the State are shut out by the inability of their parents to pay the school fees.

"It is vain to expect that schools for this class of children can be permanently maintained by benevolent persons, for the burden is too heavy. In other elementary schools, the subscribers have to provide only about one-third of the annual income, the children's fees and the Government grants furnishing the rest; but in these the fees range from nothing to about one-ninth of the total cost, while experience has shown that schools frequented by the children of poverty-stricken parents, even if the conditions of the Revised Code were complied with, must always fall below the average standard, and consequently obtain, on the present terms, very small assistance from Government.

"The Council therefore earnestly beg your favourable consideration for a relaxation of the Code in the case of these schools, in the three following particulars:—

"I. That a certificated teacher be not necessarily required. The existing requirement places poor schools at a great disadvantage. It is well known that the more efficient certificate-holders will not take charge of a school for destitute children in a squalid neighbourhood, unless induced to do so by a high salary. The managers therefore have to accept the alternative of unusual expense, or comparatively inefficient teaching. Were they left free in their choice, however,

* See p. xxxv of the Introduction to the *Transactions* of 1865.

they could procure masters and mistresses more suitable for such schools, at a moderate salary, than the lower grade of those who hold certificates are likely to prove, their training not having given the latter any special qualification for the management of children of the destitute class.

"II. That Supplementary Rule 9 be not enforced; that the grant for average attendance be raised (except in infant schools) from 4s. to 5s.; and the grant after examination from 8s. to 9s. By thus slightly lowering the standard, and at the same time increasing the grant for attaining it, the Council believe that the schools in question would obtain as much, or nearly as much, assistance as others do. For more they do not ask.

"III. That wherever additional expense be incurred for industrial teaching a grant in aid be given. For this concession the Council submit that there are two adequate reasons. However desirable industrial teaching may be in other elementary schools, in those for 'neglected and destitute children' it is almost a necessity; partly because from their habits they are unfit to bear long mental exertion, and partly because they have to be taught in school to earn their livelihood.

"The Council are convinced that these relaxations might be made without danger of abuse. The condition that the fees, which usually reach one-third, shall not exceed one-ninth of the annual cost, would render these schools so burdensome to their supporters as effectually to prevent their establishment where no real necessity exists."

In pursuance of a resolution passed by the Health Department in favour of a revision and consolidation of the laws relating to Public Health, the following Memorial was presented by a deputation to the Duke of Marlborough, President of the Privy Council, on the 2nd of April last, when an undertaking was given by his Grace, that the attention of the Government should be at once directed to the subject.

"The Council of the National Association for the Promotion of Social Science desires to submit to your Grace the following considerations respecting an amendment and consolidation of the laws relating to Public Health:—

"These laws are numerous and diverse; and, as different subjects of legislative interference arise from year to year, become more complex and more difficult to interpret and apply.

"Some of the enactments are general, some local. The provisions of the latter are often of universal value and applicability, and might beneficially be introduced into the former. In other instances there are different enactments relating to the same cases, with different penalties for the same offences. For instance, sec. 63 of 'The Public Health Act, 1848,' and sec. 2 of 'The Nuisances Removal Amendment Act,' 26 and 27 Vict. c. 117, intended to prevent the sale of diseased meat, and collateral in their operation, impose a penalty, the one of £10, the other of £20, in precisely similar cases. This, of necessity, leads to confusion.

"Some important enactments are permissive; indeed this principle very extensively pervades sanitary acts of the greatest importance, and consequently they are seldom acted upon. For instance, sec. 22 of 'The Nuisances Removal Act, 1855,' where, when ditches, etc., are a nuisance, it is left to 'the opinion of the local authority' to decide whether the nuisance requires a sewer for its abatement; and secs. 23 and 24 of "The Sanitary Act, 1866,' relating respectively to the provision of means for disinfection and of carriages for the conveyance of persons sick of infectious disorders; sec. 27 of the same Act and sec. 81 of 'The Public Health Act, 1848,' concerning the establishment of places for the reception of dead bodies; and sec. 52 of 'The Public Health Act, 1848,' with reference to compelling a proper provision of closets in factories, are all permissive.

"The bodies appointed to administer Health Laws are not always identical, as it is evidently expedient that they should be. There are natural connections which ought not to be disregarded—*e.g.*, the supply of water with the removal of waste, the large with the small means of drainage. These are under diverse authorities. Without bodies of more general and uniform powers, wider districts, and highly qualified Officers of Health precluded from private practice, Health Laws cannot be made fully successful in their operation. 'The Sanitary Act, 1861,' constitutes sewer authorities, differing, in some respects, from local authorities under other statutes. The Common Lodging Houses Acts are committed to the management of the police in the metropolis, to Local Boards of Health, to Town Commissioners and Justices in other places. The appointment of analysts rests with the Court of Quarter Sessions in counties, and with the Town Council in boroughs having a separate jurisdiction, instead of with the usual authorities for sanitary purposes. Further, this most important appointment is seldom made, as the law merely gives a permission to appoint.

"The local authorities are more or less unlearned, and for that reason require plain and specific directions. They are interested in diminising the rates, unmindful of the probable costliness of their parsimony; and they are, therefore, frequently unwilling to act in sanitary matters, except under compulsion. They are often ignorant of the importance of sanitary precautions, and indifferent to flagrant nuisances, and to the serious consequences arising therefrom to individuals, to others beyond the offending district, and to society at large. Hence the need of a special and central department to stimulate an unwilling or inefficient local authority, to act as a Court of Appeal, to diffuse to all the knowlege obtained from districts that have no connection with each other, to protect individuals and minorities against injustice, and being possessed of the highest practical knowledge, to construct or sanction bye-laws and local regulations.

"The Building Acts, which should at least contain sound rules for insuring due attention to health in the erection of habitations, are very deficient indeed in this point of primary importance. In some few places bye-laws are even now made to serve the purpose. It is undeniable that without some very uniform and stringent additions and alterations to Building Acts (such as that which is now being promoted by the Metropolitan Board of Works), the construction of healthy dwellings, especially for the poorer classes, acknowledged to be required on a very large scale indeed, will most deplorably fail; and the new tenements will doubtless be as bad as the old, or even worse.

"The sale of unwholesome and adulterated food calls for very serious attention, and for a much more efficient law. The present law is full of difficulties and defects, is much complained of, and is almost inoperative.

"While, therefore, the Acts remain so complicated and multifarious, as are those now in force, it is impossible to hope for an efficient sanitary administration; especially as the principles underlying all true sanitary law are the same, more or less applicable in the same way in all places.

"On these grounds the Council earnestly submit, for the favourable consideration of the Government—

"1. That the laws of Public Health require to be revised and consolidated with plain and specific enactments on sanitary matters.

"2. That permissive enactments are generally taken to be permissions not to act, and that therefore the most useful provisions should be made peremptory.

"3. That the constitution of sanitary authorities should be more uniform; their areas of administration more extensive; their powers and functions more comprehensive; and that some provision be made for the addition of members possessing other and higher qualifications than those now required.

"4. That the inefficiency in the administration of the Health Laws by the local authorities is in part due to the absence of a central power, which could be appealed to without reference to the courts of law, and could by means of judicious advice, and, if necessary, by legal compulsion, cause the local authorities to do their duty."

In Section A of the Economy and Trade Department, the following resolution was passed at Manchester, and was referred by the Council to the Standing Committee of that Department, to consider and report thereon:

"That in the opinion of this Department the interests of the country call loudly upon the Legislature to a pass a general measure amending the laws regulating to the sale of intoxicating liquors, and would therefore respectfully request the Council of the Association to consider the propriety of memorialising Government to insert clauses in any measure amending the licence laws, enabling the inhabitants of townships and parishes entirely to prohibit the granting or renewing of licences whenever a large majority so desire."

The Committee, after several discussions, prepared a memorial embodying substantially the recommendation contained in this resolution, and presented the same to the Council for approval; but the introduction into the House of Commons of the measure commonly known as the Liverpool Bill, as well as

the difference of opinion apparent in the Council on the question induced the subsequent withdrawal of the memorial.*

On the 21st of March the Council appointed a Special Committee to inquire into the principles and working of the system of Jury Trial, and the best mode of removing and defects therein and securing its efficiency. This Committee has already collected a considerable amount of valuable information by the examination of witnesses specially conversant with the subject, and has communicated the results of its inquiries (through its Chairman, Mr. Serjeant Pulling) to the Select Committee of the House of Commons recently appointed to investigate some points bearing on this vital question of constitutional law.

In the autumn of last year Miss Mary Carpenter, one of the most esteemed and eminent of our members visited India with a view to inquire into the social condition of its inhabitants; and on her return to England in this spring she communicated the information she had acquired respecting the state of Female Education, and of the Gaols in India, to two evening meetings of the members at the office of the Association. On the second occasion Major Hutchinson, Inspector of Police in the Punjaub, also gave the result of his official experience on the state of prison discipline in that province. The Committee of the Reformatory Section thereupon resolved to present the subjoined Memorial to Sir Stafford Northcote, the Secretary of State for India.

"Sir, — The Committee of the Reformatory Section of the Association for the Promotion of Social Science, and of the Law Amendment Society, begs respectfully to solicit your attention to the state of the Gaols and of Prison Discipline in India.

"You are, Sir, aware that the question of the due treatment of criminals, with a view to the reformation of the offender and the future prevention of crime, has long occupied the attention of the Societies

* I must take the opportunity of correcting an inacuracy in the *Journal* of the Association, wherein it was stated that the feeling of the Council was unanimous in favor of withdrawing this memorial. Though quite ready to concur in the opinion that it might not be expedient to press the subject on the attention of the Home Office at that particular moment, I spoke strongly in favor of adopting the memorial, in order that action might be taken upon it on the first favourable opportunity. Certainly there were several members of the Council who agreed in that view of the matter. G.W.H.

represented by this Committee. It has also been frequently considered by Parliament, and has been reported on by Royal Commissions and Committees of both Houses. By these means the true principles of Prison Discipline have been fully elucidated; a system founded upon those principles has for some time past been in successful operation in the convict prisons of Ireland; while a similar system has been to a considerable extent adopted throughout the United Kingdom.

"The establishment in Her Majesty's Indian Empire of a system of Prison Discipline founded on the same sound principles, is the object which the Committee has in view in thus addressing you. Of the existing evils in the Gaols of India, evils great and even terrible, the Committee can have no doubt, after hearing the information detailed to it by eye-witnesses who have recently quitted that country. This evidence is, moreover, corroborated by the facts stated in printed official reports.

"For example, it must be conceded that the separation of criminals at night is an essential element of sound prison discipline. Now the Committee learns that throughout the Gaols of India there are but few separate sleeping cells, sometimes as many as forty or fifty prisoners being locked up together, generally for twelve hours, and that without light. Under such circumstances it is no wonder that the prison officers find it impossible to prevent grievous moral contaminations, and even heinous crime.

"The Committee also learns that hardly any provision exists for the instruction of the prisoners, either by the appointment of suitable schoolmasters, or in any other way. It is obvious that religious teaching cannot be given to Native prisoners; but this makes it the more important that they should have the benefit of moral training, and of the elements of education.

"The case of the female prisoners seems to be even more deplorable than that of the males; since they not only suffer the same evils, but have the additional disadvantage of being left without any warders of their own sex, and in a great measure without care or help in their wretchedness.

"The Committee is informed that in many gaols there is enormous crowding, and other evils incident to the unsuitable condition of the buildings, which frequently have been erected for other purposes than that for which they are employed. There is consequently a very high mortality. The Gaol Report of the Madras Presidency gives a death rate of 12·944 per cent. per annum.

"Hardly any provision seems to have been made for the reformatory treatment of young offenders in India; yet the contaminating nature of the gaols, and the known increase of juvenile crime, make the establishment of reformatory schools an urgent necessity. To you, Sir, the Committee need not quote the beneficial results which have followed the institution of reformatories in this kingdom, for you have been one of the most consistent, as you were one of the earliest supporters of that system.

"The Committee is aware that the evils above described have long been the subject of anxious consideration by the Government of India, and that some ameliorations have been at various times effected; but the difficulties in the way of improvement seem to be too great to be surmounted by the means hitherto employed. The principles of convict treatment which have been adopted in this kingdom do not seem to have found their way into India. At this moment several new gaols are contemplated, and central prisons for long-sentenced prisoners are in course of erection; yet even in these the provision

of separate sleeping cells for all the prisoners does not form part of the arrangements, nor is the Committee aware that the gaols generally are being constructed in a manner suited to the adoption of a sound system of discipline. Immediate action seems, therefore, to be urgently required to prevent the expenditure of public money in a way which may hereafter be deeply regretted. With this object in view, the Committee ventures to suggest that a Commission, constituted of some person or persons thoroughly versed in the improved treatment of convicts, be sent to India to co-operate with the Government there in the establishment of a proper system of prison discipline.

"The Committee need not point out that a salutary treatment of prisoners leads necessarily to the prevention of crime and consequently to an economical saving both to the Government and to the whole community. On this ground alone the Committee might be justified in calling your attention to the subject; but there are higher considerations than this; those of the welfare of the immense population of India, and of the moral duty which devolves on our nation to care for the interests of our Indian fellow subjects. These, Sir, have impelled the Committee to address you thus earnestly, in the full conviction that its representations will receive from you a favourable hearing."

The deputation who presented this Memorial on the 5th June last were most favourably received by Sir Stafford Northcote, and it is hoped that some active steps may be soon taken by the India Office to remedy the evils complained of. It is probable that the Association will resolve to address its attention more closely than it has hitherto done to the social condition of our Indian fellow-subjects; and it will doubtless manifest its desire to co-operate with the Association recently founded in Bengal for objects similar to its own, and on a basis carefully modelled after its example.

The Rev. Walter L. Clay, having obtained ecclesiastical preferment, has resigned the office of Secretary, to which he was appointed in May, 1866, on the retirement of Miss Isa Craig. The office has been thereupon abolished by the Council.

The loss sustained by the death of Mr. Robert Culling Hanbury, M.P., Chairman of the Reformatory Section, has been already noticed. Sir Charles Hastings, who was President of the Health Department at the York Congress, Sir Villiers Surtees, and Mr. Serjeant Manning have also died within the twelvemonth past.

The Eleventh Congress will be opened at Belfast on the 18th of September next, under the presidency of Lord Dufferin.

GEORGE WOODYATT HASTINGS.

Opening Address

BY THE

RIGHT HON. THE EARL OF SHAFTESBURY, K.G.,

PRESIDENT OF THE ASSOCIATION.

HAVING already fulfilled the respective offices of a Vice-president and President at two of the meetings of this Institution, if I be asked a reason of my re-appearance on the present occasion, the answer thereto will be very simple.

First, Lord Stanley, who had been appointed to the distinguished honour, was called away to exercise his high talents in discharge of the duties of Secretary of State for the Foreign Department; and,

Secondly, Lord Brougham, who has so often and so powerfully occupied this chair, pleaded in refusal, the increase of age and infirmities, desiring some little repose after his brilliant and laborious services. However deep our regret, the appeal was irresistible; and the committee,—though sure that it was difficult to find a successor, and impossible to find a substitute; and while convinced, moreover, that the noble lord, differing from so many men, who at times are able but not ready, and at others ready but not able, would here be, as usual, both ready and able in any effort of science and intellect,—gave way upon the point, and followed his judgment rather than their own.

By this time the session was very far advanced; most persons of note had quitted London—the choice was necessarily limited; and the request was addressed to myself, with which I complied, because, although weary from labour and other causes, and in many respects unfit, I wished to show that I had not forgotten, and that I never could forget, the people of Lancashire.

We are now about to celebrate our tenth anniversary, and we may be summoned to show cause why our existence should be prolonged, we may hear that the questions are exhausted,

and the perpetual repetition of the same details is wearisome and useless. But let it be observed, that the repetition of the same details is not in the same places and before the same audiences; and, even if it were so, there steps in the language of the Apostle, "to write the same things to you, to me, indeed, is not grievous, but for you it is safe;"—safe, because we speak of things which come home to every man's life, and almost to every man's bosom—things which cannot be neglected, if ignorantly, without danger, and, if wilfully, without both danger and crime.

It is true, no doubt, that we have given to the world several volumes of *Transactions*, abounding in most valuable reports of our discussions and proceedings. They are rich in argument and facts on all the subjects embraced in our programme; and were the curious and the sympathising disposed to study them we might be spared, for some time at least, any further efforts in this direction. But such is not the case, and we must trace it to a spirit at all periods strong, but peculiarly so in our own generation—a love of things actually or apparently new. An old thought, an old fact, an old inference, dressed up in a new garment and presented in a fresh light, has all the charm of novelty, even to minds well conversant with the subject; and hundreds, no doubt, who would shrink from the dull and solitary pursuit of facts diffused through numerous and bulky octavos, are fascinated by the human voice in the delivery of eloquent addresses, or in the lively, vigorous, and profitable discussions that follow so frequently on the close of the several *papers*.

But, though we have old subjects, see how constantly we are aided by new men—and herein lies one great advantage of our system. Latent science, latent zeal, latent energy, latent intellect, latent, through diffidence, want of opportunity, or subject-matter, are brought to the light of day before your assembled congress. Each one who has contributed an essay, or taken part in the deliberations, returns to his home, and becomes recognised as a centre of influence and practical knowledge. Thus the spirit and power of active service are widely diffused, silently working in times of health, but prompt and loud in times of disease; and I cannot but attribute, under God's good providence, the suppression of the late epidemic, in no small measure, to the larger views, the readier knowledge, the greater capacity for imposing discipline, or submitting to it, and to the faculty, so recently and so advantageously exhibited, for immediate and effective co-operation among functionaries and volunteers, professional and unprofessional persons—all which issues have sprung from the exhortations we

have uttered, the lessons we have given, the facts we have adduced, the proofs we have instituted, and the healthy and enlightening circuit, as it were, of our Judges of Assize, who go forth, year by year, to set at liberty a legion of physical and moral truths, long and hopelessly despised or imprisoned by the ignorance or indifference of our forefathers.

It is said in many quarters, "the Congress has exhausted the subject, but nevertheless it has devised no cures." The second part of the sentence thus refutes the first, for the whole thing then remains to be done. So far from having exhausted the subject, we have barely penetrated the outer crust, nor will our real difficulties diminish, as in the physical sciences, with improvements of knowledge. It is impossible for us to lay down our formulæ, as in chemistry, astronomy, and geology, to be obeyed and relished the moment they are reduced to actual demonstration. In our pursuits the moral and physical elements are closely, intricately, and inseparably combined. We shall probably break up, this very session, having established to our hearts' content, and that of all thinking people, the necessity and practicability of many things essential to the bodily and mental welfare, nay, safety, of millions, all to be set aside or ignored, as the phrase is, with some honourable exceptions, by vestries, boards of guardians, and every form, pressure, and kind of single or associated proprietors.

To pause, however, in our career, would, on the part of science, be a pusillanimous confession of defeat; but on the part of humanity and morals it would be a resolution no less perilous than disgraceful.

Nevertheless, some care is required in the opposite direction. I may be wrong, yet I cannot but suggest a little hesitation before we embark on questions that are simply political or imperial. I have been urged to lay before the congress, irrigation in India, bribery at elections, treaties with foreign nations, and many other points of a similar character. But, first, I have no wish to see our gatherings converted into parliaments; and secondly, we have enough on hand to demand, and to occupy, the activity of at least two-thirds of a generation.

The President of the day is, I conclude, expected to say a few words, in the nature of a charge to the jury, on the several subjects to be handled in the various sections. For my own part I approach not a few of them with fear and trembling, feeling, in my ignorance, that the "safest eloquence concerning them is my silence;" and that in matters of law, the first here on the list, we unprofessional persons are tempted some-

times to take a common-sense view of the question; and then we are sure to be wrong. So, leaving the important principles and graver details to the enlightened and distinguished men appointed to this department, I will simply notice one or two heads that have fallen occasionally under my own observation.

A great and startling problem is proposed, "What are the best means of preventing Infanticide?" I am glad that the subject is introduced, and that the congress scouts the assertion made, I regret to say, not very long ago, by two eminent persons, that to institute such an inquiry, was to institute a libel against the women of England. The crime has attained to formidable proportions, and may not, in decency, be disregarded. We have not yet sufficiently examined and methodised the many, various, and complicated causes that lead to the perpetration of it by interested agents, or the palliation of it before juries. My own opinion is, if I may venture to say so, that, in a state of the population, where infant-life is not, as in vigorous and growing colonies, of high marketable value, the law will do but little. The Bill of last session, which did not pass into an Act, offered one excellent provision; and a strict registration of all reputed to be still-born, might give us some further security. But we must not rely upon statutes. The nostrums of some reformers are unfit to be discussed; and I hope that, without much weightier arguments, we shall place very small confidence in Foundling Hospitals.

The coroner's court is a most valuable and ancient institution; and every one will acknowledge how many admirable men we number among its officers. But still, we may ask, whether the proceedings are not oftentimes slurred over to the *miscarriage of public justice, particularly in cases where no public excitement has preceded the inquiry.* We may ask, too, whether the substitution of a fixed salary for a fee, does not, in many instances, virtually prevent the establishment of an inquiry at all?

Are we right, I put the question with diffidence before men so skilled in jurisprudence, to exhibit such extreme, and almost inviting, lenity towards crime and violence, in some instances, simply because the parties are young? Is it wise, is it just, to encircle property with such severity of protection, and visit offences against the person with comparative indifference? It may be so; but the public would be glad to hear the reasons from high and competent authority.

The subject of education will be so well handled by our liberal and enlightened friend, Mr. Bruce, and his coadjutors, that comment of mine on its principles and practice would,

certainly, be superfluous, and might, besides, be considered arrogant. But I cannot refrain from a few words of gratitude and joy, when, by the blessing of God, I review the past, and compare the state of the infantile population in factories, collieries, mines, and other trades, with that which "shocked our eyes, and grieved our hearts," some five and thirty years ago.

Thanks to a merciful and Almighty Providence, we have learned, and learned by happy experience, that labour, manual labour, the lot which He has, in His wisdom, assigned to the vast majority of our race, is not incompatible with the highest moral dignity of man. Thousands, nay tens of thousands, under the limitation of the hours of toil, are receiving a sound and effective education; the young by frequenting the schools, the adults, both male and female, by the improvement of their opportunities to advance in moral, domestic, and literary acquirements.

The alternation of work and study, in due succession and relief, the half-time system, as it has been called, is alike healthy and fruitful. The mind is not depressed by the labour, but the labour is invigorated by the refreshment of the mind. Do we not all feel the principle of it in ourselves? Its practical and most blessed effects we see in all the mercantile occupations governed by the provisions of the Factory Acts. We see it in numberless industrial schools in London and elsewhere. If you doubt the assertion, study the Reports of Messrs. Baker and Redgrave, and their efficient officers, the sub-inspectors; study it in the Reports of Messrs. Chadwick and Tufnell, in their accounts of the metropolitan scholastic establishments.

A short time back the excellence of the system came before my eyes in a very prominent way. I visited the Potteries in company with Mr. Inspector Baker, to whom we owe so much, so very much, of this successful issue. I need not describe to you the bodily and mental degradation, in former days, of that neglected district, the state of the places of work, the dust, the insupportable heat, the prolongation of toil through the day and through the night, the utter ignorance, the gross immorality, with all the evils that attend on a defiance of the material and spiritual laws of nature. They are all set forth at large in that true bill of indictment against the English nation, the five Reports of the Children's Employment Commissioners. But how is it now? Though the test has, as yet, been only partially applied, the scene is changed. Two thousand children are at school on the half-time system; and two thousand children are thus exhibiting the results of mercy-consideration, and love. The evidence of the teachers who

knew them before, and who know them now, is wonderful and heart-stirring.

The half-timers are equal, nay, oftentimes superior, to the whole-timers, that is to say, those who study and work, surpass those who study, and do not work at all. Of this we had a forcible proof in the past year, when the half-timers of the several schools distanced the whole-timers, in the race of competition; and, in almost every instance, carried off the prizes. The reason is obvious: the character of their toil demands accuracy, precision, constant, unwavering attention, and prompt obedience; and everything must be seized at the moment, because nothing can be recovered. Unbroken, unwearied after moderate toil, they bring their habits with them to the school; and the discipline of pots and pans, humble as it may appear, is found to be nobly instrumental to the acquisition of letters and learning.

"I was opposed to the measure," said one of the intelligent schoolmasters, "but a few months have given me a totally different view. Formerly as I went through the streets, I heard nothing but oaths and cursing, blasphemies and obscenity, from children of the tenderest years. But now I hear nothing of the kind; the boys touch their caps; and the girls drop their curtsies, and all try to exhibit affection and respect."

This I can confirm by personal observation. When I went into the schools, and talked to them of their books, of the course they had begun, of the hopes they entertained, and of the thraldom from which they had been delivered, their eyes sparkled with confidence, freedom, and joy; and I blessed God—who could help it? and I blessed the legislature, and I blessed the employers, and I blessed the schoolmasters, and in *my satisfaction, I blessed everybody for the glorious sight I had been permitted to witness.*

All, however, is not achieved. There is much land yet to be won. "Let not him that putteth on his armour, boast himself like him that putteth it off." I appeal to you on the behalf of fourteen hundred thousand children, women, and young persons, still under the slavery of cruel and oppressive trade, who are, to this hour, without the pale of legislative protection.

But while I leave the remainder, I must dwell for a moment on the abominations of the brickfields. Let the hardest heart that can be found in England visit those spots, and if he be not moved, he must at least be ashamed of his sex and of his country. There the female seems to be brought to the lowest point of servile ignorance and degradation. Hundreds of little girls, from 8 to 11 years of age, half-naked, and so besmeared

with dirt, as to be barely distinguishable from the soil they stand on, are put to work in these abodes of oppression. Bearing prodigious burdens of clay on their heads, and in their arms, they totter, to and fro, during many hours of toil. When I spoke to them, they either remained aghast with astonishment, or ran away screaming, as though some evil spirit had appeared to them. I could not restrain my indignation, nor can I now, at this wicked scorn of female rights, this wicked waste of female excellence and virtue. Mothers and wives they can never be in the high and holy sense of those words; and yet, were they trained to decency and truth, might there not be found some to equal the priceless heroism of Lady Baker, or the Christian intellect of Mrs. Stowe?

Is it possible in Manchester, (Manchester so high and proud that she professes to have a school of her own,) to pass, without notice and rebuke, another terrible phase of human suffering? The law has already denounced the crime and cruelty of the system of climbing-boys. Why then is it still found in so many cities and places boastful of their wealth and civilization? Which of all our national sins is more atrocious, more degrading, and so little justified by the plea of necessity? The evidence cannot be stated here, it is recorded at large in the Commissioners' Reports. But this fact I will adduce for your consideration. When England, a few years ago, took a high and noble tone in denouncing American Slavery, an accomplished and zealous lady, of the Southern States, alluding, in a tale called "Tit for Tat," to the wretched chimney-sweepers, upbraided us with our hypocrisy that, while we had so much sympathy with the blacks, we had none whatever for our own white children. America, God be praised, has purged herself of that foul stain. Let us be as forward and as true: and let not the young Republic put the ancient Monarchy to shame and confusion.

The subject of the education of children in the agricultural districts, is one of more difficulty, not in reference to the principle, but in respect of the method and details. The want of the agricultural children is not so much a better education as that a longer period should be devoted to it. Many persons of experience have known children very well taught up to 7 or 8 years of age, then called away to daily labour, and, in consequence, so unmindful of their former studies as, by the time they are 16 or 17, to have wholly forgotten almost the very letters of the alphabet. The introduction here of the half time system is neither necessary nor practicable; it is not necessary in the sense of overtoil, unhealthy occupation, or danger to life or limb; and it is not practicable, for the

children do not work, as in manufactures, congregated in large masses—they are separated in twos and threes at considerable distances from each other, the places of labour are far remote from their school and their dwellings, so that the whole day would be expended in effecting the exchange of the students and the workers. The evening classes, with some exceptions, are hardly a supplement to this defect, for during the fine months the lads prefer the open air, and when the winter has set in, the heavy rains, the bad roads, the long distances, and the dark nights, and where a separation cannot be effected, the dislike of the adults to be found with the youths in the same place of study, all back up and aid the general indifference to books and learning.

Yet the question must be wrought out. I have myself a plan which, I admit, will require trouble, will cost a little money, and may, after all, prove a failure. I may be exposed to severe criticism, but it is worth a trial. I should propose two sets of lads each to work and study on alternate days. I propose it simply as a principle, to be subjected to many modifications in practice. At any rate, while we keep this class in view, let us go forward with the other, and not listen to the resolution, as illogical as it is cruel, that nothing shall be done to relieve the miseries of the children in trades, because there is a defective education for the children in agriculture.

Essential, and indeed, indispensable as is the section on public health in any meeting of our congress, it need not be dwelt upon in an opening address. The subject has excited a deep and general interest. Almost all the causes of mischief have been dived into, and brought to the surface; and remedies of various kinds have been suggested for their cure. The legislature too, by the Act of last session, has declared that a wider activity must be exercised by the Government, and larger powers be confided to it. But there are yet two points on which the executive is nearly impotent, and those of the *greatest consequence to the labouring poor—the wretched* supply of water, and in the widest sense that can be given to the term, the adulteration of food. Let us hope, and let us work, in this very congress, that another year may not elapse without an effectual abatement of these monstrous inflictions.

But the master evil which nullifies every effort for the benefit of the working people, which leaves us no rest, and on which let us take good care that the public also has no rest; the evil that embraces and intensifies all the others; the hot-bed of pauperism, immorality, disease, and drunkenness—drunkenness alternately the cause and consequence of disease—the evil that is negative in preventing every improvement,

and positive in maturing every mischief; that lies at the root of nineteen-twentieths of the corruptions that beset our social state, and forms the crowning abomination of the whole, is the domiciliary condition of many thousands of our people. But we must look not only to the pestilential character of the actual dwellings, but to the unventilated, fever-breeding localities in which they stand; the dark, damp, and narrow alleys never visited by a ray of the sun, or a breath of fresh air. To describe these things is impossible. They must be seen, smelt, tasted, in person. Dirt and disrepair, such as ordinary folks can form no notion of; darkness that may be felt; odours that may be handled; faintness that can hardly be resisted, hold despotic rule in these dens of despair. There are hundreds where there should be tens; and thousands where there should be hundreds. The overcrowding is frightful, it disgusts every physical and moral sense; and the more so when we see it as a growing, not a declining, evil. The numberless displacements, past, present, and to come, fill the poor people, and us too, with terror and perplexity. And, as though this were not enough, the countless hosts in London ejected from their homes, and endeavouring to find shelter in dwellings already occupied, and abounding with life far beyond every limit of decency, health, and comfort, are encountered by some 40,000 immigrants annually, who are seeking the same accommodation, and contribute, along with other causes, to heap family upon family in these bursting tenements, to lower the rate of wage, and yet raise the rate of rent, for the great mass of the unskilled labourers.

Is there no remedy for this? None that I can see, except a new fire of London to sweep away all these filthy regions that must be destroyed to be improved, and then a vast and liberal contribution from all sorts and sizes of men, to erect the city on a basis of health and humanity. Four-and-twenty years of experience in the matter have led me to no practical conclusions on a large scale. We have built model lodging houses, and, so far as they go, they are a blessing to the people. But "what are they among so many?" They yield every return that a mere philanthopist can desire, but, financially, nothing that could tempt the large capitalists, who seek a remunerative investment for their money. The price, too, of land is rising mightily; and the great increase of wages among carpenters, masons, and bricklayers, is a very heavy addition to the cost of building, and, by consequence, to the amount of the rents. Houses are springing up around the cities, it is true, but they are altogether for workmen of large weekly receipts. Suburban villages are proposed with penny trains, but the objections

made to them are endless, principally by the women, who assign to me very sound and business-like reasons for refusing to quit their ordinary abodes: and, indeed, were they to do so, the public weal would be little served thereby, for the filthy tenements (unless a wholesome system prevailed to pull down in proportion as you build up) would instantly be seized by a herd of occupants, and all the mischiefs be perpetuated, and probably increased. It is necessary, moreover, that many classes of skilled workmen should have their dwellings within hourly reach of their principal and of each other. To these the suburban village and the penny train are of small use; nor, in truth, to any but those who have fixed hours, fixed places of work, and good and certain wages. To the labourer who lives from hand to mouth, hunting around for a job, hanging about the docks, the yards, the shops, the courts, always uncertain of the amount of his gains, and sometimes uncertain of any receipt at all, "rising early and late taking rest," the railways and the residences are utterly worthless; and yet these classes are the vast majority of the ill-housed population. For these, our model buildings have done nothing, and can do nothing; no one of the schemes hitherto propounded, no one of the Bills submitted to parliament, holds out even the shadow of a promise. Suppose it be ordained that tenements shall be built, it follows, of course, that they must be constructed with everything that health and decency requires. But who of this class of the people will be able to meet even the lowest rate of the new weekly payments for family houses? And if constructed on a plan of single rooms, the utmost that these casual labourers are able to afford, we shall perpetuate, by law, a system of life, subversive of every moral and physical obligation.

I will refer to but one mode among the many which have been devised for the amelioration of this state of things. A society, of which I am president, has executed several works in the way of the adaptation and conversion of existing tenements. Single houses or entire courts and alleys have been repaired, white-washed, and ventilated—drains have been fitted to the main sewers, pavements laid down, and a due supply of water provided. The accommodation, no doubt, is not equal to that which is given by new buildings, but many of the happy issues are obtained by it, and the benefits are effected at about one-seventh of the cost of fresh constructions. This plan, though qualified to effect improvements on a large scale and at a cheap rate, has not, I am sorry to say, found many imitators: but hear the result in a single locality. I had long coveted a court in a sad part of London, because I knew it to be a hotbed of fever, violence, and immorality. One house

alone had produced twenty-two cases of fever in twelve months. At last, by the liberality of a widow-lady, I obtained possession of it. The society went to work, and achieved its purpose—turbulence and disease were banished. The medical man of the district writes, "fever is unknown in this once pestilential court;" the police officers assure us that, whereas in former days the constables never dared to enter it but in twos or threes, they now rarely find it necessary to go there at all. And the whole of this has been done in such a way that the inmates enjoy a vastly increased accommodation with no increase of rent, and the society receives upon its outlay a return of at least nine per cent.

Such, amidst abundant advantages and blessings, is the social state in things material of many of our fellow subjects. We need not, however, dwell longer on these details,

> "Quis aut Eurysthea durum,
> Aut illaudati nescit Busiridis aras?"

But may we not lift up our eyes a little above the level of laws and regulations, codes, and edicts, and see whether there exist not motives of action, motives of universal impulse, of greater power, and more adapted to the wilful individuality of the present times? Is there nothing in the human heart, in the human intelligence, in the human consciousness, to which we may appeal, to beget a higher and happier public opinion, in which we might, as it were, "live and move and have our being;" not as a substitute for statutes and enactments, but to inspire, direct, and govern that, which statutes and enactments can never reach? Is it vain to hope that common sense may, hereafter, exercise, not an absolute, perhaps, but a wider, influence among civilised peoples, and teach them that, nationally and internationally, men do not dwell securely, and thrive, by the misery and degradation, but by the welfare and honour of each other? It may be vain; but it is not vain, in gatherings such as these, to proclaim the truth, to discuss its practical character, to cherish and desire it. And yet I am aghast, when I observe that, in all the exhibitions at home and abroad, compounded of the products of the various regions of the earth, rifles and cannons, swords and torpedoes, with the manifold munitions of war, occupy a broad space in the temples professedly devoted to art and science. I ventured a similar remark at the Statistical Congress of 1862; and the same thought has been stated in the present year by that eminent engineer, Mr. Hawksley, who seems to think that the great bulk of the inventive and mechanical faculty is, for the

moment, directed, almost exclusively, to refine and perfect every instrument of destruction. I do not say this in any craven spirit of submission to foreign nations, or that we should make ourselves naked before our enemies—out upon such a notion! but simply to express a wish that they would listen to our appeal, and entertain thoughts as far remote, as our own, from insolence or aggression.

Does the Atlantic cable teach us nothing? Has a merciful Providence established an intercourse between two nations of the same race, with kindred institutions and common interests, only that we may hear of "wars and rumours of wars," give or receive orders for every military service, hurl defiance at each other, and pervert that which was intended for our peace into an occasion of falling? This mighty result of intellectual and moral power has begun its career with mutual words of congratulation, friendship, thankfulness, and joy. May no other spirit ever pass along its wires, and may "it lead the rest of its life according to this beginning!"

But turn to contemplations more purely national. Why are our colonial fellow-subjects, when they visit our shores nearly strangers in the land, and find not hospitality at every corner? Do we despise their loyalty, depreciate their affection, or shut our eyes to their mighty future? Very far from it. Our neglect is the result of ignorance; and we lose, by listlessness and inattention, the happy means of binding together all regions under Her Majesty's rule, with a reciprocal esteem and regard, conducive alike to the dignity and freedom of the children, and to the honour and benefit of the mother country.

But this is applicable, with no less force, to our fellow subjects from the East. India is making prodigious strides, not only in material but moral progress. Her sons come hither from every presidency and every province; they enter our colleges, inns of court, and schools of science, in preparation for professional career in their own country. They dash boldly into competitive examination with the European, and not unfrequently carry the day. In sense, justice, policy, in the spirit of Christianity, are these men to be overlooked? Attentions shown to them in England strike a chord that thrills through the whole of Hindostan. Their manners and conversation are graceful, their thoughts high, and their views of the blessings of the British rule sagacious and solid. It is from this rule that they forsee the welfare of their fellow-millions. "Abolish "polygamy," said a number, as they stood around me; "educate our women, raise them in the scale of life, and make "them what all women should be." I ask you, was not this

"Social Science?" Have we announced, shall we announce, the Gospel alone excepted, a greater truth for the comfort and civilisation of mankind?

Surely we may have a larger sympathy, a demeanour less cold and formal, expressions more genial and cheering, with more of our common nature, towards those who live in our service, or whose labour we employ, or whom among the poorer classes we may visit at their homes, or meet along the road. We read in the book of Ruth, that Boaz said to his reapers, "The Lord be with you;" and they answered him, "The Lord bless thee!" The sentiment may ever be in our hearts, though the practice of it must be regulated by opportunity.

To enunciate, diffuse, and enforce such views, we must look to the aid of the most portentous engine that ever existed, the public press, an engine with such unprecedented capacities for good or evil, that it can hardly be regarded as a simply human power. It is idle, I think, to assert that its influence is less than in former days. The influence of the press, in all its various forms and ramifications, of journals, pamphlets, and periodicals, has increased, is increasing, and can never be diminished. Doubtless Social Science has some business here; how we may act I cannot say; but what we should desire is to see the press entrusted to the stoutest intellects, the highest morals, and the truest hearts in the country. The spring-tide of self-confident democracy is now nigh at hand; and I see no other hope save this (and it is a feeble one) for national and individual liberty, for external and internal peace, and for the grand, though homely, issue, of "Live and let live." But the editors of the British journals (and let me include those marvellous men, the body of reporters) have never been deaf to the claims of humanity and justice, to cries such as those which are sent forth from these halls—nor will they be so now, when we appeal to them to do that which no statutes, no edicts of Privy Council, nor Acts of Parliament can achieve, to reprove, rebuke, exhort, with all vigour and perseverance. Public opinion may lead to good laws, or supersede the necessity for them, and so avoid the abundant variety, and complication, of enactments which eventually break down, or fall into disuse by their minuteness and extent. Is it not a frightful condition of things that, here in the nineteenth century, we are compelled by disclosures which astonish and shock the inmost conscience, to demand, year by year, of the legislature, protection for tens of thousands of women and children of the tenderest age, against a system of physical and moral suffering and degradation, such as reduces all past "history to an old

almanac!" And is it not frightful when we consider that the vast proportion of these intolerable tribulations, to which the children are subjected, are in all cases permitted, and in many cases inflicted, by the parents themselves! The law has stepped in and rescued many; the law will again step in and rescue many more; but I tremble, I confess, for the efficiency and permanency of any machinery, that is "cabined, cribbed, confined," by the union of money-interests, perverted natures, and the mercenary belief that as godliness is gain, therefore gain must be godliness. Turn your thoughts to the numerous females, some 600,000, engaged in the various departments of dress, from the royal milliner to the most abject sempstress. Their sufferings have oftentimes excited the deepest emotion. Restrictions and regulations are demanded. But in this matter who can invent them? And, if invented, who can enforce them? A more considerate spirit, a more enlarged sympathy, and a profounder and more practical appreciation of "do as you would be done by," would stay the cries of these unhappy victims, and leave our legislators but little to do.

Turn your thoughts also to this fact, and weigh it well. These terrible sorrows, to a great extent, do not spring from the necessities, but from the luxuries of man; the luxuries, not of the rich alone, but of every class, from the peer to the *labourer. Read the tales of woe of those who toil on the apparel of the wealthier circles, nor omit the records of the needlewomen and the slopshops; read the almost incredible narratives of all the disease and death that taste and the love* of show inflict on children and females in the manufacture of lace, in straw-plaiting, in cheap jewellery, in artificial flowers, in button-making, and a hundred other callings. The mass of the people at large, and not a select few, maintain the demand for these adjuncts and embellishments of human life.

I do not say this in a vain hope, or even with a wish to restrict the tendencies of the age, and introduce a new science of political economy. I only implore you, in your meditative moments, to reflect how far such things are necessary, and whether by thoughtful and convenient arrangements, while the enjoyments of the consumer will not be stinted, the happiness of the producer may not be very greatly advanced.

It is now time to conclude. But there are some, I fear, who will reply that I have entered on a high flight of speculation, and have left terrestrial difficulties too far below. Nevertheless, "it is good for us to be here." It is good for murmuring man to see how much of the misery that he suffers or inflicts is due to himself, and how little to the decrees of a merciful Creator. It is good for him to see how the principle

of self-control is the grand principle of all social and individual freedom; that the sense of responsibility to God and his fellow-man, whether it be the sovereign on the throne, or the labourer at the plough, is the source of all that is virtuous and dignified, and considerate and true.

Neither is there any hope of attaining excellence unless our aims be directed by the highest standard. "Be ye, there-"fore, perfect, even as your Father which is in heaven is "perfect." Surely this was said by our blessed Lord rather to elevate the efforts and the prayers than to declare the actual powers of fallen man. And have we no guide? When at night we lift up our eyes and contemplate the peace and splendour of the Host of Heaven, how each one is conforming to the law of its nature, and, as it were, rejoicing to subserve the universal order, we recognise an omnipotent yet gentle principle that demands and receives a willing and exact obedience. When we turn our thoughts to the globe on which we dwell, we see, in all the works of the Great First Cause, the same invariable principle. It ruled at the creation, has prevailed throughout all time, and will bless the countless ages of eternity. It is the law of kindness and of love, the law that—

> "Lives thro' all life, extends thro' all extent,
> Spreads undivided, operates unspent."

Here, then, is the law for our ardent but humble imitation. It is rich in promise, joyous in operation, and certain as truth itself. Of such a law how can we speak but in the noblest language that ever fell from the pen of uninspired man, "Of this law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage—the very least as feeling her care, and the greatest as not exempted from her power: both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy."*

* Hooker's Eccles. Pol., Book I

Address

BY THE

RIGHT HON. LORD BROUGHAM,

PRESIDENT OF THE COUNCIL.

THE painful duty once more devolves upon me of opening the address of the Council with a notice of our losses since the last Congress. Of these, the latest is also a severe one, in Sir Charles Hastings, who, beside his relation to our worthy secretary, was one of our most eminent colleagues. His great position, his distinguished fame in the medical world, and his rare kindness and humanity in the exercise of his profession, are lost in the service he rendered the medical body by founding and conducting the British Medical Association, which has placed medical and surgical practitioners in their just position, and given rise to the most important *provisions for the extinction of irregular and pernicious practice.* But his labours in the investigation of physical science, and his foundation of the Natural History Society of Worcestershire, showed how little his studies were confined to the profession of which he was so distinguished an ornament. The world, and social science especially, has sustained a great loss in the death, though at an advanced age, last April, of Lord Glenelg. After an intimate acquaintance of sixty-five years, I can truly say I never knew a better man, and very few abler. He was a most accomplished scholar, a learned man in all respects, a distinguished orator, a minister, whose sound views and most able administration were thankfully acknowledged, even by the colleagues whose treatment of him was so unjust, and to themselves so disgraceful. Above all, he was a man of spotless integrity, both in his public and private capacity, of deep and well-considered religious opinions and strong religious feelings, but never for an instant sharing the intolerance of others towards those with whom he differed most widely, and firmly resisting all the aggressions of bigotry,

whether ecclesiastical or political. His public virtues and the entire unselfishness of his nature were strikingly displayed when dismissed from high office in a manner as inexcusable as was Lord Plunket's and Lord Wellesley's, by being suddenly told that his place was wanted for some other arrangement; he yet never showed his just resentment by a single vote, or by any remark, but persevered to the last in his honest course, nor ever uttered a word against those colleagues by whom he had been praised, and thanked, and betrayed. He departed from us in extreme old age, with all the powers of his mind entire; and of him it may be truly said:—"*Non viribus aut celeritate corporum, magnæ res geruntur, sed consilio, auctoritate, sententiâ, quibus non modo non orbari sed etiam augeri senectus solet.*" We had, the last time I saw him, been discussing a subject that had often before occupied our attention, the greater pleasure which arises from a recollection of the past, its persons, and events, and scenes, whether gratifying or not at the time, than in the prospect of the unknown future, and on which I had, many years ago, urged the greatest of our living poets (Crabbe) to turn his matchless descriptive song.

It gives me great pleasure to announce the publication of that great orator and lawyer, Lord Plunket's speeches, which we have so long been expecting. His grandson, of the Irish bar, has now, as far as was possible, completed his task of collecting and preparing them for the press, and I am happy to add he attends the Congress. The introduction has been furnished by me, as was that to Lord Erskine's speeches. But it must be observed, that there is this difference between the two great ornaments of the bar, that Lord Plunket, like Mr. Berryer, was greater in the senate than even in his professional character. To all friends of the law, as well as of social reform, this publication is an event of singular interest, and our obligation to Mr. Plunket is great.

The last session has certainly been most unfruitful in measures of law amendment, and, indeed, has been in all respects most disappointing to the friends of social science. This was no doubt chiefly owing to the lengthy debates on reform, which led to no measure; and it is to be regretted that attention was not given to the acceptance by the Whigs, at the private meeting in December, 1829, of the proposed household suffrage with a year's residence, which might have been extended to all inhabitants of each house, and occasioned the admission to the suffrage of the better class of working men, as well as the middle classes. The reform debates ended in the dissolution of the Liberal ministry, whose resignation was wholly une-

pected, and must be admitted to have been quite unnecessary. It is, however, manifest, that as long as there is no judicial department, nothing effectual will ever be undertaken for the great matter of law amendment. What is everybody' business is proverbially nobody's business; and the heads of the law are quite enough occupied in administering it as at present constituted, besides that they are, unfortunately, for the most part averse to any change. Many years have now elapsed since our eminent colleague, Mr. Napier, before he became Chancellor of Ireland, carried in the House of Commons an address for the establishment of a judicial department, which received a favourable answer from the Crown; and, if the promises then given had been performed, the institution would, besides many other advantages (among the rest, the affording an efficient council to the Home Secretary, in the discharge of his most delicate and difficult duty of advising the Crown on the remission of punishment), have assured the undertaking of the needful improvements in our legal system. Our learned and excellent colleague, Sir Eardley Wilmot, has prepared a plan for a Law Amendment Department, the particulars of which it is to be hoped he will transmit, should his judicial duties unfortunately prevent his attendance at the Congress.

The same negative which applies to the formation of a judicial department must unhappily be given as to almost all other law amendments. Among others the important subject of Reconcilement has been once more passed over, although an admirable plan was suggested, and its details proposed by Mr. Kerr, the able and learned Sheriff's Court Judge, and so framed as to meet the principal objections by providing that in all cases reconcilement should be optional to the parties. The great success of Conciliation in other countries, especially in Denmark and the Danish colonies, renders this repeated postponement truly vexatious. The prevention of useless, and in many instances oppressive, litigation has been truly remarkable in those countries—as many as 29,000 out of 30,000 suits commenced were in Denmark thus settled without being brought to trial.

The report of the Commission for Inquiry into the great subject of capital punishment has been printed, and is most important from the great body of information which it contains both on this and other countries, and it is much to be regretted that the material recommendation of the report against public executions, though sanctioned by the Upper House after a somewhat warm opposition, has not been adopted by Parliament. The more this subject is considered, the expediency of

the change thus introduced into the execution of the criminal law will be more fully admitted.

The great defects in the law of evidence so often pointed out still remain not only without remedy, but without any real defence. The exclusion of parties in cases before the Divorce Court, after the impressive argument of its learned and enlightened judge, still continues. Their exclusion in such cases was a provision forced upon me in passing the great Act for the examination of parties in all suits, and this was repeatedly stated on my authority by the present Chief Baron, Sir Fitzroy Kelly, when a member of the House of Commons. The other provision which he strenuously urged of the right to a jury of all parties in suits for divorce and for legitimation also, was not perhaps sanctioned by the same judicial approval, but was most ably maintained by him. Another most important extension of my Evidence Act has met with repeated discussion and postponement, notwithstanding the modification adopted of confining it, at least in the first instance, to cases of misdemeanour. It was the main ground of Mr. Bentham's charge against our law of evidence that we excluded the persons who know most of the facts. That grievous defect no longer exists in civil suits, but in criminal cases we still shut out one party while we hear the other party, and the evil must continue while our criminal procedure remains without a public prosecutor, one of the greatest defects in our system.

The consequences of excluding the accused party have been often shown, and petitions to Parliament have strongly expressed them. A person is charged with an offence when he could at once explain all the circumstances and show his entire innocence, and that the whole prosecution is a malicious proceeding, but his mouth is shut while his accuser is heard. Then he has the choice either of an action or an indictment; of course he prefers the latter when he will be heard and his accuser's mouth shut. Nothing can be more absurd than such a state of the law. The French course of proceeding in this respect is carefully to be avoided, being one of the worst parts of their very bad criminal procedure, the examination of parties accused by the judges at their trial, and their exposure to the moral torture of this judicial examination. But it was always proposed that with us the examination of the person accused should only be taken upon his voluntarily tendering himself, and being willing and desirous to undergo the sifting of a cross-examination. It must be added, that each renewal of this proposition has shown a considerably increased inclination towards its adoption, more especially on the modification suggested of confining it for the present to cases of misdemeanour. The great amendment in

the law of evidence, by my Act for examining parties, would thus be rendered complete, if also extended to cases in the Divorce Court.

Of the many deficiencies of the late session, one was the not passing an Act to amend the optional clause in the County Courts Act. The importance of the jurisdiction of these courts has long been admitted even by those who were at first adverse to them. The number of suits which they determine is prodigious, and so far they are a relief to the Superior Courts, and a most valuable benefit to the suitors. The numbers have increased since their foundation. In 1863, they had increased since 1855, in the proportion of three to two, the number of plaints being above 800,000 for above £2,000,000. The last return makes the number of plaints for 1865, no less than 782,849, and for sums of £1,847,000. Now the optional clause is so framed as to require the previous consent of both parties: and as the one would refuse what the other proposed, merely because he proposed it, the clause has had very little if any effect in extending the jurisdiction to other cases in kind and in amount; whereas, if the suitor could begin for a larger amount and for other objects, it is certain that the great facilities afforded by the local courts would induce the defendant to acquiesce. A very material increase is thus withheld from that most valuable jurisdiction by the delay to make this obvious improvement.

But lamentably unfruitful of measures as the last session has been, the Commons have issued important commissions for inquiry into the scandalous scenes of corruption which too many of the late elections have displayed; and without entering into the details, we are bound, on the mass of evidence collected, to conclude that in several considerable boroughs the grossest bribery has prevailed, and the inquiry, it is to be feared, has not been without showing the accompaniment of flagrant perjury. It is quite clear that in some places the right of voting is considered almost only of value as the means of obtaining money for votes. No question can be raised, although we see this attempted, as to the gross criminality of the parties, both the candidates and their agents and the voters; nor is there the least common sense in the allegation that the voters cannot be made to regard selling a trust—which a vote is—for money as criminal. They must be made to regard it as such by the infliction of severe punishment, and the candidates and their agents must also be punished. It is certain that bribery can only be stopped by sending those who give and those who receive bribes to the treadmill, like other offenders. The desire of having a seat in

Parliament is strong enough to make men despise all pecuniary penalties, but it is not so strong as to make them run the imminent risk of the treadmill; and this fear, though much less effectually, will also tend to deter the voter. So it was when in 1811 my Act making slave trade punishable as felony, extinguished that execrable crime, which all pecuniary penalties and the loss of ship and cargo had not effected, for as the gains of one adventure covered the other losses, the traders willingly ran the risk: but men would not risk their condemnation as felons. I well remember the year after at the Liverpool election I was strenuously opposed by slave traders, of whom I had said that when this abominable traffic was ended, they could turn their hand to highway robbery. If the Commons are really in earnest and wish to destroy bribery, as we must suppose they do, their course is clear, and we cannot therefore doubt that they will pursue it.

Nothing can be more satisfactory than the working of the Act passed under the sanction of Lord Carnarvon's Committee, and the continued triumph of the Irish, or Sir Walter Crofton's, system in this country. To the late improvements in our county and borough gaols it is reasonable to attribute the greater part, if not the whole, of the diminution of crime during the last half year. The employment of Sir Walter Crofton by the Home Office in carrying the Act into operation has been most beneficial. The result of this Act should encourage the legislature to pass other useful laws. But grievous as have been the failures of measures or their postponement, there is one partial excuse for Parliament, at least for the Commons, in the amount of private bill business, and the exhausting and harassing effect of this upon the members; and that there is a most substantial measure required to relieve them, needs hardly be again stated. With regard to that plan, I do not claim nearly the whole merit, but divide it with my illustrious friend the great Duke; and it ought ever to be recorded in his praise, as a signal proof that, with all his known aversion to rash changes in our institutions, yet when there was an admitted evil and a reasonably safe remedy, no one was more ready to adopt it, and even to urge it upon Parliament. When the question was of the new standing orders for the House of Lords, and they were referred to a committee, "Why not try our great plan," said he; and on my answering that we never could carry it, "We can but be defeated," he replied, "and then we can retreat upon your less effectual orders." The great plan was that which we had devised together, and in which the joint committee of both Houses to examine the whole Bill was to report, the report

being conclusive on the facts, having not only examined the whole, but acted with the assistance of a judicial chairman. In considering the composition of the committee, the Duke had at first been for an equality in the numbers from the two Houses, but he ended by considering that there should be a majority of the Commons, so little did he suffer his prejudices to interfere. There is now no conceivable reason why this plan should not be adopted; and it would be the greatest possible improvement, not only in saving time and labour to the members of the two Houses, but in reducing incalculably the expenses of parties and lessening the risks of perjury in the evidence adduced.

But the friends of Social Science have reason to congratulate the public on the great achievement of the conductors of the Atlantic cable. They have—beyond the hopes of all, and against the prejudices of many—finally succeeded; after the failure of last year, in this extraordinary and most important undertaking. The Atlantic no longer offers an obstacle to direct and instantaneous communication with the Western world, and in a few hours accounts can come from New York to London and Paris. A most fit occasion was taken by our Sovereign to congratulate the American President on this noble achievement of British art facilitating the intercourse of the two continents, and to express, in dignified terms, the sense justly entertained of his conduct to those wretched agitators who have attempted to disturb the peace in Canada and in Ireland. It must be observed that the great use of *steam in facilitating not only communication of persons and papers, but intelligence, has largely and usefully altered the human condition.* Every operation of peace and of war is affected by it, and it may truly be said that life is lengthened, and one object of the philosopher's stone accomplished, when men can both travel so much more rapidly, and communicate with each other so much more quickly. In both respects time is saved, and life really made longer to all intents and purposes.

We are now in Manchester, the head-quarters of the great Alliance movement, and, next to Rochdale, of the co-operative system, which indeed owes its continued existence to this place. As to the evils of intemperance, and the important services rendered by the Alliance to the good cause, there can be no doubt. But whatever difficulties we may have, or affect to have, on the licensing plan, and its excuse (of which excuse I can speak from having in the village close by me half a dozen public-houses, and not more than twenty or twenty-five others) on one matter no dispute can arise, and no doubt be entertained. One sees with astonishment and indignation, in cases

before magistrates in the country, intoxication urged in extenuation of offences, whereas it is a gross aggravation. No magistrate is entitled to suffer one such word to be uttered before him on the part of the accused. Any magistrate is bound to stop the party or his advocate the instant he begins on this, and to tell him that if intoxicated he must suffer a punishment more severe, and the magistrate is further bound to take it into his consideration when the prosecutor has stated it in explaining the circumstances of the case. It is undeniable that a most wholesome effect would be produced by the general impression being made that drunkenness, though by law it may be not liable to punishment, except by small pecuniary penalty, yet makes offences to which it has given rise, more severely punishable.

The progress of co-operation has been most satisfactory. In 1862, 332 societies did a business of £2,331,650. In 1865 403 societies did a business of £3,373,847. Whereas, in 1857, there was only a business of £165,770. The lecturing established by Mr. Pitman has had a great effect in giving this great increase. It must further be stated, that the great body of traders have joined in giving those under them the incalculable benefits of reduced hours of work. In all the great towns, as well as London, the half-time rule seems established on Saturdays, to the great benefit of the men, both physically and morally.

Co-operation, with its mighty benefit, is due to the people, and not to the government or the legislature. So are the institutions founded and conducted by private individuals, though licensed by government, for the refuge of female convicts, affording a stage between the prison restraints and the return to free intercourse with the world. It may be hoped that the one established at Hammersmith by the Dowager Marchioness of Lothian, Lady Georgiana Fullerton, and others, will succeed. The Carlisle Memorial Refuge in Queen's Square, Bloomsbury, under Miss Bennett, after the pattern of which it was founded, has undoubtedly flourished. That great philanthropist, our much-respected colleague, Mr. Commissioner Hill, is highly satisfied with the proceedings in both institutions.

The formation of a Society for the Improvement of the Infirmaries of London Workhouses has had important consequences. The papers read at more than one of our congresses, by Misses Twining, Cobbe, Elliot, and others, led to this society, and its recommendations have been received with great kindness, both by Mr. Gathorne Hardy and his predecessor in office; so that the matter will be brought before parliament, and must lead to the removal of the abuses so justly complained of.

If so great have been the disappointments at home, have we anything to console us when we turn our eyes abroad?

The accounts are so conflicting that we cannot pronounce anything with certainty on the state of the continent, as to what may be the distribution of dominion or the continuance of peace. Let us, however, hope that the error will not be committed of giving a preference to one, even the best, especially to Hungary. The great body of the Germans must be considered, and the weight of Austria, both by land and sea, must never be forgotten, and the united powers of Germany in all its departments be fully recognised. On the whole, there can be no doubt that the cause of progress is in a hopeful condition. There is a general tendency towards free institutions; and the states of Germany are in confident expectation of legislation more or less within the direct influence of the people. It should seem that the Protestant interest has gained considerably; and certainly against the great evils of Austria's defeats must be set their unquestionable tendency to lessen the papal power and to hasten the departure of the French from Rome, as well as their securing the liberation of Venice, at which all our friends must rejoice on account of the Venetians, and by no means because the kingdom of Italy had the least right to obtain this extension of its territories.

In France, there is so strong an opposition to the Imperial Government, and so general a desire of material prosperity, that there seems good ground for a belief in greater freedom of discussion being given to public bodies, and even in some relaxation of the laws respecting the press also. This, too, is unquestionable, that great sacrifices have been made somewhat unexpectedly for the termination of hostilities, that the Emperor's conduct to prevent their continuance has been highly meritorious, and that at length a general peace is concluded.

Yes! Peace is restored on the continent, and all friends of social science must heartily rejoice. Its conditions and the arrangements left by the war, are of great importance notwithstanding; and I cannot help reflecting on the statement which I made more than once in Parliament, that if bystanders see more of the game than those who play it, as the common saying purports, there is a bystander now who, besides seeing the game, will most probably have some claims to profit by the result, whichever party gained; and so it has turned out that the claims have been made, but most properly they have not been insisted upon. Whether the peace concluded is to be durable, or only a truce, remains to be seen. But whatsoever doubt may hang over the future, on the grievous aspect of the past there can be none. In the middle of the nineteenth century,

a wide-spreading war has raged, and tens of thousands have perished or been consigned to a life of wretchedness by their wounds, and all this has been made to secure an extension of dominion or increase of affluence. The wars of the first Napoleon were hardly more costly of blood, and yet he was excused for his lust of conquest, by the service he had rendered in closing the anarchy of the revolution—an excuse which belongs not to the authors of the late hostilities. Yet is it any real excuse for Napoleon?—and how much is his nephew to be preferred for his love of peace, and for feeling by his actual presence and expressing his deep sense of all the horrors of war! Although the glory of war lends its horrible atrocities a false glare which deceives us as to its blood-guiltiness, in what does the crime of Napoleon, when he sacrificed thousands of lives to his lust of foreign conquest, differ from that of Robespierre, when he sought domestic power by slaying hundreds of his fellow-citizens? In one particular there is more atrocity in the crimes of the latter—they were perpetrated under the name and form of justice, whose sanctity they cruelly profaned; but, on the other hand, far more blood was spilled, far more wide-spreading and lengthened misery occasioned to unoffending provinces, by the invasions of Spain, and Switzerland, and Germany, and Russia, than by all the acts of the Committee, the Convention, and the Revolutionary Tribunal. Nor will mankind ever be free from the scourge of war until they learn to call things by their proper names, to give crimes the same epithets, whatever outward form they may assume, and to regard with equal abhorrence the conqueror who slakes his thirst of dominion with the blood of his fellow-creatures, and the more vulgar criminal, who is executed for taking the life of a way-faring man, that he may seize upon his purse. We hesitate not to shed the blood of the common felon, and even those most averse to capital punishment make an exception against the murderer. Thus there is no difficulty in prosecuting murderers, and the juries convict who, in cases of theft or embezzlement, or even forgery, would hesitate. Such is the universal horror of murder, or even of attempts to commit it, and of partial committal. Then why do the same parties regard the slaughter of tens of thousands, some with tolerance, and some even with approval?

> "One to destroy is murder by the law,
> And gibbets keep the lifted hand in awe;
> To murder thousands takes a specious name,
> War's glorious art, and gives immortal fame."
>
> *Young on Universal Passion*, sect. vii.

Such is the result of war, and while men will fight, and lay their tens of thousands, the crime of murder on the largest scale must go on unpunished and unrepented. Yes, unpunished in this world. But our Heavenly Father, bestowing free-will on His creatures, hath declared them accountable for its abuse; and administering justice in mercy towards the numbers deceived or compelled into blood-guiltiness, He condemns those that have betrayed or forced them as their accomplices or their instruments to the unspeakable and enduring torments of hell.

Address

BY

THE HON. GEORGE DENMAN, Q.C., M.P.

ON

JURISPRUDENCE AND AMENDMENT OF THE LAW.

IN accordance with a wholesome rule of this Association, special questions have been chosen by the standing committees of the several departments for discussion at the present Meeting. On those questions papers will be read by gentlemen who have devoted their attention to the several subjects under consideration, and free discussion will take place upon each.

By this, our settled method of proceeding, much knowledge will be circulated, many opinions tested, many fallacies wiped out, and the cause of truth and justice promoted and advanced.

The questions specially selected on the present occasion are all questions of large and pressing importance to the whole or to some considerable portion of the population of this great country, or of her colonies and dependencies, and, in at least one instance, of the whole civilised world.

I do not propose to attempt within the compass of this opening address to anticipate the discussion of any of these special questions, further than by the expression of such opinions as are incidental to the brief sketch to which I intend to confine myself, of the present aspect of some of the busiest portions of the great campaign of Law Reform.

In that campaign, as in warfare of every kind, there are reverses as well as triumphs to be recorded, but no soldier who has enlisted in this cause need ever despair. Whatever the ultimate result may be, we must gain victory after victory, as we have already done under the guidance of that mighty captain who first conceived our plan of operations, who has devoted his best and ripest years to the service, and who still takes an active and an earnest part in every movement of

our forces. To no one more than to him has that noble eulogium ever been applicable—

"Peace hath her victories,
No less renowned than war."

Whatever may be the improvement of the science of jurisprudence, whatever the progress of law amendment in future years, it will always be a just ground of pride and satisfaction to all here present, and to all hitherto existing members of this Association, that they fought under the banners of Henry Brougham.

But the campaign is not yet over. Nay, we are engaged in a struggle which will last as long as there is a vestige of folly and wickedness in the world. Every one even of our successes is, in its own nature, necessarily imperfect, and will require constant watchfulness and diligence in order to detect and amend its imperfections. How much more, then, must every failure require fresh and toilsome efforts before it can be repaired? The very machinery by which alone our work can be accomplished—the machinery of legislation for the amendment of existing laws—may be gravely out of order. The men chosen to use, to repair, and to create that machinery may be so chosen as to give no guarantee of their fitness for the work.

Quis custodiet ipsos
Custodes?

The great Montesquieu has truly said that in England the errors of legislation are often useful by the spirit of attention which they create in the nation. It is to this spirit of attention, and to the public opinion resulting therefrom, that all real reforms are mainly due. These are the weapons by which, through the medium of a free press, all our contributions must be made, to the ultimate triumph of justice and of truth.

In considering the present condition of English jurisprudence and the present position and prospects of law reform, I, without hesitation, give precedence to a question which, for obvious reasons, is not appointed for special discussion at this meeting, but which must strike every thoughtful man who loves his country and cares for the amendment of its laws, as one of the most vital and pressing importance, and requiring our anxious consideration.

Lord Brougham, in his opening address at Sheffield last year, thus alluded to the subject:

"In reckoning our gains at the late elections, it is highly satisfactory to reflect on the considerable diminution of bribery

and corruption. Of this there can be little doubt; but still there remained enough to justify all friends of public morals, and indeed of our national character, in desiring more effectual means to be taken for the extinction of practices so disgraceful."

In spite of a very general belief that corrupt practices prevailed to a larger extent than heretofore at the last general election, it may be doubted whether all the revelations which have taken place have at all shaken the accuracy of the passage just quoted:

It is indeed an undeniable and a lamentable fact, that in a very considerable number of the boroughs now trusted with the choice of members of the House of Commons, great corruption of various kinds prevailed at the last general election, not on one side only, but on both sides. It is, I fear, almost equally certain that a great amount of similar corruption was withdrawn from the public eye by compromises of petitions and other corrupt arrangements.

But it must not be forgotten that the law which enables committees of the House of Commons to compel a full disclosure of their own misdeeds to be made by guilty but reluctant witnesses only came into operation, for the first time after a general election, at the very inquiries which have resulted in the late revolting exposures; so that we are probably nearer to the knowledge of the whole truth in these cases than used to be possible on former inquiries. It must also be borne in mind that from the disclosures lately made before the parliamentary commissions now or lately engaged in certain boroughs, it is abundantly plain that, in those boroughs, there is little, if any, novelty either in the extent or the nature of the iniquities which have prevailed. In most of the delinquent constituencies the corruptions which have been brought to light appear to have been at most the more vicious progeny of a long ancestry of corruption.

It must, however, be admitted that there exist dangers in the matter greater than in former times.

With the astonishing advance of wealth and prosperity among our mercantile and other classes; with the increased power of the Lower House of Parliament; with its growing connection with merchandise and trade; has arisen a greater probability than existed in former times that men of large means, still partly embarked in enterprises of various descriptions, will be tempted to use a portion of their wealth, if they can do so with impunity, for the purpose of purchasing a seat in the legislature, some from a desire to obtain that social position which the mere accumulation of riches fails to give,

some with the object of promoting the prosperity of some great joint-stock undertaking or branch of industry on which their further gains may depend, some with the view of obtaining lucrative appointments, unaccompanied by the necessity of discharging any serious duties, but which for some reason or other, are, as every Member of Parliament well knows, most liberally tendered for his acceptance by companies with very high-sounding names. In short, it would be affectation to deny that the possession of a seat in Parliament is now capable of being used so as to represent a money value to an extent, and in ways, unknown in former times.

For these, and for other reasons, the subject of purity of election is one upon which the aid of every earnest law reformer ought to be heartily and diligently bestowed.

But mere denunciations of corrupt practices will do little good. The low and jocular tone in which every species of electoral iniquity is now too often treated will do positive mischief. The studied ridicule of well-meant, but unsuccessful, or only partially successful, attempts to apply a remedy, is sometimes the most powerful ally of crime. Public opinion in high quarters must be itself elevated and purified before these horrors can altogether cease. Members of the House of Commons must be more unanimous in the feeling, that to pay thousands of pounds down without inquiry, in order to secure a seat which their own agent will return to the election auditor as a seat which costs him only as many hundreds, is an act unworthy of a gentleman; and until this feeling is all but universal in Parliament itself, the unscrupulous rich man will have undue influence over the councils of the nation.

This is no mere question of franchise, or of the numbers of constituencies. The work must be that of public opinion. Its progress will be aided and recorded by the press, and its success attested by the earnest action of the legislature, and perhaps, by the verdict of some future jury, and the sentence of some future judge. At present, all we can do is to pave the way for future legislation, by inquiry and suggestion, and never for one moment to allow ourselves to rest contented with the existing condition of things.

Several measures have been already proposed by eminent members of this Association for the removal of this great sore from our body politic. The noble President of our Council, the present learned Lord Chief Baron of the Exchequer, Sir John Pakington, Mr. Serjeant Pulling, and others, have proposed plans to the justice of which no conceivable objection can be made. Indeed, the only objections actually taken, have been either that the measure disapproved of was not stringent

enough to have any appreciable effect, or that by its very stringency it would shock public opinion, and so tend to create a sympathy with the offender.

In dealing with this subject, it should, however, be remembered that remedies are often cumulative. That the failure of two or three to conquer the evil by no means proves that a fourth may not succeed. It may often be difficult to pronounce beforehand whether by the sword or the pebble the giant evil will meet its final doom. Therefore the authors of the various plans already proposed, and those which may be hereafter suggested, should not be regarded as rivals to each other, but rather as allies in a holy warfare; as friendly powers conducting joint operations, all tending to the destruction of a common enemy. The enactment of a provision making all candidates, agents, and electors, concerned in an act of bribery, liable to penal servitude, while it would be just in itself, would be in no way inconsistent with the enactment of another provision, that every member on taking his seat should declare upon his oath—or upon his honour—that he believes his election to have been free from the expenditure of a single shilling by or on his behalf, beyond the sum duly recorded and explained in the election auditor's return.

The only suggestion which I would venture to make, is that of a remedy which has not hitherto been much discussed. Might not a list be made out, by anticipation, of constituencies fit to take the place of those which should hereafter be proved to have forfeited, by misconduct, their character as proper representative constituencies; so that places from time to time declared unfit, should be placed at the bottom of the list, and the rule be "*detur digniori.*"*

The great difficulty in the way of such a scheme, would be the present want of any tribunal fitted for the impartial exercise of the required functions; but I cannot doubt that such a tribunal might easily be provided, as would carry with it the confidence of the people, or that such a provision as that suggested would lead to a rivalry in the purity and inexpensiveness of their elections, even between places where now corruption and expenditure are the most notorious.

By the existence of such a law, some of the smaller constituencies would, I believe, for the first time obtain a true conception of the only valid ground for their own existence as separate constituencies, that they may return to Parliament honourable and upright men, and men of diligence and talent,

* Since writing the above, I have read an able article in the *Saturday Review* of 22nd September, proposing substantially the same plan.

but not men who will consent, even if they have the ability, to spend hundreds or thousands of pounds in the demoralisation of their fellow creatures.

But enough of a painful subject. It will doubtless occupy much of the time of the Association during the coming winter. We shall cordially hail all sincere co-operation in so great a work.

Among the special questions for discussion at our present meeting, in the section relating to international law, is one about which considerable difficulty and a laudable jealousy exists. The subject is one of great practical importance, and one worthy of deliberate discussion, in default of time for which we shall probably agree that Parliament did well in only legislating temporarily upon it.

International comity; the vastly-multiplied facilities for travelling, both by land and sea; the constantly-growing amount of our commercial dealings with the inhabitants of foreign countries, loudly demand that no undue facility for the commission of crime should be given, by allowing the mere escape into a neighbouring country to insure impunity to the criminal.

On the other hand, as long as mankind is divided into separate and independent nations, there will probably always be some notions of criminal law in one country totally abhorrent to the feelings of the inhabitants of another. Some things will be regarded as offences in the one which are praiseworthy acts in the other. Some modes of procedure will be adopted in the one quite at variance with the sense of justice prevalent in the other. No stronger case could be put, by way of illustration, than that of Anderson the negro, who, pursued by the slave-driver, while escaping to British soil, turned on his aggressor, and killed him in defence of his liberty: and whose extradition was demanded for an act which to those demanding it appeared to be murder, but to the vast majority of the nation appealed to for his surrender, was but an innocent act of self preservation. Again, in some countries, a practice has prevailed of condemning persons unheard. In such cases as these, how are we to reconcile the just claims of international comity, and a righteous abhorrence of real crime, with a true regard for that right of asylum of which all Englishmen are justly proud, and which is one of our greatest securities that the best-recognised truths in the best part of our laws, should ultimately find a place in the jurisprudence of the whole world? The interval so soon to be succeeded by fresh legislation on this important subject, cannot be better employed than by the calm discussions which will here take place, in the presence

of such distinguished foreigners as will take a part in the present Congress.

Among the special questions appointed for discussion, in the section of Municipal Law, the state of the Law of Bankruptcy justly claims the first place.

The admirable and instructive paper read last year at the York meeting, by Mr. Moffatt—a paper not less remarkable for the clearness and accuracy with which it states the past and present of the law, than for the power and eloquence with which the writer enforces his own views of the reforms required—was a truly valuable addition to the great mass of knowledge and opinion already in the possession of the Association, and recorded in its *Transactions*. But in the case of a subject so difficult in its own nature, and so complicated by unsuccessful and abortive attempts at legislation, especially at a time when the very able law-officers of a new government are, no doubt, giving their earnest attention to these matters, it is peculiarly fortunate that we should have the opportunity of considering what is best to be done, here, in the midst of the vast mercantile and manufacturing community of this great city, from whom we cannot doubt that observations and suggestions of great practical importance will emanate.

If we were to trust wholly to general opinion, the condition of the law, on this head, is at present such, that it might exclaim with Queen Katherine,—

> "Do with me what you will,
> "For *any* change must better *my* condition."

It may be doubted whether the inherent difficulty of an orderly and economical distribution of the chaotic residue of a mismanaged estate, can ever be so conducted as to avoid discontent on the part of many creditors, and whether a portion of that discontent will not always find a vent in complaints against the existing law. But this would be a poor reason for not applying a remedy to admitted defects. The present bankruptcy law was doomed to inefficiency by the denial of a tribunal adequate to administer it. The last decision of the Court of Exchequer Chamber, upon trust-deeds, is one which places all the unsecured creditors of a bankrupt entirely at the mercy of a majority whose debts may be wholly secured. But it would be a waste of time here to enumerate particular defects. The whole system is on its trial; there is a conflict of opinion even about first principles. It is of vast importance to the material prosperity of the country, that an effectual remedy should be applied. Nothing can be more likely to lead to the

adoption of such a remedy, than that those here assembled, both lawyers and laymen, Englishmen and foreigners, should, with all freedom, favour us with their comments and suggestions.

The great question of "the best mode of reducing the law of England to a compendious form," still faces us, and daily more and more presses for a solution. This is also one of the questions chosen for discussion at the present meeting. The address of Sir James Wilde, at the York meeting, in 1864, so dealt with the general subject, as to render it unnecessary for any of his successors in this seat to do more than express his adherence to the views therein so ably and so fully expressed. But little has yet been done in the direction, now generally admitted to be the right one, viz., that which would lead towards the publication of a digest of the decided law, as the first step towards the ultimate publication of a code.

I feel a pleasure in bearing my testimony to the success of that important publication, the *Bar Reports*, as a valuable addition to the stock of knowledge which every lawyer in the interest of the community ought to possess, of the daily decisions of the courts. When the plan was first proposed, sanguine expectations were entertained by many, that the scheme might be so framed as to diminish, to a great extent, the accumulation of decided cases, and so materially to facilitate the production of a digest of the law. But this object was to have been obtained by means which would have violated one important security which we possess for the maintenance of our rights and liberties. In describing the guarantees for political liberty, Lord Russell, in his work "On the English Government and Constitution," truly and forcibly remarks, "Happily, too, precedents are now so numerous, and so carefully recorded, that a judge cannot, in the face of the bar and of the country, very greatly deviate from the line of duty." This truth cannot be confined to past decisions only, nor to great and striking decisions upon grand *principles* of law. In these days of change and invention, it is not only such principles which require to be well known, and faithfully recorded. It is of at least equal importance, that those upon whose advice the conduct of others in matters of nicety often depends, should have before them also a record of the freshest *instances* of the application of those principles to new and ever varying combinations of things, habits, and transactions. The knowledge of what is really going on in the law, is only to be obtained by free, full, and accurate reports of all those cases which reporters, by experience, find that their brother-lawyers require to be

reported. Whatever are the inconveniences of what our great poet calls,

> "That codeless myriad of precedent,
> That wilderness of single instances,"

all experience teaches that there is more security for the rights of a people, and less chance of their being led into hopeless litigation, where substantially every judicial decision is sure to be made known to all lawyers, by a redundant supply of full and accurate reports, than under any, however modified, system of monopoly or censorship.

But the question proposed for our discussion is of a different kind. Grant that the year-books, and all existing reports, are to remain on our shelves; grant that no act of parliament ever can or ought to attempt to prevent an advocate from freely citing the decisions therein recorded, in the honest support of the interests of his client; the law of England, both statute and common law, ought not the less to be rendered capable of being found in a bulk less clumsy, in a shape more orderly and less repulsive, at a cost less extravagant, and hidden under fewer "debris," than it can at present. It ought to be purged of much dross which conceals the metal which it surrounds.

At no time have the deliberations of the Association been attended with brighter hopes for the future, in regard to this important item of law reform. The address by our distinguished colleague, Mr. David Dudley Field, delivered last night, is a golden contribution to the good cause, to which others present will by discussion be ready and willing to contribute.

In casting our minds back upon the legislation of the past session, it is impossible not to feel some regret that so little has been done which it is within the compass of this Department to notice. A Bill for the Abolition of Treasurers of County Courts; Lord Cranworth's Bill, which enacts some useful amendments in the proceedings in the Court of Divorce; Mr. Goldney's Bill to enable magistrates to order costs in certain cases of prosecution before them; a Bill relating to the mode of taking evidence in civil causes in Scotland; a Bill empowering the court to enrol deeds, under certain conditions, after the statutable time has elapsed; and that very important Bill which assimilates the law relating to attorneys and solicitors in Ireland to that in England: these are almost the only measures of law amendment which have passed into law.

On the other hand, the list of measures brought forward and dropped during the passed session has been unusually large, and has included many subjects of vast importance.

The Revision of the Statute Law, the Law of Bankruptcy, Capital Punishment, the Law of Marriage, the Sale of Land by Auction, the Law relating to Public Companies, the Constitution of the Disciplinary Tribunals of the Inns of Court, and other subjects of great interest, were all so dealt with, in Bills actually printed, as to have left ample materials for discussion, with a view to the ultimate settlement of questions, upon many of which there is as yet much difference of opinion among the most earnest law reformers.

Nor do the questions thus raised by any means exhaust the list of matters which claim our immediate attention. Cases of very recent occurrence will again force upon our attention the question whether the law which excludes the testimony of parties in criminal, and in certain other cases, ought not, at least in some cases, to be repealed. Take the case of perjury. Suppose, for instance, that a witness before a committee of the House of Commons sitting on an election petition swears deliberately to acts of personal bribery by both the sitting members. The committee, after hearing his examination and his cross-examination and the evidence of the sitting members themselves, come to an unanimous opinion that the witness has committed perjury and recommend his prosecution. The prosecution takes place. The sitting members are again examined and cross-examined, but their former accuser's mouth is closed. The jury, possibly because they are shocked at this apparent injustice, possibly because they lack the means of judging which the committee possessed in the cross-examination of the man now on his trial, acquit him of the charge of perjury. There is nothing now to prevent him from prosecuting the sitting members for the same offence, when they also will be debarred from giving evidence, and safe from cross-examination, but possibly a less merciful jury will act upon the uncontradicted testimony of the prosecutor, supported by some circumstance which may be technically sufficient evidence in corroboration of his statement, and they may very possibly be convicted of perjury instead of the man whom the committee recommend to be prosecuted for that offence.

Whatever may be the difficulties connected with the examination of parties in criminal cases generally, it may surely be worth consideration whether, in the case of perjury at all events, it would not be wise to amend the law at once, without waiting for the long period which must certainly elapse before unanimity can be expected on the general question.

The course adopted by the Home Secretary in a recent case of great notoriety, must also tend greatly to promote inquiry upon this difficult subject, whilst it is certain to lead (in fact it

has already led) to very valuable discussions upon the working of the Home Secretary's jurisdiction in cases of unsatisfactory convictions, and upon the larger question of an appeal in criminal cases.

Another difficulty of high practical importance presses for a solution. Some forty years ago the number of the common law judges was increased by the addition of one judge to each of the three superior courts, making the total number fifteen. Since that time the population of the country has increased by many millions, and its trade and business, and consequent litigation have grown enormously. The creation of the county courts, and their triumphant success, have not on the whole diminished, even if they have not increased, the demands upon the time of the judges of the superior courts. Other improvements of the law, such as the examination of parties to suits, have decidedly augmented the work now required to be done by the occupants of the bench. The creation of new assize towns in such great centres of industry as Manchester and Leeds (the importance of whose jurisdictions is fitly represented by noble piles of buildings, witness that grand triumph of architecture within which we have the privilege of being assembled) has had a telling effect in the same direction. The opinion is now very general amongst those who are best qualified to judge, that the time has come when an addition is required to the number of our common law judges.

But it ought to be well understood that any such addition is absolutely necessary before it is made. There are several points in which, by very obvious changes, well worthy of consideration, it has been suggested that our present judicial power might be so distributed, and so relieved of some superfluous functions, as to enable it to go further than it does. For instance, why should not the judges of any one of the three superior courts, when the nisi prius list of that court for the day or for the sittings is exhausted, be competent to sit in London or Westminster as a judge of either of the other two courts? Such a plan would undoubtedly tend to keep down the number of remanets in all the courts. It would be difficult to suggest any good reason against such a proposal in the face of the fact that on the circuits the judge of each court tries causes pending in all. Again, it is generally thought by all lawyers that a large proportion at least of the business which occupies the time of the judges at chambers might very safely be handed over to the masters of the courts, officers perfectly competent, and an addition to whose numbers could easily, if necessary, be made.

Admitting, however, that the utmost economy of our

existing judicial power should precede, or at least accompany, any addition to our judicial staff, it is doubtful whether any such changes as those I have referred to, or others as yet suggested, would be found sufficient to postpone, for any considerable time, the growing demand for such an addition.

Before long, these matters will have to be dealt with seriously, in connection with that great subject, still in embryo, the closer, if not entire, fusion of law and equity. Their satisfactory settlement will, doubtless, be largely promoted by the gathering together under one roof, of all the great head courts of law and equity in London. We shall then be in a more favourable condition for impartially considering whether the subdivision of labour, in matters litigious and judicial, has not been carried much too far, and whether there is any reason why many matters now delegated to distinct tribunals, acting under different rules of practice and procedure, should not hereafter be dealt with by the judges of one great court, exercising one uniform and comprehensive jurisdiction.

Akin to the question last referred to, is one upon which very earnest desires for the alteration of the law are entertained by the mercantile community, especially that portion of it which is interested in ships, desires very natural, and founded upon grievances undeniable and serious, yet, as I venture to think, *not yet so limited in their extent*, or so shaped, as regards the proposals for their remedy, as to enable us at present to pronounce them as being more than fitting subjects for discussion and suggestion.

The Bill which I obtained leave to bring in in 1865 was brought in with the view of obtaining the attention of Parliament and the Government to the subject. It was prepared by the Newcastle and Gateshead Chamber of Commerce, and obtained the assent and support of the chambers of commerce in most of the large seaport towns of the kingdom. That Bill was confined to disputes connected with shipping. It proposed that all such disputes, up to a certain amount, should be decided by a tribunal composed of certain already existing judicial officers, such as county court judges and stipendiary magistrates, who were to act as presidents (but with only a casting voice) over certain assessors, and jointly with those assessors to decide all questions both of law and fact. Other proposals have been made, of various kinds, with the same general object, that of providing a better, a cheaper, and more expeditious tribunal for the trial of disputes of small amount relating to mercantile transactions generally, or to merchant shipping.

The radical fault of the Bill of 1865, was in that part of it

which proposed to leave the whole decision, both of law and fact, to a tribunal consisting mainly of persons not educated to the law. However great and however just may be the disappointment of individual suitors, at the unexpected decisions of lawyers upon the interpretation of documents, all experience shows that far greater disappointment, and far more vexatious litigation, invariably arises from the "*jus vagum et incertum*" of a tribunal unskilled in the law.

The plan of reform which appears, if not most likely to meet the requirements of the case, at least one well worthy of consideration, consists of an extension of the jurisdiction of the Admiralty Court to all disputes which are closely connected with the ship and her voyage, and which in their nature ought to be settled with the utmost despatch upon the completion of the voyage, and the erection in all the principal ports of the kingdom of a fitting tribunal, such as might be found in the county court judges or stipendiary magistrates, with skilled assessors; such tribunal acting as a branch of the Court of Admiralty, and subject to an appeal in cases beyond a certain amount.

Among the events of the past year, the mention of the Court of Admiralty reminds us of one which has left its mark upon the history of English jurisprudence. The masterly judgment of that great jurist, who has so long and so powerfully presided in the Court of Admiralty, the first ever delivered by a learned tribunal in a case of booty of war, beautiful as it is in its language and composition, is still more admirable as a sound, clear, and authoritative exposition of the principles which must hereafter, in all cases of military prize, be held to be the true guide to the exercise of the royal bounty and discretion. That judgment, from the closeness of its reasoning, from the condescending particularity with which it meets every case and every contention of which it disposes, and from the ripe experience and great authority of the distinguished judge who pronounced it, must conclude for ever all doubt about many matters, which were well calculated to give rise to heart-burnings and disappointments on the part of most meritorious public servants. By that judgment Dr. Lushington may be as truly said to have rendered a great service to the members of the noble profession of arms, as he has undoubtedly added a glorious chapter to the jurisprudence of the age.

In contemplating the condition of the criminal law of England in the year 1799,* Sir James Mackintosh made the following observations.—

* In the opening address to his lectures on the Law of Nature and Nations, delivered at Lincoln's Inn.

"As to the law of criminal proceeding, my labour will be very easy, for on that subject an Englishman, if he were to delineate the model of perfection, would find that, with few exceptions, he had transcribed the institutions of his own country."

Sir James Mackintosh did not, on that occasion, enumerate the few exceptions to which he referred. The denial of the advocacy of counsel to persons on their trial for felony and other glaring defects then existing could hardly have been absent from his mind. But if we were to enumerate a tithe only of the really important improvements which have taken place during the present century in this department of the law, their name would not be few, but legion. Lord Campbell alone swept away a cartload of imperfection and absurdity. Sir John Jervis carried not few, but many, most wholesome reforms. What shall we say of the labours of Mackintosh himself, of Romilly, of Brougham, and of like-minded men? Therefore, while we reverence the grand features of that great security for our liberties, of which one of our most enlightened jurists could thus speak, long before the amending hand had been *applied to some of its worst imperfections*, we should never be slow to listen patiently to free and honest criticism of it, or fear to remedy any of its proved defects.

One of the greatest living authorities on this subject, Mr. Greaves, in an able article in the *Law Magazine*, of August last, has pointed out several important points in which the criminal law is, in his judgment, capable of amendment. Some of his suggestions are of a kind calculated to excite great difference of opinion. His proposal to abolish coroners' inquests, for instance, is one not likely to be accepted without discussion by those who are prepared to discuss the third special question in our section, relating to the repression of crime. But about others there can scarcely be a doubt. For example, it is a scandal that the criminal law should entirely fail to provide for the punishment of a murder, because it may be uncertain at what particular spot it may have been committed in a railway carriage on its journey between two places in adjoining counties, the one in England and the other in Scotland. This is only one instance of the numerous ways in which the changes of the habits of a people necessitate a constant attention to the timely alteration of its laws. The whole subject of venue, in fact, requires a full and careful investigation with a view to numerous necessary amendments. The law of costs in criminal cases is at present arbitrary and capricious, depending, as it does, upon statutes passed without any reference to consistency with each other, and excluding

many cases from its provisions much more worthy to be included than some of those for which provision is made.

Other questions of equal importance with those to which I have specially referred stand for discussion at this meeting. Others yet will occupy the thoughts of our members during the winter which is now at hand. But enough of time has been devoted to preliminary observations. The real business of the Department is about to begin. Let it be sufficient to notice that so far am I from pretending to have exhausted all the topics which may well demand a large portion of our thoughts, that the great subjects of martial law and the patent law, the minor but still important questions of how such villainous frauds as those lately exposed at sales by auction can be prevented, what alterations ought to be made so as to prevent the constant and often well-founded complaints of persons summoned upon juries, and others of great interest, have been purposely passed over, from the fear of wearying my audience.

Upon these, and upon other questions, we trust that we shall have the inestimable advantage of experienced and unbiassed opinions from men of many countries and of divers professions. In all cases of great nicety I doubt not that we shall have the benefit of the advice and co-operation of that great master of law reform under whose presidency we have so long flourished. Of him it may be truly said, as it was said by no mean poet of one whom he loved and admired

> "His aim was always Justice, his delight
> To render Law commensurate with Right;
> And from the breadth of that august domain,
> Weed the rank growth of quibbling and chicane.
> No zealot votary of the cumbrous lore
> That "darkened counsel" in the days of yore;
> Not blindly worshipping, as things divine,
> The dust and cobwebs of the legal shrine;
> But bent to make—so taught in Wisdom's school—
> Our laws progressive, like the realm they rule."

In this spirit, and under these auspices, let us apply ourselves to the work.

Address

BY

DAVID DUDLEY FIELD,

CORRESPONDING MEMBER OF THE ASSOCIATION,

ON A PROJECT FOR AN INTERNATIONAL CODE.

STANDING for the first time before the members of this Association, I must begin by making my acknowledgments for the honour which you conferred upon me some years ago by electing me a corresponding member. Though I have not been able to take part in your meetings, I have felt scarcely less interest in them than if I were present, and even take to myself a portion of the self-congratulation which the actual participators must have felt. If I have not contributed to your *Transactions*, I have been an humble sharer in the fame which the contributions of others have won.

The distinction which your association has earned is, however, the least of its honours. The good which it has done in stimulating inquiry, concentrating opinion, and combining efforts towards the improvement of the law and the education and health of the people, would be a sufficient reward for all your labours, even if no distinction had been obtained.

The scope of your labours is not confined to your own country; it extends to every part of Christendom. So intimate is now the connection between all Christian nations, that the social progress of one is sure to be felt more or less in the others. More especially is this true of your country and mine. We are bound together by so many ties that, forgetting for the present all things else, I will only think of the good we may do each other, and the spirit of kindliness we may both promote.

The particular subject to which I am to bespeak your attention is international law. In discoursing of it my purpose

will be to answer, so far as I may be able, these questions:— 1. What is that which is called international law? 2. Who made it? 3. Who enforces it? 4. Are any changes in it desirable? 5. If so, how can they be effected?

Law is a rule of property and of conduct prescribed by sovereign power. In strictness, therefore, there is no such thing as a human law binding the nations, since they have no human superior. They may, however, as they have in part done, agree among themselves upon certain rules, both of property and of conduct, by which they will pledge themselves to regulate their own conduct towards each other and the conduct of their citizens respectively. These rules form what is called sometimes international law and sometimes the law of nations. Neither expression is precisely accurate. There is a body of rules, more or less distinctly stated, by which nations profess to comport themselves in their relations with each other; but they are not laws, nor are they imposed upon nations, nor yet are they international. They are laws only in each state, so far as they are promulgated by the sovereign power of that state, and they serve international purposes. Take, for example, a treaty concluded between the United States and Great Britain; when ratified and promulgated by the treaty-making power in the two nations, it becomes a rule for both, by virtue of their compact, and a rule in each nation for its own citizens, by virtue of the promulgation by its own sovereign authority. For want, however, of a better designation, and adopting the suggestion of Bentham, publicists and statesmen now generally refer to this body of rules as international law. If the word law is to be retained, I should have thought the expression public law, or the public law of the world a better one.

Who made these rules, or this international law, if you so call it, is explained by the definition which I have given. It was made by the nations themselves, either through express compact with each other, or through general practice, that is to say, by treaty or by usage. Publicists, I know, looking beyond the rules so made or sanctioned, have sought in those moral precepts by which nations, not less than individuals, ought to be governed in their intercourse with each other, for guides in other circumstances; and statesmen and diplomatists have often fortified their arguments by reference to such opinions, and it has thus frequently happened that those precepts have been gradually adopted into the usage of nations. These views of the publicists are, however, to be regarded rather as suggestions of what ought to be the conduct of nations in particular circumstances than as a statement of

established rules. They are entitled to the same weight in the decision of national disputes as a treatise on natural law is entitled to in the decision of a case by the courts of America or England.

Some writers are in the habit of treating the law of nations as if it were something above the nations, and having an authority superior to their will. In our late civil war, for example, it became the practice of certain persons to speak of the law of nations as a guide or warrant for the executive in the conduct of the war, beyond the constitution and paramount to acts of Congress. This, I apprehend, was a mistaken view. The law of nations is only such because each individual nation adopts it, and so far only as it is thus adopted. It is legally, I do not say morally, or without just complaint from other nations, competent for any nation to reject the whole or any part of it, so far as its own citizens are concerned. The Parliament of England might enact, if it would, that no English court should decide, and no English subject act, in a particular manner, even though that manner were enjoined by the law of nations, as understood by the whole body of Christendom.

Who enforce the rules, thus made or sanctioned, and known as international law? The nations themselves, first by applying them as occasion requires, to litigants in the national tribunals, and secondly, by punishing the nation which infringes them, in such manner as nations may punish each other; that is to say, by non-intercourse, or by force. The controversies respecting captures by land or sea, and the questions concerning the responsibility of individuals for the violation of private rights, are of course determined by the courts; and where the municipal law is silent, international usage is the rule of decision. When a question arises between nations, it is debated and arranged between themselves, or submitted to arbiters, or decided by force.

The next question will lead us into a large discussion. Are any changes desirable in these rules of international obligation? The slightest acquaintance with the disputes, which have arisen, and do now constantly arise, between nations, will convince us that the rules themselves are full of uncertainty and, in many respects, defective. If we make for ourselves an examination, even incomplete, of the subjects which fall within the scope of international law, we perceive at once how many of them are uncertain or require revision. Within it are embraced all the rules which should govern the relations of states with each other, in peace and in war. All of them spring from the intercourse of nations. If a people shut themselves up

from others, as the Chinese attempted to do, building a wall between themselves and their neighbours, there can be no international law, as there can be no international relations. That condition, however, is unnatural and irrational. Man is a social being, and his nature impels him to intercourse with all the family of man. Whether this intercourse is demandable as a right, and if so, when and by whom and upon what conditions and how it should be carried on are the first questions which present themselves. From intercourse, as from a source, spring the rights and duties of those who carry it on, making it necessary to determine how far they who pass from one country to another retain their own nationality, and to what extent they subject themselves to the jurisdiction of the country into which they enter. Hence arise the questions respecting the right of foreigners to liberty of religion, residence, and trade; their obligation to civil or military service; the liability of their property to taxation or other imposition, and its devolution when they die. Traffic brings with it contracts. These are to be expounded and enforced in different nations, and between the citizens of all. Thence comes that department of jurisprudence, which, under the general title of the Conflict of Laws, has engaged so many minds and led to such profound investigations. The intercourse of nations is public or private. The former is carried on by embassies, legations, and consulates. Here is required a large body of rules, declaring the rights and duties of public ministers and consuls, with their attendants, their reception, residence, functions, and immunities. When private persons pass from one country to another, they go either for transient purposes or for permanent residence. In the latter case there arise two opposite claims: on one hand that of expatriation, and on the other that of perpetual allegiance. Fugitives from one country into another, what are their privileges? Hence the practice of extradition, as modified by that right of asylum, which, older than Christianity, has been exalted by its spirit and precepts, and which it is the honourable boast of your country and mine never to have violated or rejected. The instruments of intercourse by sea, ships, and those who navigate them, and they who pass and re-pass with them, and that which they carry, the control of them on the ocean and in port; all those are to be regulated by that body of rules of which I am speaking. Next are those rights of property which, acquired in one country, should be recognised and respected in another; the title to personal chattels, and the title, quite as good in my opinion, to the products of the mind; inventions for which patents are commonly issued; and writings, for which the law of copyright provides, or

should provide, a sanction and a guarantee. Then there are the subjects of weights, measures, money, and postal service, which fall within the scope of international regulation. Passing from direct intercourse between nations to their rights, exclusive or concurrent to things outside of themselves, we come to the subjects of the free navigation of the ocean, the fisheries, the discovery and colonisation of islands and continents, and the right of one nation to an outlet for itself through the close seas or rivers of another. After these various topics regarding the relations of nations in a state of peace, we come to those of a state of hostility. Force or constraint is applied in three ways: one by non-intercourse, another by reprisal, and a third by war. I will speak only of the relations in war. First, in respect to intestine, or civil war; when and how far may other nations interfere, and when may interference go so far as to recognise a new nation out of the fragments of a broken one, and what is the effect of the separation upon the citizens of the different parts of the divided nation and upon the citizens of other states? Then in respect to foreign war, when it is justifiable, what must be done to avoid it, and what formalities must precede it? And when it comes, what must be the conduct, first of the belligerents and then of neutral nations; and in respect to the former who may attack, who and what may be attacked, and in what manner may the attack be made? Those questions being answered, embrace the whole subject of belligerent rights. But into what an infinitude of subdivisions do these topics divide themselves; explaining to what extent it may be truly said, that, upon the breaking out of a war, all the citizens of one belligerent state become the enemies of all the citizens of the other; what may be done by one side to the citizens and property of the other, including the seizure and confiscation of debts or other property; how the persons and property of the enemy found in a country in the beginning of a war may be treated; whether private citizens without commission from the government may assail the enemy; whether it be lawful to take or destroy private property on land or sea; *whether all kinds of public property may* be taken or destroyed; how public buildings and monuments of art are to be treated; what is the effect of war upon pending contracts; and what future traffic may be carried on between the citizens of the belligerent nations. Then, when we proceed to consider the conduct of armies towards each other, what are the rules of honourable warfare, what strategems are allowable, the proper treatment of prisoners, the disposition of spies, the flag of truce, the armistice, and the exchange of prisoners of war;

all these are subjects of international regulation. Turning from belligerents to neutrals, we come to consider what are the rights and what the obligations of the latter; what are the conditions of a true neutrality; what is a just blockade, and the effect of it; what things are contraband of war; and to what extent a belligerent may be supplied from neutral territory. When a state departs from its neutrality, and becomes an ally, the rights which then attach to her and arise against her, form another department of the rules which determine the relations and the rights of states.

This rapid and imperfect enumeration of the principal subjects embraced within the scope of international law, will suggest to those who are conversant with them, the uncertainty which hangs about many of them, and the need of numerous amendments. Let us refer to some by way of example. Take the case of recapture at sea. America has one rule, England has another, whilst France, Spain, Portugal, Holland, Denmark, and Sweden have each a rule different from either, and different from each other. It was in reference to such a case, that Sir William Scott, that great Admiralty judge, whose judgments command respect for their ability, even when they do not win assent to their conclusions, was obliged thus to speak:—"When I say the true rule, I mean only the rule to which civilised nations, according to just principles, ought to adhere; for the moment you admit, as admitted it must be, that the practice of nations is various, you admit that there is no rule operating with the proper force and authority of a general law." Take the question respecting the effect of a declaration of war upon the persons and property of an enemy found in the country at the time. How important that it should be settled beforehand by a uniform rule. And yet the practice of nations is various, more various, even, than the nations themselves; for in the same nation the practice has varied with the interest or caprice of rulers. You had a controversy with the Great Frederick about the confiscation of the Silesian loan. The seizure of French ships in your ports, upon the rupture of the peace of Amiens, and the detention by Napoleon of English subjects found in France, produced an immense amount of suffering, which might have been in great part avoided by the establishment beforehand of a proper rule. What articles are contraband of war ought to be settled and everywhere known. But you do not agree with us respecting them; you do not agree with most of the continental nations. There must, however, be some rule founded upon just principles, to which intelligent and impartial publicists and statesmen would give their assent, could they but approach the subject in a time of peace, undis-

turbed by passions and enmities. The vexed questions respecting the right of neutrals to send goods by the ships of a belligerent, or to carry the goods of a belligerent in their own neutral ships—questions illustrated by the formulas, "free ships, free goods," and "enemies' ships, enemies' goods"—are matters in which the trade of the whole civilised world is interested, and yet how unsettled! The obligations of a true neutrality, what are they? Do they permit the supply to a belligerent of ships and munitions of war? Do they require a neutral to prevent the fitting out and sailing of ships? Do they require a neutral to disarm and arrest bands of professed travellers or emigrants who are seeking to pass the border, with the real intent of making a hostile incursion? Take the case of the Alabama, to which I refer for no other purpose than illustration. Here is a case where all the people of my country think that you are responsible for the damage done by that vessel. Your own people, I am told, are of a contrary opinion. Ought such a question to be in doubt? or rather, ought there to be any such question at all? The security of property and the peace of nations require that there should be none such hereafter. Then there are grave questions respecting the doctrines of expatriation and allegiance, which have given rise to some misunderstanding already, and which may give rise to greater misunderstanding hereafter. It is time that the conflicting claims of ancient monarchies on the one hand, and of young republics on the other, were, if possible, reconciled. You have in the list of topics for discussion on this occasion that of the extradition of criminals as affected by the right of asylum. This is a subject which requires you to assert the right of society to protect itself against crime, and the right of humanity to an asylum from oppression. You have also in the list the subject of copyright. This is a matter properly to be determined by international regulation. We need a uniform rule, binding upon all Christian countries, and affecting not only the subject of copyright, but that of patents for inventions, money, weights, and measures.

I might continue this list to a much greater length. There is the question of the right of search, which has already given rise to angry disputes, not yet quite settled; there is the question of the right of nations inhabiting the upper banks of rivers or the shores of inland seas to an outlet to the ocean; both of them greatly needing a just and ready settlement.

What might not be done for the prevention or mitigation of that greatest scourge of the human race, war? First, by way of prevention. Let us suppose that the governments of England and America were to commission their wisest men to

confer together and discuss a treaty, for the express purpose of preventing war between them. Can there be a doubt, that if these representatives should come together, animated solely by a love of justice and peace, they would agree upon a series of mutual stipulations, which, without compromising the dignity or independence of either country, would make it extremely difficult to fall into open war without putting one party or the other so completely in the wrong as to subject it to dishonour? Whatever those stipulations might be, whether providing for an arbitration before an appeal to arms, or for some other means of adjustment, the same stipulations which had been inserted in a treaty between our two countries could be inserted also in treaties between them and others. Is it too much to hope that by this means the time may come when it will be held impious for a nation to rush into war without first resorting to remonstrance, negotiation, and offer of mediation? Supposing, however, war to become inevitable, and two nations at last engaging in actual hostilities, how much may be done in favour of humanity and civilisation, by adding to the rules which the usages of nations have established for mitigating the ferocity and distress of war. Could not private war, and war upon private property, be for ever abolished? Could not more be done in the same direction as that taken by the late conference at Geneva, which produced such excellent effect during the last contest in Germany, in exempting surgeons and nurses from capture? Could not the sack of a captured city, or the bombardment of a defenceless town be for ever prohibited? Might not such transactions as the storming of Magdeburg and San Sebastian, and the bombardment of Valparaiso, be made violations of the laws of war? Could there not be a great improvement upon the rules which provide for the proper treatment and exchange of prisoners? What, indeed, might not be effected if an earnest effort were made to lessen to the utmost its evils before the passions become aroused by the actual conflict of arms. Discarding at once the theory that it is lawful to do everything which may harass your enemy, with the view of making the war as short as possible—a theory worthy only of savages, and, carried out to its logical conclusion, leading to indiscriminate fire and slaughter, even of women and children—the aim should be, while not diminishing the efficiency of armies against each other, to ward off their blows as much as possible from all others than the actual combatants.

How can these changes, so desirable in themselves, be effected? I answer, by the adoption of an international code. Every consideration which serves to show the practicability and expediency of reducing to a code the laws of a single

nation, applies with equal force to a code of those international rules which govern the intercourse of nations. And there are many grave considerations in addition. The only substitute for a code of national law, an imperfect substitute, as I think it, is judiciary or judge-made law. This is tolerable, as we know from having endured it so long, where there is but one body of magistrates having authority to make it. But when the judges of each nation, having no common source of power, and not acting in concert, make the laws, they will inevitably fall into different paths, and establish different rules; and when they do, there is no common legislature to reconcile their discrepancies or rectify their rules. Indeed, if there is ever to be a uniform system of international regulations made known beforehand, for the guidance of men, it must be by means of an international code.

How can such a code be made and adopted? Two methods present themselves as possible; one a conference of diplomatists to negociate and sign a series of treaties, forming the titles and chapters of a code; the other the preparation by a committee of publicists of a code, which shall embody the matured judgment of the best thinkers and most accomplished jurists, and then procuring the sanction of the different nations. The latter method appears to me the more feasible. The difficulties in the way will arise not in the labour of preparation, but in procuring the assent; yet great as are these difficulties, and I do not underrate them, I believe they would be found not insurmountable, and that the obstacles and delays which the rivalries of parties and the jealousies of nations would interpose, would finally give way before the matured judgment of reflecting and impartial men. The importance of the work is so great, and the benefits that will result from it in promoting beneficial intercourse, protecting individual rights, settling disputes, and lessening the chances of war, are so manifest, that when once a uniform system of rules, desirable in themselves, is reduced to form and spread before the eye, it will commend itself to favour, and the governments, which, after all, are but *the agents of the public*, will, must, at last, give it their sanction.

Let us suppose this Association to make the beginning. There is no agency more appropriate, and no time more fitting. You might appoint at first a committee of the Association to prepare the outlines of such a code, to be submitted at the next annual meeting. At that time subject this outline to a careful examination; invite afterwards a conference of committees from other bodies; from the French Institute, the professors of universities, the most renowned publicists, to revise and

complete that which had been thus prepared. The work would then be as perfect as the ablest jurists and scholars of our time could make it. Thus prepared and recommended, it would of itself command respect, and would inevitably win its way. It would carry with it all the authority which the names of those concerned in its formation could give. It would stand above the treatise of any single publicist; nay, above all the treatises of all the publicists that have ever written.

Is it a vain thing to suppose that such a work would finally win the assent, one by one, of those nations which now stand in the front rank of the world, and which, of course, are more than others under the influence of intelligent and educated men? The times are favourable; more favourable, indeed, than any which have occurred since the beginning of the Christian era. Intercourse has increased beyond all precedent, and the tendency of intercourse is to produce assimilation. When they who were separated come to see each other more and know each other better, they compare conditions and opinions; each takes from each; and differences gradually lessen. Thus it has happened in respect to the arts, and in respect to laws, manners, and language. In a rude state of society, when men are divided into many tribes, each tribe has a language of its own; but as time melts them into one, a common language takes the place of the many. Your own island furnishes a familiar example of the influence of intercourse in blending together different elements and forming a united whole. This tendency to assimilation was never before so strong as it is now, and it will be found a great help towards forming a uniform international code. The tendency towards a unity of races is another element of immense importance. Germany will hereafter act as a unit. Italy will do likewise. In America no man will hereafter dream of one public law for northern and another for southern states. Even the asperity which always follows a rupture between a colony and the mother country will give way before the influence of race, language, and manners, so far as to allow a large conformity of disposition and purpose, though there cannot be a re-union of governments. The relations between America and England are, or were till lately, softening under this influence; and if Spain is ever governed by wiser counsels, she will make friends of her ancient colonies, instead of continuing to treat them as enemies, and will confer on them benefits, rather than wage war against them.

Would it not be a signal honour for this Association, rich in illustrious names and distinguished for its beneficent acts, to take the initiative in so noble an undertaking? Would

it not be a crowning glory for your country to take it up and carry it on? Wearing the honours of a thousand years, and standing at the head of the civilisation of Europe, England will add still more to her renown, and establish a new title to the respect of future ages if she will perform this great act of beneficence. The young republic of the West, standing at the head of the civilisation of America, vigorous in her youth, and far-reaching in her desires, will walk side by side with you, and exert herself in equal measure for so grand a consummation. She has been studying during all her existence how to keep great states at peace, and make them work for a common object, while she leaves to them all necessary independence for their own peculiar government. She does this, it is true, by means of a federative system, which she finds best for herself, and which she has cemented by thousands of millions in treasure and hundreds of thousands in precious lives. How far this system may be carried is yet unknown. It may not be possible to extend it to distinct nationalities or to heterogeneous races. But there is another bond less strict, yet capable of binding all nations and all races. This is a uniform system of rules for the guidance of nations and their citizens in their intercourse with each other, framed by the concurring wisdom of each, and adopted by the free consent of all. Such an international code, the public law of Christendom, will prove a gentle but all-constraining bond of nations, self-imposed, and binding them together to abstain from war, except in the last extremity, and in peace to help each other, making the weak strong and the strong just, encouraging the intellectual culture, the moral growth, and the industrious pursuits of each, and promoting in all that which is the true end of government, the freedom and happiness of the individual man.

Address

BY

THE RIGHT HON. H. A. BRUCE, M.P.,

ON EDUCATION.

AFTER thirty years of discussion and controversy in the press, in Parliament, in every diocese, in every town, almost in every parish in England and Wales, it seems a bold thing to say that the subject of national education has never thoroughly possessed itself of the public mind, has never occupied that place in the heart and conscience of the nation to which its vast and pressing importance entitles it. Books and pamphlets, sermons and lectures in abundance have been published and delivered; there have been many debates in Parliament, and innumerable public meetings; many millions of money, public and private, have been freely given and spent, and great individual exertions and sacrifices have been made. The Church has founded its central and diocesan societies, and its clergy have, as a rule, displayed an energy and self-devotion above all praise; the Nonconformists have shown an ever-increasing zeal and activity; yet, after all said and done, it cannot be denied that the subject has never been grappled with in that earnest and vigorous spirit which is the fruit of a strong conviction of a great evil to be removed, and a great good to be won. Education, instead of being discussed on its own merits, has been made the battle-field of religious parties; and the adoption of a real and effective national system has been kept subordinate to the interests or supposed interests of Churchmen or Dissenters. The first modest efforts of Government to promote it were received with distrust and opposition; and the long and animated debates in Parliament upon the principles on which the public grant should be administered, seem to have been inspired, not so much by zeal for education, as by the jealous fear of the preponderance of one religious party over the other, or of the state over both. The attempts

made by Sir John Pakington and Earl Russell to introduce a more comprehensive system, and to make the provision of education compulsory, were summarily rejected by Parliament, and so coldly received throughout the country that little has been done since but to indulge in vague complaints and to make impracticable suggestions. The measures taken to supply the public need have therefore necessarily been partial, irregular, unsystematic. Necessarily, too, have the results been incomplete, causing dissatisfaction, disappointment, and legitimate anxiety for the future. Voluntary effort, supplemented by public money, has, it is admitted on all sides, left thousands of rural parishes either without schools or with bad schools, and has failed to reach effectually large and populous districts, the abodes of the poorest and most ignorant, in our metropolis and great cities. Yet men of the most undoubted worth and ability are still divided in opinion as to whether this failure is temporary and accidental, due to imperfect arrangements and incomplete development, and therefore to be met by patient persistence in improving the existing machinery of education; or whether it is inherent in the principle on which we have hitherto acted, and therefore only to be overcome by the substitution of a new system, or at least by some additional organisation.

The advocates of our existing voluntary system point to the great increase in the number of our schools, to the improvement in their character, to the growing intelligence and zeal of our people, who, they affirm, will, as they awaken to a sense of their wants, take measures to supply them. They insist upon the inappreciable value of the voluntary principle, the life and warmth and animation which it imparts to all that it touches, and the danger of substituting for it the cold mechanical action of a general compulsory system. They dwell upon the fact that the great increase of education among the poorer classes has been mainly due to the efforts of religious zeal, and they warn us to beware of replacing that powerful motive by the agency of a less animating and more material principle. The adoption of a compulsory education rate would, they argue, even if enforced only where everything else had failed, lead to the speedy extinction of voluntary zeal. With the aid of time, and by a relaxation of the conditions on which the Government grant is dispensed, they indulge a diffident, hesitating hope of seeing the wants of the people ultimately supplied.

The advocates of a more comprehensive and more systematic scheme of national education, on the other hand, point to the fact that, after all that has been said written and done

during the last thirty years, a large portion of our population is still allowed to grow up ignorant and untrained. Admitting the increase of schools in number, and their improvement in quality, they assert that experience has proved the incapacity of the voluntary system to bring education home to those who need it most. They affirm that it has succeeded only where success was comparatively easy, and the need least pressing; that it has failed where the difficulties were greatest and the need sorest. They argue that it is irrational to make the education of a district dependent upon the idiosyncrasy of a landlord or clergyman, or the accidental devotion of some public-spirited individual. Admitting, for the sake of argument, that in process of time, and with some improvement in our existing machinery, education might gradually permeate our whole population, they ask, in how many generations may this hope reasonably be expected to be fulfilled? and whether this sort of patience is really a virtue which Christian men ought to practise? While we wait for a millennium, which may never come, are tens of thousands of innocent children to be allowed to grow up in ignorance and vice, in that intellectual and moral debasement, which those only know who, like Howard, "have surveyed the mansions of sorrow and pain, have taken the guage and dimensions of misery, depression, and contempt; have remembered the forgotten, attended to the neglected, and visited the forsaken?"* Under no system, they urge, which could possibly be adopted in this country, could voluntary effort be dispensed with, or religious zeal be wanting. The rate levied to erect or maintain a school, would, they acknowledge, be of little use, if good and earnest men ceased to devote themselves to the management of its affairs, and they ask whether the compulsory provision of educational funds has damped voluntary ardour in the United States, or whether, as a matter of fact, the very highest examples of well-directed, voluntary devotion, may not be found in the managing committees of the schools of New England, New York, and Pennsylvania? They do not deny that the denominational system affords a stimulus which would be wanting to an education supplied by means of a public rate. That is an unfortunate result of our religious divisions; but an imperfect education is better than the heathenism of utter ignorance; and zealous ministers would find means to supply the deficiency of dogmatic teaching in our schools.

Such is a brief and meagre outline of the arguments employed on either side of this great and difficult controversy.

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* Burke.

Dependent upon its decision is another question of great importance and equal difficulty. When a sufficient supply of schools has been secured, shall the attendance of children of a certain age be voluntary or compulsory? Are we to rely upon the parents' sense of duty, or are we to call in the aid of the law, in order to compel those who neglect their duty to perform it? The advocates of compulsion point to the undoubted fact that, even where ample provision for education exists, thousands of children are deprived of its benefits, sometimes by the wilful neglect or stolid indifference of the parents, sometimes by their poverty. This is the common experience of all large communities; but nowhere, I believe, have the facts been so carefully ascertained as in this great city in which we are now assembled. That excellent institution, the Manchester and Salford Education Aid Society (an institution which affords an example for imitation in every town of the kingdom), has for its objects, first, in respect of existing schools, to pay for the children of poor parents so much of the school fees as may be needful; and, secondly, by aiding (and, if it should be deemed advisable, by establishing) free schools for the children of parents who are unable to pay any portion of the school fees. In the fulfilment of these objects they have taken steps for a systematic canvass of the town. This inquiry has, as yet, only been completed in some districts, but the facts ascertained, thus far, are so interesting and important, and bear so directly on the subject under discussion, that I must ask your patience while I refer to some of them.

The results hitherto obtained in the examined districts have been "singularly uniform. Everywhere a majority of the children between the ages of three and twelve are found to be *neither at school nor at work.*" This was *not owing to the poverty of the parents, for "in many districts"* (I quote from the report of this year) "the number of children who are not sent to school, but whose parents are able to pay school fees if they were willing, approaches very nearly to the number of those who are neglected on account of poverty." In one district, out of 142 children not at school, only 31 were found to belong to parents too poor to pay for their education. In the districts already examined, of 5,787 children neither at school nor at work, 2,175 had parents able to pay for them, 3,612 were the children of parents unable to do so. In other words, out of every 19 children absent from school, 7 were so by the wilful negligence, 12 by the poverty of their parents. The 3,612 receive aid from the society, but the whole of the 2,175 are necessarily passed over;

for (in the words of the report) "it would be most demoralising for a charitable society to pay school fees for parents who are able themselves to pay." During the course of the canvass, 7,650 families have been visited. These families consist of 37,975 persons; the number of children of all ages was 23,988. Of these 7,804 were above twelve years of age; 11,086 were between three and twelve. Of the 7,804 above twelve, only 112 were at school, there were 6,424 at work, and 1,268 neither at school or work. There is nothing very startling in these figures; those that follow are in the highest degree unsatisfactory. Of the 11,086 children between three and twelve, there were 762 at work, 4,537 at school, and 5,787 neither at school nor work. Of every 100 children, above three years of age, living with their parents or guardians, and not at work, there are 40 at school, and 60 not at school. I have already stated that it appears, from the investigation of the society, that about two-fifths of this absence from school was due to the neglect, and three-fifths to the poverty of the parents. Their latest returns show that while they have made 24,000 grants to enable these latter children to attend school, only half of that number, or 12,000, have availed themselves of this aid. And this fact is attributed to the apathy of the parents.

It is clear—and this must never be forgotten during the discussion of the subject—that it is not the employer of labour who is the competitor of the school-master. Of the children between three and twelve years of age, less than one in fourteen is at work, while out of every twenty-two of such children only nine are at school. Miserable as this is, it seems to be hardly as bad as that which remains to be revealed. The committee has hitherto shrunk from visiting some of the worst and most populous districts in Manchester and Salford, because so large a proportion were below the reach of their influence. "In the lowest districts only a small proportion of the children could be got into schools by any agency the society could use. There are few schools in the localities, and parents and children are alike unimpressible." The statistics, therefore, which I have just read, melancholy and disheartening as they are, by no means indicate the lowest state of depression in the population of this great town. There is a lower depth yet to be sounded. While we await the revelation of these dismal researches, let us take a general view of the state of education in Manchester and Salford. In these towns there are 104,000 children between the ages of three and twelve. A minute inquiry has established the fact that the numbers on the books of all the day schools of every

class in Manchester and Salford in 1865 was 55,000. Add to these 7,000 who may, judging by the sample already examined, be assumed to be at work, and there yet remain 42,000 neither at school nor at work. It is not, of course, to be assumed that none of these children get any schooling, but after making every allowance for a short and occasional attendance at school of a portion of this vast horde of neglected children—equal in numbers to the population of a considerable town—what a picture of the state of our urban fellow-countrymen does it present! After all our efforts, all our expenditure, after so much honest work, so much untiring devotion of our clergy and their fellow-labourers, the comparison of what has been done with what remains to do, is almost enough to make the most sanguine among us despair. And let us not solace ourselves with the hope that Manchester, which has thus manfully laid bare her sore places, and thrown light into her darkest lairs, stands alone in educational destitution. I know that the enormous population of such a city as Manchester imposes a task of peculiar difficulty upon those who devote themselves to supply and keep pace with its religious and intellectual wants. But have we no other great cities in England? And if the state of things in Liverpool, Birmingham, Leeds, Sheffield, Newcastle, were depicted with equal honesty and care, have we any reason to hope that they would exhibit different results? Are their merchants more liberal, their ministers of religion more zealous, their missionaries of good more numerous or devoted than those of Manchester and Salford?

An inquiry less minute and exhaustive than that made at Manchester, but sufficiently careful to deserve confidence, has, at the instigation of the Bishop of London, been made under the auspices of the Committee of the Diocesan Board of Education into the state of education in the metropolis. Already, in 1861, the Royal Commission, presided over by the late Duke of Newcastle, had proclaimed the fact, that, whereas the proportion of the population of all classes receiving some sort of education in England and Wales, was one in seven, or fourteen per cent., the proportion in *Middlesex was only one in thirteen*, or eight per cent. The inquiry just made shows no improvement in the interval. The most that has been done has been to keep things at their level and prevent retrogression. The committee reports that the means of education are wanting in the diocese of London (which, be it remembered, does not include all the metropolis, a considerable portion of which is in the diocese of Winchester), for from 150,000 to 200,000 children. Add to this statement the fact that the average increase of the

metropolis calls for an annual increase of school accommodation for 5,000 children of all classes, every year, and what stronger demonstration could be furnished of the necessity of devising some elastic machinery capable of adapting itself to these tremendous numbers, this gigantic growth?

But the want of accommodation is not the only, nor even the most pressing evil. "It is a significant fact" (says Mr. Oakley, who drew up the report of the committee), "and one that well reflects the variety and multitude of interests included in your lordship's diocese, that from its opposite corners—from Bethnal Green and Whitechapel, from Willesden and Mill Hill—the cry is heard, and echoed in complaints of the same evil from many other places, for some forcible protection to the children of the poorer classes from the temptations of the labour market—some power to compel their attendance upon elementary education. And there can be little doubt that the looms and the workshops of the east-end, and the brickfields, dairies, and and market-gardens of the western suburbs, do contain a whole population of neglected children, who, but for some such enactment, will be thrown ignorant and degraded upon the hands of the next generation." And, if this be the cry from London, that from Manchester is not less earnest and decided. The Committee of the Educational Aid Society, on whose information I have so largely drawn, assert their belief that more valuable than the aid they have extended to 7,000 or 8,000 perishing children, more valuable than the knowlege of their social wants which they have revealed to their fellow-citizens, is the proof they have supplied "that no voluntary or private effort can reach the depths of this evil in the social constitution, and that further legislation is urgently needed, such legislation as shall boldly seek to provide for, and, as far as possible, secure the primary education of every child in our great community."

I have dwelt hitherto on two of the imperfections in our educational system which have been selected for discussion on the present occasion. I will now briefly put before you the best estimate I can form of the work to be done—*i.e.* of the number of children of the poorer classes to be educated—together with a statement of what has been done by Parliament. The population of England and Wales at this moment cannot be less than twenty-one millions. The proportion of children of all classes between three and twelve years of age is about 4,420,000. The rule of the Educational Department of the Privy Council Office, which has stood the test of much experience, is that there ought to be school accommodation provided for one-sixth of the whole population. It may be fairly assumed,

therefore, that there are 3,500,000 of the working classes between three and twelve years of age, whom it would be very desirable to have at school. During the year ending August 31, 1865, Her Majesty's Inspectors visited 10,519 departments of annual grant schools, with 1,247,379 children on the books, and 881,948 in average attendance. I will assume that all these children are provided with good schools; to them I will add (a very liberal estimate) 350,000 children receiving their education in good unassisted schools, making 1,600,000 sufficiently provided for. I will further add (a much more liberal estimate) 800,000 in indifferent schools, and we get a total of 2,400,000 children at school, leaving 1,100,000 unaccounted for, of whom, probably, following the experience of Manchester, 250,000 are at work.

Let me now briefly advert to the action of government. And here let me remark that it is only just to the eminent statesmen belonging to the two great political parties to recall the fact that they have acquiesced from necessity in the compromise on which our present system is founded. The names of Earl Russell and Earl Granville, Lord Lytton, Sir John Pakington, Mr. Adderley, and Mr. Milner Gibson may be found appended to measures not identical, differing indeed in important particulars, but far more comprehensive and stringent than either Parliament or the country was prepared to adopt. The demand of the advocates of a national system is that the Legislature should provide machinery by which schools should be built and maintained wherever they were wanted. To this demand Parliament has declined to accede. However urgent the need, however absolute the destitution, Parliament refuses to supply, or to enforce the supply of a single school. It contributes with no reluctant or niggard hand towards the erection and maintenance of schools which have received a certain amount of local support, and give certain guarantees of good management and efficiency. But it initiates nothing. That the grant voted by Parliament, and dispensed under the superintendence of the Committee of Council on Education, has done immense good, and has not yet reached the limit of its useful operation, I should be the last to deny. I doubt whether any nine millions of our vast expenditure have been ever so beneficially applied as those devoted to the promotion of education. The annual grant has provided for the inspection and largely contributed to the maintenance of schools in England and Wales, at which some 1,250,000 are receiving an excellent elementary education. These schools are taught by upwards of 11,500 certificated teachers, probably the best of their kind that any country contains, the cost of whose training has been mainly

contributed by the State. It has greatly improved our school-buildings and apparatus, and everywhere, even where it gives no direct aid, it has tended greatly to raise the standard of education. It has indeed, improved in a far greater degree than it has extended education. I do not deny that the £1,600,000 it has contributed towards the erection and enlargement of school-buildings have added something to their numbers and still more to their convenience. But the real substantial work done by the parliamentary grant has been to give us better masters and mistresses, and to test their work by the instrumentality of inspection. If any one doubts the correctness of this statement, a reference to the estimates of last year will satisfy him. During the year 1865 the State contributed only to the building of 65, and the enlargement of 46 schools, providing additional accommodation for 15,302 children. But during the same time it extended its aid to no less than 610 schools not previously in receipt of annual grants. The 112,000 children present at inspection in excess of the numbers of the preceding year must be considered, not as additions to the number of children at school, but to the number of those attending good schools. And the value of the work thus done it is hardly possible to exaggerate. Who can place limits to the social and moral effects of a good school, its influence upon the character, the intellect, the careers of those who have had the good fortune to profit by it? To substitute a good for an indifferent school in a district, is to regenerate it, to breathe new life into it, gradually but surely to work a revolution in the lives and fortunes of its inhabitants.

But beneficial as is this work of improvement, it must not be forgotten that other work has to be done, and that to provide schools where there are none, and to secure the attendance of our youthful population, are matters well deserving the attention of our Legislature. For this work, I do not hesitate to say that our existing machinery is not only inadequate, but unsuitable. Some modifications in the practice of the Committee of Council may, I think, be advantageously introduced. The contribution towards the erection of the schools might, considering the increased cost of building, be made on a more liberal scale. The difficulty of maintaining efficient schools in our rural, and some of our poorer manufacturing districts, would be alleviated by raising, in all cases, the rate of payment for the first 100 children. Possibly other alterations, not subversive of the principle on which the grant is made, may be suggested; but any large departure from its present practice, by making special allowance for the supposed poverty of a district, would be inconsistent with its fundamental principle, and

inevitably lead to its overthrow. If poverty be pleaded as an excuse for the meagreness of the local subscriptions, what test can be applied to the validity of the plea? The Valuation List? But many of the places most needing aid are districts of great rateable value, having the misfortune to be removed from the presence, and therefore from the sympathy, of their proprietors. Even in the rural districts there is good reason for doubting whether the failure to reach the conditions of the Government grant is not due to other causes than poverty. Much important evidence on this subject may be found in the Report of the Select Committee on Education which sat during the present session. It is undoubtedly conflicting. Many witnesses stated that in a large proportion of rural parishes it was not possible to raise sufficient funds to fulfil the essential condition of employing a certificated teacher. On the other hand, in the diocese of Bangor, no less than 104 out of 110 schools in connection with the Diocesan School Society obtain an annual grant. In the diocese of Canterbury 66 per cent. of the schools receive the aid of Government, and the causes which prevent the remainder from doing so were stated by the diocesan inspector to be accidental and temporary, and not due to poverty. So in the diocese of Oxford, it was shown that the majority of the rural schools found no insuperable difficulty in complying with the conditions of the Government grant, and that the parishes in which they were situated were not distinguishable from the remainder by their superior wealth. The disabling cause was the indifference of the landowners, the lethargy, sometimes the caprice, of the clergyman, the unwillingness to remove an old uncertificated teacher, in fact, any cause but poverty. In one diocese, a diocesan inspector of great ability and experience stated that the absence of annual grant schools in his district was due to the dislike by the clergy of state interference—that is, of the visit of the inspector.

Now, while I acknowledge the hard case of the population which finds itself deprived of the benefit of the grant by the *apathy, caprice, or secret hostility to education among those who, from property and intelligence, should be the promoters of* schools, I confess myself unable to discover any method by which the present system can be rendered sufficiently elastic to meet such cases, without making a fatal inroad on the very principle on which it rests. We must, instead of having recourse to petty and mischievous makeshifts, boldly face our difficulties, and by enlightening the public mind and awakening the public conscience, enable Parliament to supply us with machinery which shall impose on all alike the duty of providing education for our whole population. I know the objections to

such a proposition; I appreciate the difficulties of carrying it; I foresee the religious controversies to which it will give rise; I admit that we run the risk of losing some considerable advantages connected with the present system; but it is my deep conviction that the balance of good lies on the side I advocate. Briefly and generally stated, my proposition would be to maintain the present system where it works well, but wherever satisfactory evidence is given that the provision of education falls short of the wants of the population, to supply the deficiency by an educational rate. It is affirmed that even this partial introduction of the rating system would be the death-blow to all voluntary effort. I have no doubt that many schools now maintained with difficulty by the voluntary sacrifice of a few over-weighted men would be devolved upon the rate. But I do not believe in the extinction of the voluntary system. It is too deeply fixed in the habits of a large portion of our people, its advantages are too strongly felt, both by Church and Dissent, to be easily uprooted or readily surrendered. Nevertheless, experience has proved that the voluntary spirit, in its full power and development, is the growth of certain favourable soils, and that there are wide, ungenial regions in which it can find no sufficient nutriment. In districts like the principality of Wales, where the population is not collected in overpowering masses, and the voluntary system is thoroughly organised; in many of our rural parishes, where the squire and clergyman work heartily together; in those portions of the country where the rich, poor, and middle classes co-exist in fair proportions, our present system has very nearly supplied the means of education, and may be trusted to make up the deficiency within reasonable time. But in the poorer districts of our larger cities, in parishes where the clergyman struggles in vain against the niggardliness of the landowner and the apathy or hostility of the farmer; in those places, in fine, which the voluntary system, after thirty years trial, has failed to reach, some other means more stringent and peremptory, and independent of individual caprice or illiberality, must be found. The alternative is the growth of a vast population in ignorance and vice, with ever-increasing danger to the State, and to the reproach and scandal of a civilised and Christian people.

The settlement of the question, "whether we are to have a national system of education," must, it seems to me, precede the consideration of any measure of compulsory attendance; and I confess that I should regret to see the energies of the friends of education expended in that direction. Laws of compulsory attendance may almost be said to exist only where

they are not needed, as in Prussia, in some of the Swiss cantons, in Massachussetts, where the conviction of the value of education is so deep and general that the only use of such an enactment is the formal recognition of the duty of parents to their children. I am satisfied that among ourselves such a law would simply be inoperative, that it would not and could not be enforced; and I would therefore venture to recommend that, placing our chief confidence in the growth of a better spirit among our people, and sparing no effort to evoke and cherish it, we should exert ourselves to obtain such indirect aid from the Legislature as is suggested by the precedent of the Factory Acts.

The last extension of the principle of these acts in the Pottery districts, and to some five or six new trades, has already had the most beneficial results, unalloyed by any of the predicted inconveniences. There can be little doubt that similar regulations will shortly be extended to many other occupations, in accordance with the suggestions of the Children's Employment Commission. When this great step has been taken, and one more proof afforded of the feasibility and advantage of such legislation, Parliament will, I hope, gain courage to make one general law, that no child under twelve or thirteen years of age shall be allowed to work without producing a certificate that he is able to read and write. Such a law, accompanied by an adequate provision of schools, would not be long in conveying, even to the most ignorant and degraded of our population, that sense of the value of education, which is the truest indication, as it is the fairest fruit, of advancing civilisation.

I will leave to others who are, I believe, prepared to address you on the subject, the task of suggesting the best means of superintending and utilising our educational endowments. I fully recognise the importance of the subject, and the good which may result from its discussion. But it has always appeared to me doubtful whether these endowments could be made as largely and generally available for the education of the poor as some sanguine persons have supposed. Whatever changes in their administration may be effected; to whatever extent the smaller charities may be consolidated, and useless and mischievous ones devoted to the purposes of education, the present local distribution will, I apprehend, be virtually preserved. That distribution is so uneven, so widely different from the distribution of our population, that it seems inevitable that the best arrangements which can be made will only work a partial good. And I would venture to express a hope, first, that even in the interests of the working classes, no

considerable portion of these endowments may be diverted from middle-class to elementary schools. In the absence of national middle-class schools, such as exist in France and America, I hold it to be of the utmost importance that we should furnish to the most gifted among our poorer fellow-countrymen the means of obtaining a superior education. Secondly, I would urge that the largest possible provision should be made from these funds for the improvement of female education. There is, I am satisfied, no more crying want in our age than that of a sound and solid education for our women. I need not insist upon the immediate bearing of this subject upon that now under discussion. Education is like the cloud,

"Which moveth altogether, if it move at all."

Any substantial improvement in the education of our middle classes will tell directly and powerfully on those immediately below them in the social scale. Again, one of the difficulties which retards the progress of education is the demand for male labour, sensibly limiting the supply of masters, except at rates of payment beyond the means of many of our schools. I look with hope to a remedy for this evil in the example of a country which has outstripped all others in the extent and completeness of its public system of education. In the United States of America, the work of education, not only in the elementary, but even in the more advanced classes of schools, may be said, almost without exaggeration, to be carried on by women. In the schools of Massachussetts there are 9,340 females employed as against 1,544 male teachers; and the proportions in many other states are nearly similar. Here are some instances:—

	Males.	Females.
State of Connecticut, winter schools .	757	1,338
„ „ summer schools .	135	1,892
„ New Hampshire	759	3,262
„ New York	5,707	21,181
City of New York.	202	2,057
„ Boston	63	522

The State superintendent of the New York schools, states that it is impossible to over-estimate the value of the influence thus brought to bear upon daily developing mind and character in our schools.

The great subject, however, for our consideration is how to give to our fellow-countrymen that indispensable minimum of education which is, in the language of M. Guizot, the author of the greatest and most successful scheme of national education in our days, "the bare debt of a country towards its off-

spring, sufficient to make him who receives it a human being, and at the same time so limited that it may be everywhere realised." The demand is so reasonable and moderate, that in a country like ours, so full of good and conscientious men, lovers of the public weal, and impatient of all recognised evils, it would seem only necessary to proclaim and prove the necessity for a remedy in order to secure its application. But, alas! the forces combined against the adoption of any comprehensive system are many and powerful. Once more we shall find arrayed against us the fears, the jealousies, and, what is more formidable, the deep-seated convictions of religious bodies. Once more we shall encounter the enthusiasts of voluntary effort. And I greatly fear that the majority of our ruling classes are as yet rather inclined to self-complacent congratulation on the progress we have made than to acknowledge the necessity for renewed and more systematic exertions. It would almost seem that nothing less than one of those providential calamities which have so often roused our fellow-countrymen into wise and strenuous action will awaken them from their pleasant delusion. Fear of an Irish rebellion brought us Catholic Emancipation; an Irish famine was the death-warrant of the corn-laws; the terrible mutiny in India became, we may hope, the starting-point of a happier era for our greatest dependency; and, if I may borrow a minute example from your recent experience, I can testify to the improved perception of sanitary evils and the alacrity and vigour infused into out sanitary legislation by the presence of the cholera. We can hardly hope for any such impulse to the cause of national education. To many the misery and debasement of so large a *part of our fellow-countrymen are either unknown*, or, at any rate, they do not interfere with the daily comforts and the sense of security of our educated classes. The thunder-clap from Manchester, repeated, as I earnestly hope it will be, by similar investigations in our other great cities, may alarm their fears or, better still, may touch their hearts and consciences, and rouse them into vigorous action. And I cannot doubt but that, stirred by this unexpected and appalling revelation of wide-spread ignorance and hopeless apathy, a younger generation of public men, some of whom perhaps now honour me with their presence and attention, will aspire worthily to complete the work of national education so nobly begun by those living veterans of a glorious war—Lord Brougham, Lord Russell, Lord Shaftesbury, and Sir James Kay-Shuttleworth.

Address

BY

W. FARR, M.D., F.R.S.

ON PUBLIC HEALTH.

PUBLIC HEALTH is the subject of inquiry in your third department. Every life here, the life of every community is surrounded by dangers, which it is the business of science to study and of art to avert. These dangers are of various kinds; they spring from various sources. Enemies abroad and criminals at home are dangers to which every government is alive. There are other dangers not less formidable. Famine now ravaging India, cholera in Europe, early deaths, sufferings in hospitals, fevers in homes, are instances of a class of dangers that we seek to investigate, avert, and disarm.

Health implies more than existence; it implies energy. In Anglo-Saxon, one word designated healthy man, hale man, brave man, hero; and *háelend* was healer, saviour. These simple but noble conceptions it is our business to bear in mind. Development as well as conservation of life is the aim of public hygiene—the name by which our science is known in the continental schools. Private hygiene deals with individuals, public hygiene with communities; but, inasmuch as nations are aggregates of men, it is evident that the division into parts is only made for the convenience of study and of administration. Some things a man can do himself, others can only be done by town councils and imperial governments. It will be an advantage to confine our discussions to the latter field.

As political economy rests upon the idea of value, so our science rests upon the idea of health, and it is as important to us to find a measure of health, as it is to the economist to find a measure of value. That measure must be simple, and applicable to all countries. Now, the measure that is in universal use is the rate of mortality: a unit of life loses a certain fractional part by death every moment, and the amount

of loss in a unit of time expresses the rate of mortality. The rate varies from ·020 to ·040 in England; that is, in one place the deaths are 20, in another, 40 to 1,000 living. Indeed, the range is still greater without a correction to which I will shortly advert.

In a normal community constituted of persons of all ages by an equal number of annual births, there is a fixed mathematical relation between the rate of mortality and the duration of life. Thus, if the average rate of mortality in two cities is 2 per cent. and 4 per cent., then the mean duration of the lives of the inhabitants is 50 years in the one city, and 25 years in the other. Therefore, in saying that rate of mortality measures, it is conversely affirmed that length of days measures the health of nations. As the population fluctuates, certain corrections are necessary; the rates of mortality are determined at various ages, and from these the probabilities of living year by year are calculated and set forth in a Life table that determines the path every generation passes over from its rising to its setting.

The mortality is really a life measure, for the people living to a given sum of births increases in exact proportion as the duration of life increases.

If it is only an indirect measure of some of the elements of *health, according to our larger definition, it* expresses in masses the sickness, measures very accurately the influence of a variety of causes on life, and is a safe guide in practice.

Public health now engages the attention of every civilised state; so we can pass in review the principal populations of Europe, and from the researches of their own statists learn by this measure their comparative health.

I take the population in the lowest stage of health first, beginning with Russia. That empire is emerging from barbarism; and its condition enables us to conceive the state of the population of Europe in the dark ages. The people of various races between the Caucasus and the Arctic Ocean, the Oder and the Ural Mountains, die at all ages, from birth up to 100 years, but their mean lifetime is only 25 years.* The marriage rate is 10, the birth rate 45, the death rate 36 (per 1000 is always understood, unless another scale is mentioned). Thus birth, marriage, death, succeed each other rapidly among the sixty millions of people diffused over nearly two million square miles of steppes, forests, farms, and river-side pastures. In Archangel, where the greatest extremes of cold are experienced, the mortality is nearly the

* Reg. Gen. 6th Report, p. 327.

same as it is in England; in Esthonia and Courland, on the Baltic, the rate is low; so it is in Finland; while about the Caucasus, the Black Sea, and the Caspian, it ranges from 40 to 52.* Whenever the mortality is excessively high in any place, its causes can now almost always be discovered; they are familiar enough to us in England; but as they take different forms in different countries, and are the subjects of inquiry in Russia itself, it is not my intention to dwell on them. Russia has emancipated her serfs. Russians have taken a conspicuous part in the international statistical Congresses; they are frequently inquiring into what is doing in England; and if I mistake not, English engineers have been consulted on the water supply of one of their capitals.

Italy extending from the Alps across the middle of the Mediterranean, offers a strong contrast to Russia; it is divided by the Appenines, breathes the air of the sea, is not frozen by hard winters, is the home of the arts, and inherits the renown of the empire of the world. But the Italian people suffer much; few live to their natural term; the death rate is 30.† I speak now of the new kingdom of Italy. The death rate in Piedmont and Lombardy, and in the islands of Sicily and Sardinia is 29; south of the Po, in Parma, 35; Modena 31; Romagna and the Marches 31; Tuscany 33; Naples 35: Umbria is the healthiest province of Italy, rate 27, and Rome, thanks to her aqueducts, is perhaps the healthiest city in Italy. Venetia, under the Austrians, was in health on a par with Tuscany, 33. It is a peculiarity of Italy that the population of the country is as unhealthy as that of the towns. This low standard of health is the fruit of the former state of things, as the new government has had little time to do more than bring the evils to light, which luxuriated under small paralysing despotisms. As the science of Italy reveals the evils and their causes, the people will find remedies; and among the first will probably be the restoration of the great drainage works, and the magnificent aqueducts of their ancestors. Improved health will increase the military power of Italy. East of Italy is Greece, which holds only a fraction of the Greeks, about whom little can yet be said; and Turkey, Syria, Egypt, North Africa. All that is known about these fine regions of the world is that they are desolated by diseases, are unhealthier than Russia or Italy, and are nurseries of the plague that subjects Europe to the vexatious oppression of quarantine.

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* Reg. Gen. 6th Report, p. 317.

† Three years, 1862-4. Reg. Gen. 27th Report, p. xxxviii. The mortality of provinces is for the year 1862.

Spain lying west of Italy, between the Mediterranean and the Atlantic, mountainous, and divided by deep cut rivers, was perhaps, when she colonised South America, the healthiest country of Europe. The death rate of Spain is now 28.*

Between Italy and Russia, on the Danube, extending from the Carpathians to the Adriatic, lies the Austrian empire, full of natural resources and pervaded to a considerable extent by the industry and science of Germany; yet the death-toll of Austria is high, it is 30.† The mortality of Prussia is not quite so high, it is 29; in Bavaria, on the Upper Danube, it is 29; in Saxony, on the Elbe, 29. At such rates 72 millions of Germans and their associated races die. In none of these countries do the people live on an average 30 years.

We now enter a healthier region of Europe, of which England is the centre; where the people live, on an average, 35, 40, or 50 years, and where a fuller life is enjoyed. Take Norway for example, with its Udal proprietors along fiords and streams; there the mean lifetime of the people is full 50 years. The death rate is 17; the birth rate is 34. They are, as the old sagas teach us, at home on the ocean, and emigrate freely. In Sweden as well as Denmark the mortality rises to 22; and the mean lifetime of the Scandinavians is about 44 years. Sweden, I may remark, is famous in our science for furnishing Dr. Price with the data from which the first national life table was constructed. In Hanover the death rate is 23; and in Holland, on its canals and river deltas, where the greatest natural sanitary difficulties are found, the mortality is 26;‡ *the mean lifetime is 35.* In Belgium other difficulties have sprung up; *the population is the densest in Europe, thanks to* its industry, but the death-toll little exceeds 22. If we ascend the Rhine to Switzerland, we there find several healthy cantons.

In France, that various and beautiful land, lying between England and Italy, Germany and Spain, the death rate was 23; in the last year or two it has fallen to 22, as low as that of England.

No variation in the health of the states of Europe is the result of chance; it is the direct result of the physical and political conditions in which nations live. This is so well understood, that the people of every country are associated with

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* Four years, 1861-4. † Eight years, 1857-64.

‡ Sweden, 1841-55, mean lifetime males, 41·28; females, 45·60. Holland, 1850-9, males, 34·12; females, 36·43 years. Berg and Baumhauer. See Paper by Hendriks' Journal of Stat. Soc., vol. xxvi. p. 423.

you in these inquiries, and are watching the progress of the great question of Public Health in England. Yet its vital importance is nowhere fully recognised; its influence in the history of mankind is lost sight of in the din of war, and in the terrors of revolution. With what just eloquence have Burke and the historians of all nations denounced the furious executions of Paris. But in Germany, including districts under paternal well-intentioned sovereigns, some 300,000 men, women, and children are killed every year by diseases, in excess of the numbers dying of the same diseases in France.* Under the indolent princes of Italy, the annual life-loss in excess exceeded 150,000 lives annually. Not to save in some circumstances is to destroy. Can we wonder, then, at the feverish uneasiness of those great populations, whose instincts have led them at last to coalesce in powerful states.

I now ask you to consider the sanitary state of the United Kingdom. The rate of mortality is 22. The rate is nearly the same in Scotland, England, and Wales. But how fares it with Ireland? Well, as far as official documents go, the death-rate of Ireland is 17; and, after every allowance for defects in registration, which has only been recently established, I do not think the death-toll of Ireland can be set higher than that of Scotland.

From the English Life table we learn that the mean lifetime of the nation is 41 years (40·85),† and this implies a corrected mortality of 24 (exactly of 24·47) annually, whereas by the ordinary method the mortality is 22 (or 22·45). The difference arises from the increase, which throws into the population a mass of young persons at ages when the mortality is below the average. The average age of the dying is reduced from the same cause: it is 29·4 years. Similar corrections of the mortality are required, and will ultimately be made in other countries.

The mean age of the population by the Life table is 32 years; the mean age of the enumerated population in 1861 was 26½;‡ the difference of 5·5 years arises from the same cause. If a normally constituted population has lived 32 years, it will live 32 years under the same law of mortality;§ but in England,

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* The mortality in France 1853-62 was at the rate of 23·82; Prussia 1851-60, 29·00; Austria 1857-62, 30·38; Italy, 1862, 31·28 per 1000.

† *English Life Table*, p. 22, based on returns of population, 1841 and 1851; and 6,470,720 deaths in 17 years, 1838-54.

‡ Report on Census, 1861, p. 110.

§ See this curious law demonstrated in *English Life Table*, Introduction, p. xxxii.

the age of the people is now 26·5 years; and they will live 35·6 years on an average. As they are younger they have an ampler prospect of life before them than a stationary population.

You are aware, that more boys are born alive than girls, and the boys dying in greater numbers, this provision of nature brings the sexes nearly to an equality at the age of marriage. Thus, of 1,000 children born in England,* 512 are boys, 488 girls; 334 men, 329 women live to the age of 20. The excess of boys is reduced from 24 to 5; and if there was no emigration and foreign service, the men of the age 20-40 would exceed the women in number. An unchanging million of annual births will produce, according to the law of vitality in England, a population of 20,426,138 males, 20,432,046 females, large numbers differing quite inconsiderably.

The births registered in the United Kingdom in 1865, exclusive of the islands in the British seas, amounted to 1,006,223, and this is below the actual number, as all the births are not registered in Ireland or England. The population of the United Kingdom, including the islands, is now estimated at 14,775,810 males, and 15,553,397 females. England differs from the other countries of Europe in this respect;† it has 250,356 men in the army, navy, and merchant service abroad, on the seas, and in English possessions. This leaves 14,525,454 males at home, against 15,553,397 females. The females exceed the males in the United Kingdom by 1,027,943. After deducting the men abroad having English homes, the number is reduced to 777,587 women. The proportionate number is greatest in Scotland, least in Ireland.

Nevertheless, if our calculation is correct, the men must be somewhere in existence; and, in fact, in America and in Australasia alone, at the last census, the males found exceeded the females by nearly a million (972,530‡). Allowing for the *share of other nations in the surplus, there* can be no difficulty in identifying the men of which the 777,587 women at home complete the calculated couples. The men are in Newfoundland, New Brunswick, Canada, Australasia, and the United States, whither the women have hitherto hesitated to sail from home across the ocean; but with constant magnetic communication, commercial intercourse, and the intimate union of the

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* See Life Table, p, 24. † Census Report, 1861, p. 5,

‡ Excess of males in Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and Newfoundland, 68,740; United States (census 1860), 727,085; Australasia, 176,696.

people on both sides of the seas, the equilibrium of the sexes cannot fail, in the end, to be re-established.

It is gratifying to find that the health of the English race in North America and in Australasia, so far as we can judge from imperfect documents, is not worse than it is in England; and that those rising communities are eager to adopt all the sanitary improvements of Europe. In some respects they have gone ahead of Europe; I may refer to the magnificent aqueduct pouring the fresh streams of a mountain river into New York since the year 1842, when Paris and London were drinking polluted waters from the Seine and the Thames.

A word on the growth of population in England, which is unquestionably one of the weightiest of all our hygienic problems. The population of the United Kingdom was 16,302,410 in the middle of 1801; it is now 30,329,207. Population naturally increases in geometrical progression; and in this country, the rate of increase was very uniform during the fifteen years of war down to 1815, and the fifteen years following. After the reform of parliament and catholic emancipation, so well calculated to content the people, the rate of increase decreased slightly down to 1841; and then rapidly, after the potato blight and the repeal of the corn laws, during the exodus, down to 1851; and since more slowly. The decennial rate of increase was 15 per cent. (1821-31), 11 per cent. (1831-41), and in the last decenniad (1851-61), 6 per cent. Thus our population increases at a decreasing rate; which implies that the increase will cease. In the first 30 years of this century, the addition to the population was 8,121,178; in the second thirty years, it was 4,935,339. The rate of increase was 50 per cent. in the first, and 20 per cent., in the second period.* The great perturbation took place in Ireland, where the population rose two millions in the first, and fell two millions in the second period. In England, the population increased five millions in the first, and six millions in the second period.† The change in the rate of increase is due to no decrease of energy, but to the flood of emigration; for the population, like a mighty stream, flows into America and Australasia. The population of the American colonies, of the United States, of Australasia, and of the United Kingdom, was *twenty* millions

* The first ratio $r = 1{\cdot}4982$, the square root is $1{\cdot}2240$; which is nearly the second ratio $= 1{\cdot}2021$.

† 4,933,467 in 1801-31, and 6,124,854 in 1831-61; or 54 per cent., and 44 per cent., on the population. See Reg. Gen. 27th Report.

save lives from the flames. Lifeboats rescue mariners from the waves. Chemistry finds antidotes for poisons. Surgery, armed with Harvey's discovery, ties bleeding arteries. From Jenner, medicine has learnt by vaccination to prevent small-pox. And this brings us to the cholera, over which new power has been recently acquired, by the discovery in England of the laws of its propagation.

A surgeon dips a lancet into the pustule of a small-pox patient; on its point is a drop of transparent lymph; and that lymph mixed in the blood of a child that has not before had the disease, reproduces the lymph in new pustules, which will again propagate the disease among other children. This matter is also volatile, and other children, brought into the same atmosphere, are said to catch small-pox. If lymph is derived from a cow-pox pustule it reproduces cow-pox. In large lying-in hospitals it has been found by repeated experience, that child-bed fever, or what I call *metria*, is generated: one woman falls ill, other women take it; every fresh patient that enters dies; and if the hospital nurse attends a lady out of doors, that lady will probably die of child-bed fever. Erysipelas, pyæmia, and gangrene are generated, when wounded soldiers are crowded in military hospitals; and the specific matter of each of these diseases produces the same specific diseases in other soldiers.

Typhus has been generated in jails, and has infected judges in courts as it infects physicians in hospitals. Here is a large number of diseases which we know how to produce; and a second group equally numerous we know how to propagate —such as measles, scarlatina, hooping-cough, and small-pox. In the statistical nosology, I classed all diseases of this kind together, under the head of Zymotic diseases; and in the analysis of morbid phenomena named the different species of matter generated in each malady. Thus, selecting a few, the matter of small-pox (variola) is called *varioline*; of cow-pox, *vaccinine*; of erysipelas, *erysipeline*; of scarlatina, *scarlatinine*; of syphilis, *syphiline*; of typhus, *typhine*; of dysentry, *enterine*; of cholera *cholrine*.* These matters introduced into the blood directly by inoculation, or by air, or by water, only induce their transformations in a certain number of the persons exposed to their action. They vary from day to day in strength. Cases of small-pox, for instance, occur every week in London: few children die of small-pox for weeks together; when suddenly the *varioline* becomes

* Registrar General's 4th Annual Report, 1842, pp. 186—216.

active, is multiplied with redoubled velocity, destroys large numbers, and after a time again becomes quiescent. All zymotic diseases follow this law, and are hence called epidemics, endemics, plagues; which, as their cause is not evident, have often been referred to supernatural agency. In their course they are generally influenced by atmospheric vicissitudes; but the zymotic stuff probably acquires its extreme diffusiveness in some wretched families, under hygienic conditions that favour its creation. Asiatic cholera thus originated in the delta of the Ganges, in spots where the huts are on mounds, surrounded with pits, which are the receptacles of dejections and of the stagnant water the natives drink. Jameson says, "bad water no doubt sometimes immediately induces the disorder."* In India they had advanced scarcely any further in the etiology. The English reports on the epidemic of 1832, and the elaborate official French report,† discussed all the conditions, except one, likely to influence its course, and the results were purely negative. They stated but did not solve the problem of the disease. The English system of registration was established in 1837, and in the epidemic of 1848-9, the age, profession, date of death, and the place of death of each person by cholera was published by the Registrar-General in the London weekly tables of mortality. These tables were freely distributed among men of science, who had thus an opportunity of studying the facts. London presents a favourable field for the analysis of epidemics. It has a vast population, spread over a large area at different elevations, rising from ground below the Thames level to Hampstead and Norwood; the population exists in every degree of density, in every degree of poverty and wealth: it was supplied in *1849, by eight companies, with unfiltered water*, some of it drawn from springs, the rest from different points of the Thames, and its tributary the Lea. At that time the sewers of London poured their contents into the Thames, at different parts of its course, so that the waters of the companies differed very much in impurity: at Hungerford Bridge the water was charged with soil, and higher up the tidal stream was comparatively pure. It was immediately found, on examining the returns, that cholera was much more fatal on the south side of the Thames than on the north; and at the close of the epidemic, calculation showed that the mortality had been

* Cholera Report to Reg. Gen., p. lxxvi.

† Rapport sur la Marche et les effets du Cholera-Morbus dans Paris, 1834.

at the rate of 41 on the north, and 120 in 10,000 on the south banks. The two populations differed in many respects, and further analysis was necessary. The population in 38 districts, each * a large city in magnitude was variously grouped according to (1) wealth determined from rated value, (2) density, (3) elevation, and (4) water supply. It was shown that density and wealth in their different degrees had an influence on the mortality of the epidemic; but that the effects of these influences were completely overwhelmed by the influence of bad water and of elevation. Thus, the six districts supplied with the least impure water lost in every 10,000, 15 by cholera; the twenty districts getting still more impure water lost 48; those getting the water from the parts of the Thames saturated with sewage lost 123. The air, the water of wells, and the water containing impurities in suspension running along tubes under ground from the river up the sides of heights, contain different amounts of such matter in suspension at different elevations; and it was found that the mortality ranged from 177 deaths by cholera in 10,000 people on a level with the Thames, to 102 among those living on ground 10 feet higher; and thus the mortality fell to 65, to 34, to 27, to 22, to 17, to 7; as you ascended, 30, 50, 70, 90, 100, 350 feet above Trinity high-water mark. In the epidemic of 1853-4, and in the epidemic of 1866, the same laws prevailed.

That was all we could rigorously determine in 1848-9, and the experiment was incomplete, as the drainage of the ground and other conditions in which the people of South London live, differ in many respects from the corresponding conditions on the north side of the Thames. South London is supplied chiefly by two companies. In the interval between 1849 and 1854, one company, supplying South London, was driven higher up the Thames, and got above Teddington lock water uncontaminated with London sewage; while the other company still drew its water, in 1854, from the impure stream below. Here was an experiment on a grand scale. Asiatic cholera was epidemic once more, and retained its full power of destruction in the districts still supplied with impure water; but it was discovered in the returns of the weekly tables, that the mortality in the districts supplied with the better water was diminished. The difference was striking in houses of the same street, supplied by the two companies; and it was observed every week, in every district: after the epidemic was over, the two companies furnished lists of all the

* Registration Districts of London, 36; two were sub-divided.

houses which they supplied; and when the deaths by cholera in these two classes of houses, both in 1849 and 1854, were taken out at the General Register Office, and tabulated, the result satisfied the committee for scientific inquiries of the Board of Health*, that the diminished mortality was due to the change in the quality of the water.

This reasoning involves no theory. The result is arrived at by induction drawn from a vast number of instances all concurring. But I am bound to notice here an important theory, which was advanced in 1849, by Dr. Snow, a London physician, who died young, but whose name will not perish. This, in a few words, is Snow's theory:—The rice-water discharges are to cholera, what the lymph (varioline) is to small-pox; the matter is generated in the body, it is multiplied in the intestines, and diffused by direct handling, or by water, and I should add, by air in certain states, carrying it suspended as dust—cholera-dust.

Dr. Baly, in his able but cautious report to the College of Physicians, decided against the theory, and, in fact, the evidence then in its favour was not conclusive. But Dr. Snow persevered; he collected instances of the communication of the disease through pumps, wells, and rivers; and, in 1854, inquired at every house of certain districts where deaths from cholera occurred in Southwark. Thus he collected many new confirmatory facts. Some links had been left incomplete in the verification of the law that cholera matter (*cholrine*) is diffusible through water: these have been supplied in the present year partly by what I cannot but consider a deplorable *accident.*

South London, it will be recollected, was still supplied with impure water in 1854 by one company (the Southwark), and it suffered severely in the epidemic of that year. In the field of the other company (Lambeth), the mortality was much reduced, but was not inconsiderable. In 1866 South London was supplied with water by the two companies from the purer source; the shallow wells were dried by the metropolitan drainage, and the deaths by cholera in all the districts, holding 873,548 people, were not so numerous as the deaths had been in 1854 in a single district. Thus you have these sequences: in the Lambeth field, impure water, 1849, cholera terribly fatal—purer water, 1854, cholera much less fatal; in the Southwark field, impure water in 1849 and in 1854, cholera

* The Committee consisted of Arnott, Baly, Farr, Owen, Simon. The subsequent Report by Mr. Simon gives the final results of the Committee's investigations.

terribly fatal in both years; in 1866, both fields with pipes interlaced, in South London, supplied with the purer water, mortality from cholera comparatively slight, but sufficient to remind us that the water is not yet perfectly pure.

Cholera had been epidemic in the continental cities since 1865, but London rested secure, expecting to escape with comparative impunity, when lo! in July, the weekly deaths by cholera sprang up from 6 to 14, to 32, to 346, to 904, to 1,053, with an unexampled velocity, and threatened to renew all the horrors of the former plagues. The weekly returns showed that multitudes of men, women, and children, spread over an area of about ten square miles, were indiscriminately struck down by diarrhœa or cholera.

In East London 3,613 people perished by cholera and diarrhœa in the six weeks, ending August 18th. The great destruction of life occurred in every district, nearly every sub-district, supplied from the Old Ford reservoirs of one of the eight London companies, and to the same extent nowhere else. These reservoirs are close to the Lea, which is a tidal river, polluted with the sewage of West Ham and of East London. In Manchester the water is immediately under the control of the town council, and you can know all about the supply, but in London that is not the case, as the water is supplied by private companies on strictly commercial principles. The directors are not bound to tell us precisely what their servants do, and they have not done so, but circumstantial evidence irresistibly shows that polluted water was distributed over all the area of extraordinary mortality during a certain number of days, with the same result as in previous epidemic years. The source of mischief was no sooner pointed out than the plague began rapidly to decline; it appeared to be under control; and the mortality by cholera in East London is now nearly as low as it is in the rest of the metropolis.

When zymotic matter or any impurity is thrown daily into the mains, pipes, butts, houses, and, I may say, bodies of a population, it is irregularly distributed, and requires many successive daily changes to eliminate it; thus, when impure water is supplied for three days only, it may take thirty days to eliminate it. This may be demonstrated mathematically, and be illustrated by experiment.*

* Problem.—A full vessel contains x gallons of *pure water*: a *gallon* is poured out and is replaced by *a gallon of impure water*, which is mixed completely with the pure water; this operation is repeated n times: then the operation is reversed and the liquor drawn off is every time replaced by a *gallon of pure water* for n times, how much *impure*

I may add that although the distress from the loss of thousands of children and parents in an epidemic is never wiped away, yet, in East London it was mitigated; the people behaved with courage and patience; they helped each other in danger, and they were succoured by enlightened English charity. The Queen herself came to their relief; Mrs.

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water and how much *pure water* remain at the end of the $(m + n)$ operation?

Taking a as 1 or any proper fraction let ax be the quantity of pure water remaining after the first operation, then a^2x will remain after the second operation, and a^mx after the m^{th}; as the vessel is still full the quautity of impure water is $x - a^mx = (1 - a^m)\,x$. In the reverse operation the impure water is continually diminished in the constant ratio a, and after the first change becomes $a\,(1 - a^m)\,x$, after the second $a^2\,(1 - a^m)\,x$ . . . . after the n^{th} change, that is the $(m + n)^{th}$ operation, the quantity of impure water is $a^n\,(1 - a^m)\,x = (a^n - a^{m+n})\,x$. As in the reverse operation the impure water is replaced by pure water, the quantity of pure water is found by subtraction to be

$$= (1 - a^n + a^{m+n})\,x$$

If, instead of replacing the gallons of water withdrawn in the first m operation with impure water, a solution of arsenic is substituted, or a solution of a given quantity of any substance, then if the proportional part of the arsenic or other matter in 1 measure of water is expressed by q, then $q\,a^n\,(1 - a^m)$ will give the proportion of that substance in every unit of the solution, and the total in x such units of the solution by weight will be $q\,a^n\,(1 - a^m)\,x$, and the weight of pure water will be

$$\left\{ 1 - q\,a^n\,(1 - a^m) \right\} x$$

For arsenic substitute cholera matter, say for shortness *cholrine*, and the result will be the same.

But *cholrine* is unlike arsenic in this respect, it has the power of multiplying itself in the bodies of men, varies in strength, and undergoes changes in its activity.

It will be observed, that the quantity of poison increases faster than it decreases; and that the velocity of both changes increases as a decreases in value. A similar law is observed in the rise and decline of cholera.

Dr. Angus Smith illustrated this law by a beautiful experiment.

Three glass vessels (Wolff's bottles) were connected by means of glass tubes. They were intended to represent water reservoirs.

A was full of pure water, and was supposed to be supplied from *C*, but suddenly it is supplied by impure water from *B*. The impurity was represented by colouring the water with a solution of litmus.

As soon as three or four ounces of the impure water had passed into *A* the whole was coloured so much that it could be seen at a great distance, perhaps as much coloured as moderately light sherry. The connection was then broken with *B*, so as to exclude the impure water, and opened up with *C*. The pure water passing into the impure slowly removed the colour, but so slowly that the audience did not wait to see it quite finished. However, it may be said that after pure water to the extent of twenty-five times the impure had entered, the colour

Gladstone, Miss Marsh, Miss Sellon, and Miss Louisa Twining, treading in the steps of Miss Nightingale, administered relief to the sufferers; the Bishop of London and the Lord Mayor upheld the honor of their high offices by indefatigable services. The medical men, and it is right to add, the clergy, nobly did their duty; the local authorities, to a greater extent than they ever did before, carried out the judicious recommendations of the Privy Council. House-to-house visitation was in many cases in use for a time.

By these means, by the exertions of the engineers of the companies, and by the early discovery of the source of the terrific mortality in East London, the plague has been stayed; we now know how Asiatic cholera can be subdued. Twenty thousand lives have been saved. This is an achievement in the science of health, which reflects some glory on England, and of which all the world will enjoy the advantage. It is due to many years of labor; to the labors of Jameson; Scott, Orton, Balfour, Martin, Parkes, in India; to Sutherland, Southwood, Smith, Baly, Gull, Simon, and especially to Snow, in England; to the English registration of deaths, which enabled us to demonstrate by several experiments in the largest city of the world, the fatal effects of water tainted by impurities.

How did it happen that the disastrous effects of the diffusion of this matter through water was not discovered in Paris or elsewhere? For this simple reason, that when the observer has under his eyes a population all supplied with impure water, he cannot logically refer the effect to the specific cause. For this happens in cholera, as in all zymotic diseases: only one individual in a given number is susceptible: for the sake of illustration say 1 in 4. Only one in the number susceptible (say 1 in 5), by chance comes in contact with the stuff; and only one vessel of water in a given number (say 6), contains a dose active enough to induce Asiatic cholera. Then by the doctrine of chances, only 1 in 120, (that is $\frac{1}{4} \times \frac{1}{5} \times \frac{1}{6}$), will be attacked, and about 1 in 240 will die of the disease. Great numbers will be attacked by diarrhœa and milder forms, but 119 will not be attacked by cholera, while 1 is attacked. Here

was not perceptible, although no doubt traces would still have been found had it been carefully examined.

The bottles used held half a gallon each, the flow was caused by attaching a syphon to *A*, and with a clamp stopping it at will. The coloured or impure water entered so as to fall near the surface of the other; the water passing away was taken from the bottom.

This mode is favorable for a rapid removal of the impurity; true some modes are more so, but others much less so.

are apparently 119 instances in favour of and 1 against the water.

In the worst sub-district of the East London field, 193 in 10,000 people died of cholera. Say that 386 were attacked, then 9,614 were not attacked, and the health officer might reason thus: 9,614 persons in this district exposed to the cause—impure water—were not attacked, therefore the disease was not caused by the water; and of the 386 attacked some drank no water, the fact being that they were tainted in other ways. This logical difficulty is the origin of the greater part of the disputes on contagion. We overcame it by comparing the mortality of cholera in all the East London districts, the Lambeth districts, the Southwark districts, with the mortality of all the districts —many of them similarly situated as to condition—supplied with water from other sources. As the difference is uniformly enormous in successive trials at distant dates, the conclusion is irresistible.

In Manchester the people have, with great credit to their intelligence, secured a supply of pure water; in fact, the systems of Manchester and of Glasgow are models to other cities. But Manchester retains the excreta of the sick from all zymotic diseases, with other impurities, close to the dwellings and under the faces of the people. By comparing the *mortality of the city so organised* with that of London when the metropolitan drainage is in *full* operation, and with that of other cities where such matters are now carried off by water, they will be able to analyse the effect of their system of arteries without veins, and I suspect that it will be decisively condemned by the result.

The effect of a multitude of other causes on health, such as overcrowding, uncleanness, and drunkenness can be tested by the same methods.

To render our investigation of causes affecting public health complete, there should be a public registration of every form of sickness and infirmity, as well as tests of strength by the quantity of work performed, either mental or muscular. The conscription and recruiting examinations are the only tests now in use.

The sanitary society in Manchester has commenced some work of this kind, and will, I hope, persevere. In the diffusion of sound practical information, the Ladies Sanitary Association has already rendered services which we are bound to recognise. The *Lancet* Sanitary Commission has done excellent service, and so have writers on hygienic subjects in the *Medical Times*, and in the other journals. The universities of England will, I hope, ere long, teach formally, as the con-

tinental universities do, the doctrines of public health; and by recognising the doctrines in granting degrees, as suggested by Mr. Rumsey, they will promote the health of their country. Manchester and all our cities will, like Liverpool, Glasgow, and some districts of London, have accomplished officers, educated in the end specially for the purpose, keeping incessant watch over their health, like tutelary geniuses, and doing good not only to the inhabitants, but to mankind. For what good has been hitherto done by hygiene, however striking in building up healthy generations, is nothing compared with what remains for it to accomplish in times to come. Let there be a small ratio of improvement among the millions born in the successive generations of the English race—of the races of Europe—and under that law of geometrical progression with which the world has been sometimes terrified unreasonably, mankind will attain a degree of excellence of which we have now no conception. Healthier, happier men may become as by miracle only a little lower than the angels in the golden age, the paradise of the future.

How far we are from this consummation we are reminded by the untimely loss of our fellow-labourers. Since we met last year, Sir Charles Hastings, president of the Health Department at York, is dead. He was a man most friendly in his nature; and devoted himself to the organisation of a great medical society. His life was crowned with success: and he had the supreme felicity of seeing his son lay the foundations of this Association, in conjunction with some of the greatest and some of the best men of the age.

Address

BY

SIR JAMES KAY SHUTTLEWORTH, BART.,

ON ECONOMY AND TRADE.

THIS Association is founded on the idea that the growth of civilisation proceeds according to laws, the investigation of which is as much a matter of science as are the physical laws which govern the material world. The philosophy of history *would*, if accurately written, consist in an account of the operation of those laws amidst disturbing forces during the development of civil order and social prosperity from the chaos of barbarism. In an address which I delivered at Bradford, I drew attention to analogies in the operation of the moral and physical forces, intending to suggest that the work of the supreme intelligence and will is harmonious, seeing that both forms of force are agents in the development of one design, and have certain features in common in their modes of operation.

Thus, both in the development of civilisation and of the present condition of the earth's surface, all modern investigation tends to show that for many ages the changes necessary for these results have been so gradual as almost to escape the observation of contemporaneous races. For example, the growth of a nation like the English from the condition in which Cæsar found the Britons, has required two thousand years. The successive forces introduced by Roman occupation, Saxon and Danish colonisation, and Norman conquest, have only produced their results as an acorn is developed into a tree under the influence of the seasons. Time is a necessary element in all great changes, whether on the earth's surface or in society. The occurrence, at remote periods, of eras such as geologists call catastrophic, is the sudden result of causes which have long been in operation, but the force of which has been resisted. Thus, if the Alps were suddenly uplifted, that catastrophe is attributed to the cooling of the central

fluid mass, and the contraction of the earth's crust, which had become thick enough to resist, until the force of compression within accumulated so as to break the crust. So, in the history of nations, a revolution like the French of 1792, is proved, by inquirers like De Tocqueville, to have had its causes laid deeply in the condition of the people, which had become too miserable to be long consistent with social order, while all change was resisted, not merely by the moral licentiousness and political apathy of the ruling orders, but by a system of administration so centralized as to place the nation prostrate under the oppression of a corrupt court. The crust of the ruling classes was rudely torn to pieces by the frenzy of a suffering people, taught to rebel by the Utopian philosophy of Rousseau and the encyclopædists, and left without faith or reverence by the teaching of the school of Voltaire.

How necessary an element time is in all permanent changes becomes evident also, if we reflect that revolutions seldom accomplish the objects which are embodied in their principles, except after the lapse of a long period from that of the destructive outbreak. For example, the French revolution was in the first instance most powerful to destroy all privilege, to confiscate and disperse the estates of the *noblesse*, and on this basis to create, not simply equality of civil rights before the law, but, as far as the law could accomplish it, to provide an equality of civil conditions by the compulsory subdivision of property under the law of bequest. But the idea of personal and civil liberty has been of slow growth, and that of self-government has not had power to develope itself, under the centralised bureaucracy of France and the military organisation which have subordinated personal and civil liberty to that of the external influence of France in Europe. France has become an armed democracy, with a chief wielding the military and civil power, but holding his authority as the expression for the time being of the strongest force in the revolution, viz., that love of equality which tends ultimately to the domination of numbers, and which, having failed repeatedly to establish a republic in France, exalts a chief on the condition that he make himself its instrument. The French are therefore far from liberty, and they have attained equality only by the creation of a despotism supported by the peasantry, the artisans, and the army. The fruits of the French revolution cannot be said to be reaped until among this subtle and enlightened people there is perfect freedom in the expression of political opinions, nor until the faculty and institutions of self-government are developed. The revolution of 1792 was therefore powerful to destroy privilege and to

establish equality, but probably another century must elapse before the French people attain the powers of self-government and all the privileges of personal freedom.

Time is therefore required for great changes, and all changes are the results of the continuous operation of natural forces, which evolve phenomena in a regular succession. Nothing endures which is not in harmony with this law. The improvement in the condition of any class, the growth of any institution—such, for example, as a representative governing body—the relative powers and privileges of different orders of society, all result from a resolution of the great forces which create and sustain society. It is impossible to overleap intervals of time, so that conditions of society, which a philosophic observer may foresee to be possible, and to be ultimately beneficial, shall exist otherwise than as the result of that irresistible development to oppose which is to enter into a war with nature.

Thus, in our own history, no change has been permanent which has not been a logical consequence of other antecedent conditions, all proceeding from the same social forces, and which has not also been in harmony with surrounding conditions. All attempts, in such countries as Spain and its colonies, to found representative institutions have had the most limited success, for these two reasons; first, that they are not the natural offspring of precedent conditions, nor in harmony either with the genius or institutions of the people. The Spanish are not prepared for self-government by the exercise of a limited and regulated freedom, nor by education in the habits of a temperate liberty. On the other hand, the germs of personal liberty and of self-government which existed in our Saxon institutions, slowly—in centuries—emancipated the serf and the villein, subordinated the feudal to the national law; first established the authority of the king and *his judges, and then limited the* authority of the Crown; created municipal government, and, by the memorable struggle with the monarchy, set aside the principle of divine right in kings, and created the limited representative constitution by which England has been governed nearly two hundred years. The only violent break in this succession was the Commonwealth, in which the Puritan democracy overthrew the monarchy to establish a dictator. But Cromwell respected the distribution of property, and had found the traditions of the country as strong as the democratic spirit. A republic could not have been established without a war of classes, ending in the confiscation and banishment of the cavaliers and their adherents. After Cromwell's death, therefore, the nation

entered upon that path of wise compromise which, though resisted by the Stuarts, led to the settlement of 1688. The Commonwealth was not the natural permanent result of the preceding struggles—it was not in harmony with the then existing conditions, which the limited monarchy and representative government of 1688 proved to be.

The progress of civilisation, therefore, is continuous, and for the most part not interrupted by catastrophes, but when such revolutions occur they result from the accumulated force of social causes, the natural effects of which have been resisted, and which at length break the orderly succession of events. Revolutions, however powerful to remove obstacles, contain in a less degree the constructive principle. They destroy the obstacle, and the formative forces then proceed with the new creation, but this may require centuries for its development. But if a revolution establish some institution or form of government which is not the effect of the formative force, or in harmony with surrounding conditions, the new creation will soon perish. All sanguine expectations of the rapid evolution of new forms of government, in nations ill prepared by their antecedent conditions, are not warranted by the experience of history; and generally all sudden transitions in national polity, as, for example, from the government of one class to that of another, unless brought about by the irresistible force of the growth of intelligence and virtue, partake of the character of revolutions, and of their weakness in the presence of surrounding conditions not in harmony with them. One of two things would therefore be consequent on such rapid transitions —the new condition must subordinate all surrounding forces to itself, or it must perish.

In the history of physical development, progressive forms of animal and vegetable life appear only when the external conditions of the material world have advanced, so as to prepare a habitation for them in harmony with their organisation. In the first stratified rocks which contain any traces of animal life, fishes were the most advanced forms of structure; and among vegetables, cryptogams. Reptiles floundered about the swamps and fern and moss forests of the middle period. It was only in later periods of the distribution of land and sea, and their relations to the mean temperature and constitution of the air, that quadrupeds appeared with a dicotyledonous vegetation. Throughout the whole development of animal life, the germs of the most elaborate structure are found in the earlier types, and the evidence of a pervading archetypal design can be traced from the first Acalephian Hydroids; the radiate class of the Echinoderms; the Molluscs, the

Articulates, and among vertebrate animals, the Ganoid, and shark and skate fishes.

"Those early types," say Agassiz, "seem to sketch in broad general characters the creative purpose, and to include in the first average expression of the plan all its structural possibilities. The crinoid forms include the thought of the modern starfishes and sea-urchins; the simple chambered shells of the silurian anticipate the more complicated structure of the later ones; the trilobites give the most comprehensive expression of the articulate type; while the early fishes not only prophecy the reptiles that are to come, but also hint at birds, and even at mammalia, by their embryonic development and their mode of reproduction."

This is not the place in which to enter into any details, either as to the gradual building up of the most elaborate structure, from the earliest traces of its organisation, through every new combination, step by step, in growing beauty, to its most perfect form. Suffice it to say, that all naturalists are agreed on the necessity of a harmony between such forms of life and the external conditions by which they are surrounded, and that the progressive development of the organisation is itself a sign of the advance of the material world, rendering it at each step a habitation fitted for animal life in higher combinations of physical structure, and forms only more perfect because they are adapted to a more advanced condition of all that sustains the vital forces, and prepares the world for the advent of man.

The evidence which thus transpires of archetypal design governing the earliest manifestations of life, and its development in harmony with the successive states of land and sea, and atmospheric constitution and temperature, are not wanting in their analogy to facts which gradually transpire concerning the history of the human race, and they are obviously in harmony with the laws which govern the development of human institutions. With respect to some of the progressive conditions of mankind, we witness the persistence to this day of races of men in the earliest and in other progressive stages of civilisation, such as other facts indicate to have existed in a primeval time. Thus the races which use stone implements appear to have had representatives, who inhabited England and other regions at the same time as some of the great tropical mammalia, such as species of the hippopotamus, the rhinoceros, the elephant, and the cave bear. Since that contemporaneous life existed, it is probable that the floor of the present Channel, and part of the Mediterranean, have sunk so as to make deep sea where once was dry land. There is evidence that the forest vegetation of Denmark altered from the Scotch fir to the

oak, before the races inhabiting it changed their stone implements for bronze, and the forest which had been oak became beech, before those bronze implements were superseded by iron. Probably, therefore, in these intervals great though gradual changes had occurred in climate, and there had been a vast lapse of time.

I do not enter into the question of the origin of races of the stone implement time, nor do I introduce any of the topics of controversy which arise as to the descent of the races of mankind from one parent stock, and the causes of the condition of any savage race. In the bare facts which I have related, I simply trace the evidence of an advance of civilisation, after the lapse of indefinite, but certainly long, periods of time, in which men, inhabiting one region, successively discovered three of the metals, acquired the art of smelting and working them, and applied them as weapons in hunting and war, and for domestic uses. Whether this development was promoted by any migration and admixture of races we do not know, nor in what degree the growth of intelligence by experience was promoted by the improvement of the external physical conditions of mankind. But we may presume from the facts themselves, and from the tendencies which analogous facts prove to be the invariable accompaniments of such a capacity of development, that there had been a growth of moral attributes as compared with the animal, and of the intellectual faculties, giving the race an ascendency, not merely over the brute creation, but also over what was brutish in itself, and a consequent capacity for further development in its internal and external relations, in short, to the growth of a social and tribal polity. These general principles may deserve a brief illustration.

The advance was great from the use of a chipped flint as a knife, arrow-head, or axe, to the construction of those more elaborate implements of iron, and was doubtless accompanied by corresponding changes in the habitations, clothing, food, domestic economy, and familiar and social relations of men. The power of these races over nature was thus largely extended. With iron implements they could cut down and fashion the forest trees for dwellings, canoes, and utensils. They could extend their mastery over the fiercer and stronger beasts of prey. They could fish at sea. They could place their dwellings in positions of safety in lakes. They could thus provide for the comparatively stationary life, and exchange the condition of the hunter, or the nomad, for that in which agriculture would begin. To subdue the outer world of wild beasts and rude nature; to domesticate the dog, the sheep, and the bovine race; to catch and tame the horse; to gather and

store the wild fruits; to learn how to cultivate and improve them; to make wines from the wild grape, cyder from the wild apple, mead from honey; to learn how to provide stores during winter for man and beast, were among the earliest steps of that civilisation which cannot be developed without a corresponding growth of the intelligence and moral faculties of man. The power to contrive, and the courage to dare, enabled him to subdue or destroy the strongest and fiercest animals, and, step by step, his mind discovered the natural forces and converted them into submissive servants. Thus the wind filled his sail; fire melted the ore; at a much later time the stream turned his mill and ground his grain; the fibrous plant made his net. In temperate climates he was first clad in skins, and then, much later, in rudely-fashioned cloth.

The domestication of animals and the culture of trees and crops have been developed in long periods of the slow growth of experience founded on observation and thought. All these conquests of mind presuppose many virtues—courage, endurance, perseverance, patient observation, thoughtful reflection—and these are among the natural forces by which barbarism is transformed into growing civilisation. But at the side of them, and as indispensable conditions of their development, the first human institutions appear. These germs of the future are contained in marriage, in the degree of the simplicity and purity of domestic life in the family as a separate group, in the relation of the family to the tribe, in the conditions of domestic servitude, in the power of the head of the family and the tribe, and the relations of one tribe to another or to any larger organisation. These elementary conditions have been multiform in different races and in successive stages of society, and as there is a singular persistence of types in the physical world, so, in the social, probably all the forms of these conditions survive to the present day, in cases in which the brutish propensities have predominated, or in which the external conditions have been so unfavourable as to prevent the growth of the moral and intellectual tendencies. Without entering into details, we may say that those races have relatively made the most rapid and permanently great advances, in which, as proofs of the highest intellectual and moral capacity, the idea of personal liberty and of the dignity of virtue in the individual man, together with the sacredness of the marriage tie, was recognised, polygamy was soonest discarded, the authority of the father was acknowledged, and the government of the tribe was patriarchal, being modelled on that of the family and limited by some kind of common descent.

These are the primary forms of civilisation in the races in

which the moral and intellectual capacity was the highest. They are also the strongest germs of other institutions, because most consistent, in an elementary condition of society, with the growth of intelligence and virtue, and most capable of development during the hunting and nomadic states. The accumulation of property, even in flocks and herds, rendered the association of families for mutual protection necessary. The nomadic patriarch become the chief of a clan, having associated chieftains who aided him to repel the incursions of such wild tribes as lived by plunder. In this way arose the customs of tribal intercourse, and of united action in peace as well as war. The inhabitants of an extensive river valley or of a fertile plain gradually coalesced for mutual protection and beneficial intercourse, and became the nucleus of a nation. The tribal constitution often survived when the national union was created. This form of development characterised some of the most developed of the Semitic races, and may be regarded as that in which the highest domestic and religious virtues have attained their earliest growth and most lasting forms.

The time which I have at my command would not suffice to trace the operation of social laws in the history of this development in particular races. As respects the Anglo-Saxon, I attempted at Bradford to define the nature of the forces and of the surrounding conditions which had governed the history of our English polity, and especially had promoted and regulated the improvement of the condition of our manual labour class during the 2,000 years which have elapsed since the Roman invasion. And in a more recent address at Bacup, I analysed the causes which, in the last thirty years, had contributed to the more rapid development of the physical and political condition of the working classes, especially in the cotton manufacturing districts. My object in both these cases was to give illustrations of the operation of social laws, proving a train of causation tending, by continuous action amidst whatever surrounding disturbances, to the promotion of harmonious and beneficial results. To define what such forces are, and to discover what circumstances modify or resist their action, is to lay the basis of the social science. When the more complex forms of society are under our observation, the forces by which they are affected are so numerous, and the combinations of these forces so various, that each form of society requires a separate study. Even to analyse any one of these within the limits of this address, it is necessary to select some particular sphere of observation. It is impossible, in the present state of our knowledge, to foresee with certainty and

exactitude what will be the operation of any acknowledged forces in a complicated state of society, but we may greatly improve our power of such prevision, by carefully observing all antecedent facts, calculating the power of the several social forces thus revealed, and having due regard to sources of disturbance to their operation.

I propose, therefore, to pursue the train of investigation adopted in my address of 1859, when I gave an outline of the history of English polity, a rough sketch of the development of the manual labour class, and of the causes which, in the last century, and especially in the last thirty years, so powerfully promoted its improvement. And as even this inquiry involves a wide field of observation, I propose to-day mainly to examine the operation of this chain of causation in enlarging the political capacities of that class. I trust that I may do this without any regard to the prepossessions of party, and, if so, I shall not have departed from my duty.

Our previous review showed us that the manual labour class continued in a condition of serfdom during the whole period of the Saxon and Danish colonisation, and after the Norman conquest during the feudal organisation of England, and a large part of it during the reigns of the Tudor kings, so that its emancipation was not complete when Henry the Seventh ascended the throne. As a serf, the state regarded the labourer as the chattel of his owner, who was responsible only to God, but not to the law, for his treatment of him. The man who had no means and could find no one to take charge of him was an outlaw and had no civil rights of any kind. The genial *character of the Saxon thane* probably rendered the condition of the servile population not necessarily one of hardship. The serf probably endured not much more toil than the agricultural workman recently in the most pauperised counties, and if, when old and worn out, the lord wished to rid himself of a useless burthen, he could, by an act of emancipation, hand over his broken-down labourers to the care of a Church which, with all its faults, never totally lost sight of the divine precepts of charity. The villeins were cultivators attached to the soil, having a right to their land so long as they acquitted the service, dues, and obligations by which it was held; but they could not remove from it, and they were conveyed with the estate as part of the inheritance—sold "*mid mete*" and "*mid mannum.*" With the aid of the best authorities, I strove to define the condition of the serf and the villein in the successive periods of English history up to the reign of Henry VII.—the mode in which Christianity mitigated the rigour of their lot, and promoted, by its influence on

custom and law, their ultimate emancipation. The causes which fostered the growth of the principle of personal independence and Christian charity, notwithstanding the rigour of the feudal institutions, the selfish luxury of the barons, and the wild licence of their retainers, who mercilessly plundered the people and devastated the country; as well as the not infrequent disorder from the contentions of nobles issuing with armed retainers from their castles, all of which tended to give great insecurity to freedom, and to harass the growing middle class by vagabondage and bands of marauders. I gave a rapid sketch of the consolidation of the regal power as the centre of the common and statute law; the limitation of the king's authority within the bounds of the great charter of civil rights; the gradual growth of domestic manufactures, and with that of the demand for labour; the increase of towns and of the municipal spirit; the frequent efforts of the serfs to escape from bondage to the towns and secure their emancipation by service for a year and a day; the repeated insurrections of the villeins; the vain attempts of laws to restrain the tendencies to freedom; the way in which the Christian law of equality, the Saxon spirit of personal dignity and self-government by representative institutions, the inventive faculty applied to manufactures and enterprise in the home trade and foreign commerce, reared men grouped in towns, who, without the fierce struggles which occurred between the burghers and the lords or prelates of foreign cities, curbed the power of the aristocracy, and, step by step, prepared the nation for the enjoyment of greater freedom.

Then I described the influence on the partially emancipated classes of maritime discovery and enterprise—of the invention of the art of printing, and gunpowder, &c., of the preliminary movement in the mind of the nation which prepared for those great changes in religion which finally defined the course of the national polity and legislation, and its development in commerce and the arts.

These are some of the most remarkable events in our history, by which the serfdom of the humblest classes of labourers and the villeinage of the occupiers of the soil at length disappeared, about the close of the fifteenth century, and the nation, after five hundred years of feudal turbulence, domestic insurrection, and civil war, slowly emerged from a semi-barbarous condition. They present a picture of the gradual growth of intelligence and of the higher moral qualities in a down-trodden class under the fostering influence of the maxims of our Saxon forefathers—of those institutions

of self-government which they bequeathed to us—and especially under the guidance of that Christian faith which makes all men equally responsible to God, and extends a divine charity from the State as an aggregation of Christian men to the wretched and forlorn.

The history, both of the nation and of the manual labour class, from the beginning of the sixteenth century, records more signal triumphs, both of mind and of the higher moral faculties, than that of any preceding period. There was a dawn of scientific discovery—the growth of a literature of genius, reaching at length to its highest manifestations—the change in our ecclesiastical and national polity wrought by the Reformation; a great spread of education by the foundation and other schools of Edward VI. and Elizabeth; and a ferment of the patriotic sentiments through the mass of the people, which, guided by religious convictions and deep-seated national instincts, led them through the Puritan revolution to the constitutional settlement of 1688. To these succeeded a rapid movement in maritime enterprise and colonisation; a growth of manufactures and commerce, and with them of the arts and luxuries of life. These were preliminaries which ushered in the marvellous period of scientific discovery and invention which has made the last hundred years the most remarkable era of the conquests of the mind and will of man over the forces of nature ever recorded in history.

The triumphs of intelligence over matter have been accompanied by manifestations of a higher moral sensibility as to the condition of the masses of our fellow countrymen, which has tended to inspire a religious ardour for their elevation. This has been manifest in numerous efforts of civilisation. For example—a mitigation of the severity of the penal code, founded on a recognition of the truth that, however terror may act as a deterrent, it has little or no reformatory power. In the improvement of prison discipline and reformatory training for the young. In the amendment of the laws for the relief of indigence, whereby the traces of serfdom will ere long be removed from the most pauperised portions of the *indigent classes. The regenerative power of education has been applied to the children of paupers,* and we are, I trust, on the eve of providing for impotency, sickness, and age, with Christian solicitude. In the first steps towards an obligatory system of national education, in which we have only very partially recognised what is needed for the preparation of an intelligent freeman for the discharge of his duties as a citizen. In the emancipation of labour from all restraints on its association, and in the freedom of all trade and industry. In the

extension of the municipal suffrage, thus creating in the borough a school for the training of the people in the discharge of political duties. In the cheapening of justice in all the smaller disputes which affect the condition of the labourer, small householder, and humble tradesman. In the spread of political education by means of freedom of meeting for public discussion; and by a cheap press, which has, by its general enlightenment and high morality, become the most truly conservative of all our institutions. In the universal publicity of all political discussion, whether in or out of Parliament, making the press like the market-place in which Socrates disputed, or the forum in which Cato, Cicero, or Cæsar pleaded.

The advance of our national polity has overflowed even upon the wild uncultivated regions of the world. The migratory instinct of the race, and the awakened activity of the middle and labouring classes, combined with the extension of commerce and maritime discovery, and the restless energy which strives to overleap, when it cannot break, any social restraint to the advancement of the emancipated classes, have poured forth on the virgin soils of the New World and of Australia, of the islands of the Pacific, and even on the oases of the sandy plains of Africa, a race of indomitable but uncultivated energy—strong to subdue nature, to tame or extirpate wild beasts, drain the morass, cut down the forests, root out the jungle, but not so trained by a Christian education as to be equal to the task of mingling in fraternity with the wild red and dusky races, and of winning them by patiently teaching them the arts of settled life, and especially by a pure example, to that Christian life of which every man who leaves the shores of England ought to be an image. By the colonisation of the western nations the Red Indian, the Hottentot, the Caffre, the Australian, the Maori disappear, either in deadly struggles against the encroachment of the white race; or under the death-spreading poison of the fire-water, or of foul disease; or under the influence of famine from diminished hunting-grounds. The blast of the pestilence is not so sure as the desolation and death of which the white man is the harbinger. The red, yellow, and dark races disappear as the white advance. This should not be so. Christendom, if it had been more careful that the transforming influence of its faith should penetrate its humblest and last emancipated classes, would, instead of disease, demoralisation, and death, have borne to the savage the precious gift of its transforming faith, accompanied by all the arts and comforts of civilised life.

That which underlies every other consideration in interpreting the circumstances which have affected the advance

of our national polity, is the degree in which education has been extended, at any period, so as to prepare each class either to enjoy the benefits of freedom, or, which is much more difficult, to promote, by active exertion, the growth of free institutions. The mass of the working population in any craft, and the herdsmen and tillers of the soil, both in the Saxon era, and even, in a gradually modified sense, during long succeeding periods of our history, cannot be said to have had any political or social rights. They could be bought and sold. They "*adscripti glebæ*" and conveyed with it under the comprehensive phrase, "*mid mete* and *mid mannum.*" They received, like beasts of burden, food and lodging for their toil, but they were absolutely in the "*mund,*" that is, under the protection and power of their master, who might kill them at his pleasure. I described, in a former address, and I have briefly traced in this, the slow and painful steps of their emancipation from this thraldom, which was not complete even when Henry VII. ascended the throne. The vagabondage, turbulence, crime, and outlawry then existing, were disorders which, in the succeeding history of the class, were sought to be trampled out by the rigour of law and of a harsh administration, until the provision for the relief of indigence, in the reign of Elizabeth, became the dawn of a system more in harmony with our faith and with the demands of advancing civilisation.

But the idea of transforming this uncivilised class by a Christian education, does not appear to have entered, even at the Reformation, into the civil polity of the nation. The schools established by Cranmer, by Elizabeth, and by Edward VI. and his successors, were founded more with the intention of extending the reformed doctrine among the middle than among the humblest classes. There remained the polity of the Church which, in order to rear a lettered priesthood, had encouraged learning in its cathedral schools and monasteries, and had made the priesthood and religious orders an institution in which the humblest might aspire to the highest honours and power. The Reformation transmitted this tradition in the *rule which opened the door of the school,* and provided scholarships, *both in the schools and in the universities, for the* promotion of merit in a republic of letters. This ancient privilege had, however, little effect on the mass. In England no institution was formed like that most fruitful offspring of the reformation in Scotland—the parochial school. With all their manifest limitations and imperfections, the Scotch parochial and burgh schools, acting in harmony with their universities, have given the most remarkable impulse to that nation. For

a long time they supplied many of the universities throughout Europe with professors. Among our most skilled and educated workmen, such as gardeners, mechanics, and agriculturists, the Scotch have taken the first rank. They have long been advanced to offices of trust requiring well-trained intelligence, high probity, and considerable cultivation. They have been among our most successful colonists. They may be said for a century to have been the chief civil administrators of India, in whose history they have left a golden book of illustrious names, emblazoned with feats of enterprise, valour, endurance, high intelligence, comprehensive statesmanship, and heroic self-devotion. These are among the fruits of Scottish education.

For our own manual labour class, barely emancipated from the semi-barbarism of preceding ages, the Reformation did little by means of schools, yet this was the only means by which the original Saxon idea of personal dignity and civil freedom could be attained by the poor. The Reformation did not extend this form of freedom to them. It is not improbable that the "iron-sides" who fought with Cromwell had received some training in the grammar schools. They had at least been trained by the congregation in the dialectics of the Calvinistic doctrine, and through it in a stern sense of duty and personal rights. But the common people, with this exception, continued to be immersed in the consequences of serfdom. The serf had been the chattel of his lord. His descendants had nothing to do during the feudal period, with the local government of the tything, or parish, or hundred. Probably the villeins did not rise to any participation in such government until a very late period of the Tudor reigns. Those who had constituted the folkmót, or who were sent to the Wittenagemót, were freemen. The burgesses of towns and the electors of the shires, were certainly neither serfs nor villeins. The Saxon idea of liberty was therefore consistent with the slavery of the serf. Institutions, whose roots were in our ancient Saxon polity, had a representative constitution in which the serf played no part, and in which the villein only gradually rose to participate, and that just in proportion as he was admitted to the possession of personal property independently of the lord of the soil. The gradual transition from the occupation of land by villeinage to the cultivation of the "*lean*" or loan land, and the freedom of the tenant to migrate, to carry with him his acquisitions, and to acquire land as a personal possession, are the chief steps of advance of the villeins to the class of small tenant-farmers such as now exist, and to the establishment of the independent class of yeomen and statesmen who cultivated their own land.

We thus recognise some of the sources of the present condition of half pauperised agricultural labourers, and unlettered small tenant farmers, and the causes of their unfitness, by the want of intelligence and independence, to discharge, beneficially to the commonwealth, the political duties of freemen. They are still, politically speaking, the thralls of the possessors of the soil. In proportion as they are admitted to the possession of the franchise, the landlord augments his personal power, but no privilege is, for the time being, extended to the people. The result of the extension of the franchise to any class thus enfeebled by traditional dependence, by ignorance, and habits either sensual or servile, results in its political subserviency.

It would be difficult to assign the limits of the political elevation which this country might have attained, if parochial and borough education had been provided for all the recently emancipated classes at the reformation. Nor can we now measure the benefits which would have overflowed on the savage tribes which have disappeared before the advance of English colonisation. If the progress of our social polity has been deformed by errors and excesses in any class, we may attribute these misfortunes to this neglect and want of foresight in the leaders of the Reformation. Every class has been unfitted to receive the teaching of those pioneers of national thought who have successfully laboured to reduce the complex phenomena of society to their simplest elements, and to build thereon the idea of a science of social polity.

Yet in some departments of social economy, considerable progress had been made in the observation of facts, and the induction of principles, so as to reduce them to a technical form, long before either statesmen or people recognised in them their true guides in legislation. The laws of political economy and trade had been thus analysed, and their operations explained, by Adam Smith. Yet, the principles thus shown to govern taxation and the accumulation and distribution of wealth, have only very recently modified domestic legislation and international treaties, though they will now continue to exert a great influence on the polity of nations, on their relations to their dependencies and neighbours, and on the intercourse and harmony of mankind. All that department of jurisprudence affecting international copyright, the extradition of criminals, the protection of neutrals in time of war, had received an earlier cultivation than almost any other department of sociology. But it is only now that we begin to hope that it will receive that interpretation which is most consistent with national intercourse, on the basis of the utmost liberty and the protection of individual rights. The neglect of these departments of

social science, and of constitutional history, in the education of the ruling classes, has corresponded until recently with a complete ignorance of them in the subject classes. To this continued neglect and ignorance may we ascribe some of the most grievous and persistent errors in our national policy; and tendencies, in the exercise of our power and wealth, obstructing the highest material and moral development of the nation, and especially inconsistent with the faith and practice of a Christian people. It becomes material for the object we have in view, to inquire what part the manual labour class have taken, amidst all their manifest disadvantages, in that wonderful development of material wealth and power, of which the last hundred years have been the era.

The subordinate qualities which they have displayed, have proved them to be a race of singular hardihood, vigour, and powers of endurance. These physical qualities have been accompanied by the higher moral qualities of a capacity for obedience, fidelity, discipline, and organisation certainly never excelled. These have been the noble characteristics of an unlettered race, not long emancipated from serfdom and villeinage, and for whom no systematic education has been provided. But the capacities of this race cannot be estimated by regarding only the subordinate virtues of the unlettered mass.

The more gifted in intellectual and moral faculties have struggled hardily with their lot; many have educated themselves; some have risen to be foremen of labour, thence to be possessors of capital enough to be masters of workmen, first in limited, and then in more extensive contracts. Thus the middle class has been recruited by men risen from the ranks, despite the want of school culture, but who have, by self-education, become great manufacturers, iron-masters, ship-owners, or merchants with enterprises on every sea. From among the most gifted, too, we must reckon the rise of the men of science who have become the lights of ages. These had generally some help from an obscure grammar or other school, and some of them by these means reached the university. Among them we may name even Newton, Dalton, Davy, Whewell, and the names of living men almost equally illustrious. Many of the greatest sculptors have, in like manner, been the sons of common masons, and some of our most successful painters and singers were born in the cottage of the day labourer or factory operative. Almost all inventions in the mechanical combinations of industry may be traced to equally humble men. Thus the inventors of the cotton trade, except Kay and Cartwright, were all (Hargreaves, Crompton, Arkwright, Roberts) weavers, or mechanics, or handicraftsmen. Brindley

was absolutely unlettered; Wedgewood was a working potter; Mercer the son of a hand-loom weaver; Watt's accidental associations as an instrument maker with the university of Glasgow, barely lifted him out of this class. Our engineers, Roberts, Stephenson, and Fairbairn, worked with the hammer or the pick. In these efforts to rise above merely manual toil, the enterprise of the most vigorous and intelligent workmen has made them the colonists of the world. But perhaps the most pregnant proof of the growth in them of higher political capacities, was the remarkable spectacle exhibited by the operatives of the staple trade of this county during the cotton famine. With the aid of the teaching of the press they understood the true character of the war; spite of every tendency to sympathy with the chivalrous valour and endurance of the Southern States, they maintained their faith in the great principles of humanity, which were at issue in this momentous struggle. They supported our own government in a policy of non-intervention, at the cost of the privation to themselves of all the sources of domestic comfort, and in the face of unknown dangers and sufferings. They consented to accept for this end the bread of charity; to husband it faithfully; to conform cheerfully to an artificial social organisation of labour on public works, and attendance in day and sewing-schools. They endured all this, living for years on one-third of their ordinary income. This proven political intelligence; this patient martyr-like endurance for the sake of sacred principles, involving the interests of humanity; this faith in their ultimate triumph, have established for them an indefeasible claim to be accredited with the possession of many high qualities of freemen, indispensible to the political security, influence, and development of a civilised state.

In like manner the *élite* of the manual labour class have aided in the growth of the public polity, by their disinterested sympathy with other principles capable of a wide application. The extension of the franchise to the middle classes by the Reform Bill, the extinction of the slave trade, and the emancipation of the slaves in our colonies, received from them a wise and generous support. Though they, like other classes, are responsible—both in times past and at present—for the most persistent opposition to the adoption of well-ascertained principles in industry and trade, yet they were led by a true class interest, to appreciate, before the pure economists, the economic as well as the social value of a shortening of the hours of labour in factories; and though they did not promote, they assented to the compulsory provisions for the education of their children, which were inserted in the Factories' Regulation Acts.

In all these measures, and in many others, they have co-operated with a portion of the middle classes, led by men capable of a philosophic or philanthropic view of all the interests concerned. But the independent and spontaneous action of the working classes, though in many of its earliest and some of its recent manifestations it has been deformed by the errors inseparable from such efforts in an unlettered class, has given proof of a power of organisation and associated action, which, whether for good or ill, cannot but be regarded as important elements in the social organisation of any nation, and especially of one in which industry, commerce, and agriculture are among the main sources of national prosperity and power.

The majority of the workmen in all trades and handicrafts are associated in unions for mutual benefit, and especially for the protection of the wages of labour from any form of injustice. Besides these legitimate objects, such associations have endeavoured to regulate industry, by prescribing rules as to the hours and the mode of executing work; promotion to the office of foreman; the comparative earnings of skilled and unskilled workmen; the prohibition of piece-work; the internal management of manufactories, &c. &c., tending, if successful, to subordinate the control of capital to the authority of a *Directory of Labour*. These unions exert a domination over their members like that of an army, and are capable of sustained action, at the expense of accumulated resources and prolonged privations, greater than any other known voluntary associations. Regarded as political and social phenomena, such results are of the most signal importance. This organisation may be a most potent means of attaining any object which the manual labour class may have a strong conviction would be for their common interest. Any statesman who fails to recognise the existence of the formidable tendencies of such a power, and to provide for its right direction by a universal and obligatory provision for public education, by the most free dissemination of political and economic information, and by the steady extension of political franchises, cannot long govern this country.

We may take a slight review of the way in which we have escaped some of the greatest of the dangers attendant on this power of association. Ireland has not been so fortunate as England and Scotland, for the trades' unions have driven capital from manufactures everywhere in the sister kingdom, except in the north. But, in England, the socialistic theories which, in consequence of the want of economic instruction, have, from the earliest growth of these associations, hitherto been the basis of their organisation, have not succeeded, because of the rapid migration of labour within our own bounds enabling the agri-

cultural labourer and shepherd to better their condition in the manufacturing districts. Then, because the restless and discontented among our own operatives have emigrated, the more moral and intelligent have rapidly risen in the ranks, and become at length master manufacturers. In America, the continual migration to the west has, in like manner, kept in check these socialistic tendencies. A similar revolutionary theory and passion have for a time been controlled in France by the sagacious policy of Napoleon III.; and, in Germany, have led to a vast emigration from that country to America, which has been the outlet for the misery and discontent and socialistic error of the Old World.

The experiment of relying solely on material development for the stability of our institutions and property, has been carried to the last extent of rashness; and, if we would avoid a crisis, in which the organisation of an unlettered class would play the chief part, we must take systematic measures to instruct the people from their youth upwards in economic laws, and in the history of our liberty, and to instil into them a reverence, founded upon sound principles, for institutions which are the growth of the traditions, habits, and associations of all classes, which derive their life and strength from an intelligent freedom, but would perish under ignorant and presumptuous innovation. If we neglect this education long, we simply prepare, either in Parliament or in the country, a reign of demagogues, under whose rule a destructive democratic revolution may disturb, if not destroy, all the securities of property, and the sources of national prosperity.

This spectacle of the power developed by these unexampled capacities for associated action among our working classes, leads many thoughtful men, lifted above the contentions of local interests, to rejoice in the astonishing results which have very recently been attained by the purely industrial organisation of workmen. The co-operative stores of England and Wales are supported by about 150,000 members—of whom 106,241 belong to Lancashire and Yorkshire—and possess a share capital of £761,313, of which £667,798 was subscribed in the same two counties. The loan capital of these societies was, at the end of 1865, £112,733, of which £80,806 was subscribed in Lancashire and Yorkshire. The movement of capital in 1865, by sales, was £3,373,837, or nearly three millions and a half, of which about two millions and a half occurred in Lancashire and Yorkshire. The profit of 1865 amounted to £279,226, of which £207,197 was paid in Lancashire and Yorkshire. The whole assets and property of these societies were valued in 1865 at £1,105,685, of which

£887,005 were possessed by societies in Lancashire and Yorkshire.

The joint-stock manufacturing enterprises, supported almost exclusively by the capital of workmen, have within these few years invested above a million of money in buildings and machinery in this county alone. Nearly all these establishments survived the cotton famine, and have struggled successfully with the embarrassments which have attended the subsequent fluctuations in the price of cotton. Great manufacturers have appreciated the capacity of which these beneficial combinations are the sign. They have capitalised their stock in trade; divided it into shares; and made a portion of these shares accessible to their workmen, whom they have thus admitted to a participation of profits. The law now wisely facilitates such combinations, and they afford a new method for the solution of some of the most intricate and threatening questions as to the relations of capital and labour.

Many obvious difficulties and dangers attend the early steps of associations which have little experience to guide them, though conducted by the most able and prudent of an unlettered class. But the effort, though arduous, is in the right direction—it is consistent with the soundest economic principles, and ought to be attended by the earnest wishes of every enlightened man.

Friendly societies or benefit clubs, which have had a spontaneous origin among the manual labour class, are often founded on calculations and conducted by rules inconsistent with the principles of insurance and vital statistics. These again are the errors of ignorance, but the power of independent organisation which they exhibit, and the salutary objects which they seek to attain must be reckoned among the proofs of the growing political capacity of workmen. The circular sent out by Mr. Tidd Pratt, the Registrar of Friendly Societies in England, to ascertain the number of the members and the amount of the funds possessed by these societies were to a great extent left unanswered. Out of 22,834 schedules sent out, only 9,997 were filled up. These accounted for 1,434,676 members and £5,562,988 in funds, or an average of 143 members and £556 funds for each society. If we were to suppose that, on the average, the societies who made no returns possessed one-third of this average, then the aggregate number of members of friendly societies in England and Wales is 2,038,014, and the funds possessed by them amounts to £6,937,833. From the return of 856 loan societies to the Registrar, under 3 & 4 Vic. c. 100, for the year ending the 31st December, 1865, the deposits made by shareholders

amounted to £253,523; the amount circulated during the year was £857,884, and the sum in borrowers' hands on the 31st December, 1865, was £518,866. The gross profits of the year amounted to £58,509, and £32,859 had been in the same period paid to depositors or shareholders. Similar evidence flows from the history of the accumulation of capital in building clubs. The habits of business shown in their successful management, and the beneficial influence which they exert on the domestic comfort of the working classes are all signs of growing social capacities.

Perhaps no regenerative effort is more important or has to grapple with so formidable an evil as the Temperance Alliance. Between sixty and seventy millions of money are every year spent in beer, spirits, tobacco. Every intelligent inquirer is conscious that the eighteen millions of money which we annually apply to the support of indigence and the repression of crime are to a great extent absorbed by the consequences of the demoralisation, misery, and want caused by intemperance. Our commercial prosperity will feed this frightful source of degradation, so long as the evil is not combatted by a system of obligatory national education, elevating the intelligence and the moral and religious principles of those classes who are now the victims of intemperance. Meanwhile 70,000 of the manual labour classes have enrolled themselves members of the United Temperance Alliance. They have created an active propagandism—assembling meetings, characterised by the most enthusiastic outbursts of feeling. They establish local societies in almost every town or large village, circulate periodicals, and enrol members; they found benefit societies, bands of hope for children, employ missionaries and teachers, and have established about twenty county unions. There are several associations aspiring to national influence whose aggregate annual income is about £15,000. There are four widely-diffused temperance newspapers and about twenty monthly publications, two of which have an aggregate circulation of about half a million. By the influences of these agencies, their members assert that the pledged or practical abstainers from the use of intoxicating liquors now number some millions, among whom are 2,500 ministers of religion in England alone; and they trace the efforts of the association in the greater moderation in the use of intoxicating drinks, which is becoming a sign of good breeding and reputable life, and is rapidly spreading in all ranks except the lowest. Too impatient, however, to wait *for the slow influence of education, and the gradual infiltration* of better habits from the more intelligent classes to the

more sensual, the United Kingdom Alliance despair as to the power of purely moral restraint to resist the attractions with which the trade in drink combats, by an enormous outlay of capital, the influence of the school, the congregation, and the church, and makes the beerhouse, the gin-palace, and the tavern, English institutions for the demoralisation of the people, the spread of disease, the increase of mortality, and the promotion of pauperism and crime. They therefore in this despair appeal to the legislature to transfer the power of granting licenses for the sale of intoxicating liquors from the magistracy and the Inland Revenue Department, to two-thirds of the inhabitants of any parish or township. Whatever opinion we may entertain of the justice, expediency, or sufficiency of this form of interference, we must acknowledge that we owe to the upper portion of the manual labour class, apart from all religious or political feeling, the vigorous and persistent protest which, in spite of all failure in and out of Parliament, they have continued to make against the facilities afforded by the law to the unregulated sale of intoxicating drinks. It will be an auspicious day in the history of the United Kingdom, when the organisation and enthusiasm of the Alliance are diverted from their hitherto fruitless effort to restrict or prohibit this trade in drink, and are applied with equal force and perseverance to demand from Parliament a national system of obligatory education, in order to create a power of moral restraint capable of resisting the temptations of a trade, which flourishes by the demoralisation and mortality of the people.

Meanwhile these spontaneous efforts of the upper section of the manual labour class to emancipate their brethren from the frightful slavery to sensuality, establish for them a claim to political confidence which a wise legislature will acknowledge.

To the purely spontaneous efforts of the manual labour class may be added those in which their own frugality and forethought have been encouraged by the facilities afforded by the Government to place their savings in safe keeping. In 1865 there were nearly a million and a half of individual depositors in the old savings' banks, of an average sum of about £25, and an aggregate of nearly 36 millions in money. Besides which, penny banks, charitable institutions, and friendly societies had deposited £2,632,164, or altogether £38,444,007. Further, the total number of depositors in Post Office Savings' Banks and old Savings' Banks combined, and throughout the kingdom, had risen at the close of the year 1865 to 2,078,000, being an increase of 774,000 in the preceding ten years, and of 468,000 in the four years follow-

ing the establishment of the Post Office Savings' Banks, and the total amount standing to the credit of all open accounts in Post Office Savings' Banks alone was, at the close of the year 1865, £6,526,400; and the aggregate sum of deposited savings in the old banks and the Post Office Savings' Banks was, at the end of 1866, £45,070,407.

These spontaneous and independent efforts of working men, are the fruits of the growth of social and political capacity among those who may be regarded as the intelligent leaders of their class to a higher condition of civilisation. Beneath them lie the prostrate classes who still have the taint of the leprosy of centuries of serfdom, from which they have not yet been cleansed by a Christian education; the dangerous classes who prey upon property, or sell their virtue, or are ready to take advantage of any tendency to tumult; the hereditary vagrant and pauper; the ill paid and half-pauperised agricultural labourer; the starving weaver of decaying trades, dying a slow death of famine and despair; the sensual classes, who spend their earnings in gross living or intoxication, leaving little for house-rent, household comfort, or the education of their children; the men of the rudest forms of labour, like some of the colliers, the navvies, the brickmakers, and hodmen, who are the hardy pioneers of material progress, but often gross in their habits, and generally without social or political aspirations; the classes who stagnate, like the lees of society, in the obscure and unhealthy parts of great cities; and all those who, despite sufficient or high wages, have no thrift, no forethought, but seem to perpetuate the helplessness of a servile class by the waste of the earnings of independent skilled labour:—generally, all who are the victims of our social system, which has not yet fostered the development of an intelligent Christian life, by the vivifying influence of obligatory Christian education among the masses of the people. All these and others lie below that self-educated vanguard of the manual labour class, who have explored the path, and removed the most formidable obstacles to the advance of their brethren. This higher class is destined to vindicate the truth of the theories of social progress which I have ventured to sustain. They are that irresistible force, whose claims for the possession *of political rights it will be impossible to postpone. Their acquisition of them is the logical and inevitable* consequence of the virtues, intelligence, and patriotism which they display. No argument can be adduced against them because of the venality of any of the prostrate or undeveloped classes. There arises only the political necessity of providing some self-acting expedient, by which they can be sifted out of the mass: or

all the incapable and unworthy can be winnowed from this true grain.

I have been concerned to perceive that some capitalists, and most prominently some of the ironmasters of Staffordshire, are so alarmed by the formidable strength of the trades' unions, as not to believe that their socialistic errors are consequences of an ignorance which instruction would remove, and are therefore jealous of that increase of the power of the manual labour class which would undoubtedly be the consequence of a well ordered system of education. They do not bear in mind how many economic and social truths have already been slowly implanted by experience among the workmen, and have become the best security for the progress of improvements in machinery, and correctives of some of the worst features of the trades' unions. They forget how much of the intelligent acquiescence of the operatives in our national policy during the late American civil war, was the direct consequence of the dissemination of political knowledge among the superior workmen. Nor are they conscious what need there is in some even of their own class for a more accurate acquaintance with economic principles, and with the historic events and national forces by which the development of our industry has been affected. The history of the manufacturing industry and commerce of this country has been one of marvellous progress. Its expansion has been so great, that such fluctuations as have been caused by wars, by measures of public policy like the Orders in Council, or by financial crises, have been forgotten or overlooked. This expansion is the consequence first of the continual extension of the application of steam power to mining, to spinning, to weaving, to locomotion, and the transport of the commodities of trade, to agriculture, as well as to the succession of inventions tending to the economy of almost all forms of labour, then to the improvements of the laws of industry, partnership, and trade; the removal of restrictions and imposts, and the rapid opening of new markets for commerce in every quarter of the world. The result has been a deep-seated conviction, that our trade has an internal vital force whose development will burst all bonds, and triumph over all obstacles.

Perhaps no more remarkable exemplification could be given of this than the continuation of a very large outlay of capital in the building of new factories during the first year and a half of the cotton famine. This conviction is like all others which are founded on the regular sequence of events. We expect, because we have always witnessed, the orderly succession of material phenomena—that the sun will rise—that the seasons will succeed each other—that the tides will

continue to ebb and flow—that the hills will remain stable from one generation to another. Yet, taking into account vast periods of time, we know that all these apparently most constant phenomena have been subject to great changes. Some such event as the cotton famine was needed to shake an unreasoning confidence in the unlimited expansion of the Lancashire staple trade. If we review the facts, we cannot fail to see how blind and rash that confidence has been. We had prohibited the slave trade—we had emancipated the slaves in our colonies—we had maintained a blockade of the African and Brazilian coasts, to intercept and, if possible, to prevent the traffic in slaves. We had, by our constant efforts to establish international treaties for the suppression of this trade, and by our press, literature, and parliament become the active propagandists of the doctrine that the slavery of responsible human beings is a crime against the rights of humanity. We were thus actively creating that force of opinion which was to explode in a revolution in America, destined to lead, through civil war, to the emancipation of the slaves of the Southern States. Yet during this time our confidence in the uninterrupted expansion of the cotton trade was in no degree impaired, though we were depending for the continuance of a rapidly increasing import of cotton, chiefly on the productive powers of those states in which it was grown exclusively by slave labour. In 1860 the consumption of cotton in the United Kingdom had arisen to 2,500,000 bales, of which 85 per cent. were imported from America, and only eight per cent. came from Egypt and Brazil, and seven per cent. from the East and West Indies. We had ourselves undermined the institution of slavery in the United States, and had, as it were, placed beneath the fabric, in which 85 per cent. of the raw material of our staple trade was produced, an explosive force; and even may be said, by our conscientious encouragement of the leaders of the abolitionist party, to have fired the train and blown into the air the cotton production of the Southern States. Yet, while all this was in progress, so insignificant were our efforts to promote the cultivation of cotton either in Egypt, Brazil, or in the East and West Indies, that they produced scarcely any appreciable result. Even when the civil war broke out and the blockade of the Southern States was declared, our confidence in the continual expansion of the trade was such, that the building of factories proceeded a year and a half, not only without check, but with unexampled rapidity.

Now we experience the effects of the civil war in the long interruption to cotton culture, in the very partial reorganisation

of the industry of the black population, and the consequently great reduction of the amount of cotton grown in the Southern States. If the machinery of the trade is to resume and maintain full activity, we shall probably have in future to procure a great increase of the supply of cotton from almost every part of the world from which we have recently imported it. The cotton manufacture would thus cease to be dependent chiefly on one source, and might escape from the risks inseparable from such dependence, but it would encounter others. The raw material must be seaborne, and it would be brought across every ocean. So scattered a supply would therefore obviously be exposed to great risks in a maritime war. We should need to provide for the exigencies of the manufacture by the increased vigilance of our navy; by a modification of international law, providing security for the property of neutrals; and by every expedient by which peaceful commerce can be protected, as well as, perhaps, by such arrangements as would grow out of the experience of great fluctuations of price.

If, from a maritime war, or any other cause, a new dearth of the cotton supply should be caused, we are now in a condition to appreciate the benefit which the trade would derive from the patience, the fortitude, and the intelligence of an operative population, which has attained in some degree to the knowledge of principles, and the comprehension of political and social duties. No fatuity could be more gross than that which would prefer, to an intelligent well-instructed people, in such a crisis, a manual labour class, inflamed with the passions and prejudices of an ignorant and suffering multitude, which could find no form of expression for its misery but violence.

But the interference of war with the supply of cotton is not the only risk to which the expansion of our trade is exposed. We were not, in the earlier period of our history, manufacturers of anything but coarse domestic cloths. We gave no evidence of inventive skill. We derived all our crape, stuff, worsted, woollen, and silk manufactures, from the immigration of foreign weavers, driven to this country chiefly by religious persecution. Our "silk throwing" machinery was copied from the Italian. We owe to France the "Jacquard" loom. We have never been able to compete with France in the production of articles of luxury; nor with Saxony in broadcloths; nor with Switzerland in figured muslins; nor with Prussia in some forms of iron and bronze manufacture; nor with Italy in all bronzes modelled on an antique form. Sweden and Prussia have excelled us in the production of the purest iron, and the most tenacious forms of steel. Of late years we have removed

all restrictions on the exportation of machinery. The continent is covered with a network of railways and electric telegraphs. Every nation has striven to rival us in the cheapness of production, which is the primary cause of the continual expansion of our trade. The elements of a formidable rivalry are in course of gradual development in Belgium and Germany. These elements comprise their coal fields; the cheapness of labour; the growth of the principles of freedom of industry and trade; their skill in the manufacture of iron; the growing facilities for locomotion, and the prospect, with an increase of the Prussian seaboard, of a great extension of their merchant shipping. We shall, perhaps, encounter still more formidable rivals among our transatlantic brethren, to whose genius in invention we already owe some of our most remarkable improvements in machinery. They have a physical energy, powers of endurance, and an enterprise in trade like our own. They have inexhaustible coal fields and mineral treasures. They have the raw material of our staple trade within their own shores, and a vast system of transport by river navigation, railways, and steam on their seaboard. If we are to maintain our position against these formidable rivals, we must also cultivate, as they do to the utmost, the intelligence of our manual labour class, making them equal to every emergency, whether political or social, and to all the wants of our trade.

There is no true economy in trade which neglects the force of a trained intelligence in developing its resources, or of a high morality in making perfect the order of its organisation and the security of property; and in preventing the waste of the precious resources of health, strength, and capacity. A policy which forgets or neglects the intellectual and moral improvement of the manual labour class, and depends only on their physical force, is at war with the best interests of humanity, and deserves the defeat which will be its unavoidable result.

The whole tenor of my argument has been to show that the growth of the intellectual and moral capacity of all classes is the primary source of strength and progress in any commonwealth. Mere physical force even fails to subdue and cultivate wild nature. The mind discovers and combines the natural forces so as to make them the servants of man. The moral faculties wean men from brutish instincts, and give them the *courage, the endurance, the persevering energy* which enable the intellect to become the master of the world.

The social polity is built up and sustained by the same forces. Merely physical force can neither create nor preserve the power and happiness of a commonwealth. A barbarous

despotism may exist by terror, but a large part of the subjects must be ignorant slaves, by whose oppression alone the state can live. An arbitrary power cannot long dominate over an intelligent, instructed, Christian people. Even when such a government strives to make itself the expression of the wishes of such a nation, and exercises a wise foresight as to their interests, it is subject to the casualties brought about by the inferior character and capacity of successive rulers. The genius of ruling a people wisely is not hereditary, and even if it were, a wise despotism cannot compensate for the collective moral and intellectual force of the nation long trained in the enjoyment and use of freedom.

No mere physical force, wielded with whatever skill and cunning, can successfully grapple with the power of such a people. Nor can any coarser mistake be committed, than even to hint that any occasion can arise on which such a people ought to resort to the rude expedients of physical force, to secure the development of the national policy.

If it be true that civilisation is a conquest over all that is brutish in our own nature, and the subjection of all forms of physical force to the will of man. If national polity approaches perfection, in proportion as it is expressive of the highest intelligence and the purest morality, then, to appeal to physical force is to summon barbarism to make war on civilisation. There will be passionate outbreaks of rebellion, like those of our own serfs and villeins, or like our own Puritan revolution; but I have already shown that such catastrophes have no formative power. They are the instinctive expressions of an intolerable sense of wrong. They sometimes remove obstacles to the operation of the formative forces; but they do not create. Their destructive force is often such as to sweep away the whole fabric of the national polity.

But such catastrophes are rendered less probable, in proportion as the intelligence and morality of the people are developed. Moreover, it may be confidently said, that when a nation has acquired a large measure of self-government, and when it also enjoys perfect freedom for the expression of opinion in Parliament, by public meetings, and in the press, any appeal to physical force is a proof of the absence of the true qualifications of citizenship in the class which resorts to it.

One of the highest qualities of statesmanship consists in the power to think calmly in the midst of popular excitement. This faculty resembles that of great generals, whose genius receives its highest inspiration from battle and is to be contrasted with the impulsiveness of the orator, whose imagination or passion is fired by popular excitement and

overcomes his reason. A great statesman knows how majestic and irresistible is the operation of the intelligent convictions of a cultivated nation—the seed of which convictions he may have deliberately sown. He calmly watches their development—he wisely fosters their growth—he waits, like the husbandman, for the harvest. As no impatience can hasten the gradual operation of the natural forces, so no insensate outbreak of turbulence can bring about the true development of the national policy, which is the fruit, not of physical force, but of the highest intelligence and virtue. A great statesman will therefore strive to assuage the sense of political injustice, and to prevent the destructive outbreaks of passionate misery, and will calmly lead the ablest and best among his fellow countrymen to redress all proven wrong, and peacefully to remove every obstacle to the development of all the institutions of freedom.

SELECT PAPERS,

NOTICES OF PAPERS,

ETC., ETC.

JURISPRUDENCE
AND
AMENDMENT OF THE LAW.

Report of the Standing Committee of the Department.

ACTS OF PARLIAMENT.

THE last Session of Parliament was singularly barren of useful measures of legislation. Though several Bills were introduced, which were of great interest and importance as regards the principles and administration of our law, the proper discussion of them was prevented by the party question to which everything else was postponed; and on the change of ministry, they were all, with the following exceptions, dropped:—

Act to further Amend the Procedure and Powers of the Court of Divorce and Matrimonial Causes, 29 & 30 *Vict.*, c. 32.—This Act provides for the payment of weekly or monthly allowances by husband to wife on decree for dissolution of marriage, and enacts that no decree *nisi* shall be made absolute till the expiration of six calendar months.

Expenses on Charges of Felony and certain Misdemeanours, 29 & 30 *Vict.*, c. 52.—This Act gives Magistrates an extended power to grant certificates of expenses to witnesses, and entitles clerks to justices in Petty Sessions to fees on depositions, subject to their being allowed at Quarter Sessions.

Courts of Justice Act Amendment, 29 & 30 *Vict.*, c. 65.—This Act enables the Commissioners of the Treasury to purchase land adjoining the site of the New Courts, which has been found necessary for the purposes of the scheme.

The Reformatory and Industrial Schools Acts, 29 & 30 *Vic.*, c. 117, 18.—During the past Session, two Acts were passed to Consolidate and Amend the Law relating to Reformatory Schools and Industrial Schools. On the introduction of the Bill, the Association, in conjunction with the Reformatory and Refuge Union, convened a special meeting of the managers of such schools; who, at two lengthened sittings, went through the various clauses, and agreed to urge certain amendments, some of which were ultimately adopted.

The most important new provisions of the Reformatory Schools Act have reference to the power of licensing, which after detention in the school for eighteen months, may be for three months, with

renewal for a like period from time to time, without the necessity of returning to the school; and to the power of apprenticing after being out on licence, and before the expiration of the period of detention. The preliminary imprisonment is now ten days, or a longer term, instead of fourteen. A youthful offender under ten is not to be sent to a reformatory on first conviction, except by a judge of Assize or at Quarter Session; the intention being, that such children shall, on summary conviction, be sent to an industrial school. The religious persuasion to which a child appears to belong, is to be stated in all orders of detention, a school of that persuasion to be selected, and a minister authorised to visit for the purpose of giving religious instruction. Where this was not done at the time of committal, the offender may, at any time within thirty days, on the requisition of the parent or guardian, be removed to another school.

In the Industrial Schools Act there are similar provisions as to the religious persuasion, and as to the power of licensing and apprenticing. Power is also given to allow a child to lodge out of the school with his parent or other trustworthy person, while being taught, fed, and clothed in the school. The class of children to be sent to these schools is more clearly defined, and provision is made both for the reception of offenders under twelve on first summary conviction, and for refractory children in pauper schools. The period of detention, which in reformatories is not under two or more than five years, is left to the committing magistrate, but in no case is it to extend beyond the time when the child is sixteen years of age.

Extradition Treaties, 29 & 30 *Vict.*, *c.* 121.—This Act allows warrants and depositions used under the Extradition Acts to be given in evidence without proof of the signature of the Magistrate, or of depositions being true copies, where the signature of the Magistrate is authenticated in the manner specified by this Act.

BILLS.

Bankruptcy.—One of the most important Bills introduced during the Session was that brought in by the late Attorney-General for consolidating and amending the law of bankruptcy. The Sub-Committee of the department to which this Bill was referred, found, on examining its new provisions, that many of them were identical with those which have been repeatedly advocated by this Department and the Law Amendment Society. The consolidation of the law relating to bankruptcy; the winding-up of an insolvent's estate, through the agency of a paid trustee appointed by and responsible to the creditors; the gradual transfer of the provincial jurisdiction in bankruptcy to the county courts, are all parts of the scheme which the Association has long recommended. But from some of the alterations proposed by the Attorney-General the Sub-Committee dissented, particularly from those which required that the administrative authority to be exercised by creditors should be preceded by adjudication, those which disallowed the right of creditors to arrange for a composition with their debtors, and those which proposed to withhold

absolutely, for six years, the discharge of insolvents who do not pay 6*s.* 8*d.* in the pound.

The Sub-Committee drew up a series of suggestions for the consideration of the Attorney-General, in which they urged the imperative necessity for certain modifications in the provisions of the Bill, which would give the creditors complete extra-judicial control over the estate of the insolvent. These suggestions, which also contained recommendations for several alterations in the details of the Bill, have been embodied in the report of this Committee, which was presented to the Department on the 23rd of May last.

Capital Punishment.—The report of the Royal Commission on Capital Punishment, led to the introduction, by the late Lord Chancellor, of a Bill founded upon its recommendations. After a double revision in Committee, it was reduced to certain provisions of which the chief are as follows:—that there should be no conviction for murder, unless the jury were satisfied of an intention to kill or do some grievous bodily harm; that persons charged with murder may be found guilty of manslaughter; that a wounding of a new-born child should be felony punishable with penal servitude; and that executions should be carried out within the prison walls, in the presence of certain witnesses (including the prisoners, unless the governor thought fit to dispense with their presence; and that a coroner's inquest should be held on the body). The Bill passed the Upper House, but was abandoned by the new Ministry in the Lords, on the ground that it did not fulfil the recommendations of the commission.

Law of Evidence.—An attempt was also made by the late Lord Chancellor, to remove two defects, which have often been pointed out and objected to by this Department. But, unfortunately, the Bill which he brought in, providing that every person in a suit instituted by reason of adultery, or action for breach of promise, should be competent, but not compellable, to give evidence, was lost upon the motion for a second reading, the members on a division being equal. It is to be hoped that next Session a Bill containing these provisions may be passed in the House of Commons, where their justice and good sense have been already recognised.

Clerks to Justices' Bill.—A Bill was introduced by a private member by which it was proposed to prohibit magistrates' clerks from acting as prosecuting attorneys. The mischievous nature of such a provision was clearly exposed in a discussion on the Bill, which led to its rejection. The introduction of the Bill, however, did unexpected good by drawing attention to the grave defects in our administration of criminal justice, consequent upon the want of an official prosecutor.

Statute Law Revision Bill.—The withdrawal of the Bill for revising the statutes, which would have swept away from our statute-book a large number of obsolete and useless Acts, affords a strong instance of the interruption caused in the progress of remedial legislation by the change of ministers in the middle of last Session. Prepared with great care, it only awaited legislative sanction. But the responsibility

of passing it could not be shifted from the out-going to the in-coming government, and it was withdrawn only, it is to be hoped, until next Session.

Legitimacy Declaration Bill.- The Committee much regret that they are obliged to place among the many legislative failures of last Session, the Bill prepared by their Legislative Business Committee for removing any doubt as to the right of parties to suits for dissolution of marriage, or declaration of legitimacy, to have any disputed questions of fact tried by a jury. The obvious justice and reasonableness of such a right, render it of such importance, that the legislature should remove even a shade of doubt as to its existence.

MISCELLANEOUS.

Digest of Law.—The Council of the Association appointed a Committee, at the beginning of the year, to prepare a memorial for presentation to Earl Russell, drawing his attention to the importance of at once beginning the work of digesting our case law. The memorial (which will be found in the introduction to the volume of the *Transactions* for the current year) was forwarded to Earl Russell, who was too unwell to receive the influential deputation which had been appointed to wait upon him. It is earnestly to be hoped that the present government will take up, and prosecute with vigour, a work which has too long been neglected, and which, to the discredit of our profession, has been completed in New York, before it has been begun in the mother country. One of the three men, to whose indefatigable labours the State of New York owes this useful measure, Mr. David Dudley Field, our corresponding member, is present at this meeting, and will add greatly to the interest of the proceedings, by explaining how this work has been so successfully carried out in his own country.

Patent Law.—The report of the Patent Law Commission, the recommendations of which Commission were given in the last year's report to this Department, received an exhaustive examination at the hands of the Committee, in the expectation that Government would have brought forward some measure on the subject last Session. A report of the Committee embodied a series of practical resolutions, the object of which was to reduce the vexations and grievances caused by vague, obstructive, and trivial patents; to establish machinery for the simplification of the procedure connected with the trial of patent cases; and to compel patentees, upon equitable terms, to grant licenses for the use of their patents. The interests of party politics have, however, prevented any measure for reforming the patent law from being brought in, and the value of the suggestions contained in the report still remain to be tested.

Master and Servant.—The Committee of the House of Commons, which during the last two sessions has been taking evidence as to the law of master and servant, has recently presented its report. It contains valuable information as to the relations at present existing between employers and workmen, and suggestions for the removal of

the anomaly by which the breach of a labour contract by the labourer is made a penal offence, whilst its breach on the part of the employer is only a civil injury. These suggestions will doubtless receive the early attention of the Department.

Law Reporting.—The Committee are glad to be able to say that the success of the scheme for bringing the whole system of law reporting under the control of a council of the bar is now placed beyond a doubt by the number of subscriptions which have been received.

INTERNATIONAL LAW.

INTERNATIONAL COPYRIGHT.

On the best Means of Extending and Securing an International Law of Copyright. By ANTHONY TROLLOPE.

ALL those who are here present, no doubt, know full well that a law of copyright exists in this country by which an author's property in his own work is ensured to him and his heirs for a term of years. This law of copyright protects equally the author, the painter, and the composer of music; but, in speaking to you now of copyright and of international copyright, I shall confine myself to remarks on the copyright of books; partly because I am myself a writer of books, and not a painter of pictures or a composer of music, and partly, also, because the arguments which will hold good as to one class of productions will hold good equally as to the other classes.

This law of home or domestic copyright originated, singularly enough, not in a desire to extend protection to authors, but with a view of limiting that protection, which was presumed to belong to them as a matter of course. It appears that in 1709 an act was passed limiting copyright in England to 14 years. I mention this as showing that, till the law interfered, the ordinary sense and feeling of men presumed that an author's property in his work was the same as that in his house or in his land. Then there came up the idea that, for the sake of literature in general, with the view of protecting readers, not against the authors, but against the booksellers, this right of property should be curtailed as to duration of time, and it was cut down, as I have said, to 14 years.

In 1814, the period was extended to 28 years; in 1842 to 42 years, and to the term of the author's life, should the author outlive the 42 years. This is the law which now defends copyright in England,

For the Discussion, see Summary of the Department.

and it may be acknowledged that justice to the author can demand no more.

There have been men whose opinion on such a matter deserves great respect, who have held that all copyright was pernicious. Lord Camden said, in giving judgment from the bench against a claim for copyright, that "Glory is the reward of science, and that those who deserve it scorn all meaner views," meaning thereby that an author should care nothing for his hire, only for his fame. But Lord Camden, who himself achieved much glory, would hardly have been satisfied had no other payment been made to him from his country's exchequer.

There are two living men, great in literature, who think that all copyright should be abrogated by law, arguing that the welfare of the country in cheap literature is of more concern than the material prosperity of the author.

I myself think that such an argument, though it is far better as being far truer than Lord Camden's, admits of easy answer. For all good work done the labourer is worthy of his hire; and taking the world at large—the world of authors as well as the world of ploughmen—without that hire the labourer cannot live. This question, however, is hardly that which you are now requested to consider. It is not for copyright, but for international copyright that I have to plead before you.

The justice of copyright, though it has had its distinguished opponents, has been allowed by almost general consent; and it has, as regards the requirements of our own country, been settled by law. I have alluded to it simply that I may call upon you to note that the questions of domestic copyright and of international copyright stand precisely on the same basis. If the one be desirable, the other must be equally desirable; if the one be just, the other must be equally just.

If there be anyone here who will dispute the propriety of copyright altogether, with him an argument may be held; but I make bold to say that no man admitting the propriety of home copyright, can bring forward reasons that shall be even plausible against international copyright. *The only argument* that I have ever heard as between two countries is this—between countries, let us say, which we will call A and B,—that we, the men of A, finding ourselves in a condition to get more by pilfering from you, the men of B, than you can get by pilfering from us, we of A will not consent to any law that shall impose a penalty upon us for such pilfering.

Now I would not use so hard a word as that,—even of the pilferers themselves of another nation,—were it not that I shall go on to tell you just now that, in the case which most closely concerns us, they who have hitherto opposed an international law of copyright are not the individuals who seem to be, and who indeed are, the persons most concerned. Our opponents to international copyright are not the publishers or the booksellers of another nation, but the legislators.

And here we are struck forcibly by that singular blindness to honesty which will so often fall upon a joint company of men, of which each member shall be as clear as the sunlight in his own sense of individual integrity. We need not go away from our own cities, or confine ourselves to the question of international copyright, to learn that it is so. Men who are honest enough for themselves can dare to be very much the reverse of honest in the interest of others.

Most of you, however, are no doubt aware that the principle of copyright as regards the work of English authors has been extended beyond our own shores. International copyright does exist,—very much to the profit of many English authors. In 1838, an Act was passed for securing to Englishmen international copyright wherever conventions could be made; and, in conformity with this Act, conventions have been made with the two countries in Europe with which, as regards literature, we are most closely concerned. Such a convention has been made with France; and such a covention,—or rather conventions,—have been made with that country which I may perhaps at the present moment be allowed to call North Germany. We have such a convention separately with Saxony,—which I will not name as a part of Prussia,—and that convention with Saxony has been especially valuable to English authors, for it has enabled them to deal on fair and reciprocal terms with that most energetic of publishers, Baron Tauchnitz. Under his auspices during the last 25 years some 700 volumes of English literature have been republished in Leipsic, by far the majority of which were so republished during the lifetime of the authors.

But there is no such international copyright with that great nursing mother of English readers, the United States of America.

When we speak of international copyright, and of the want of international copyright, we mean international copyright not with Austria, or with Spain, or with Russia, though we shall be ready enough to welcome as additional blessings justice for literature between those countries and our own, but with America!

As regards literature, America and England are one. We read the same language. We think the same thoughts. Our minds run in the same currents. Our literary tastes are formed on the same models. Many popular works of the present day might have been written either by English or by American authors. Who would have known that the "Skeleton in Armour" came from an American poet, or the romance of the Monte Beni from an American novelist, by the simple act of reading? Prescott and Motley might have been English as far as style, and mode of thought, and historic manner are concerned; and very proud England would have been to acknowledge them. There are, probably, above 12,000,000 readers of English in the United States—not, I mean, of readers who can spell their letters and make out words with painful slowness, but of men and women, of lads and lasses, who can sit down to their book, as you and I can, with true enjoyment of its luxury; and yet there is no

international copyright between us and the United States. It is exactly as though there were none between Middlesex and Yorkshire.

In our endeavours to get at the root of this matter, and to understand whether an international copyright would in truth be beneficial to the literary interests of the two countries, we should, I think, bear in mind the literary position of each of them. The United States is of the two the richer in readers, whereas England, including of course Scotland and Ireland, is as yet the richer in writers. That such a difference exists is indisputable, and it is the natural result of the condition of the countries. The United States, beginning as it were afresh, with the experience of all other countries before it, and weighed down, when so beginning, with no existing burden of rooted ignorance, has been able to teach her children—I may almost say, to teach all her children—to read and write. By reading, I mean, as I said before, the faculty of finding positive enjoyment in a book. I am afraid we must own that we fall very far short of this as regards our millions. But among us that leisure which comes from long prosperity and established wealth has been favourable to literary production, as it has been favourable to all intellectual employment. The United States counts her authors in quickly-increasing numbers, but they have not, as yet, increased with her as they have with us; and therefore it is that the Americans consume while the English produce. And, added to this, there is, I think, on the part of Americans, a prejudice in favour of the literature of England over their own. Their most popular authors are more popular with us than they are in their own country, whereas the works of Dickens and Tennyson are sold in numbers of which we here know nothing.

If this be so,—and I think that the assertion will be contradicted by no Englishman or American who has watched the market for literature in the two countries,—it would appear at first sight that we Englishmen, in asking for an international copyright, are *demanding from them much more than we are prepared or are able* to give in return. But what if it be so? In a great international question shall interest override honesty? Shall a great nation consent to possess itself of that which is not its own because it has the power to do so? Would the Americans take, and dare to say that they took, our cloths and our cutlery without paying us in corn or in cotton, if simply they had the power to do so? It seems to me that any such policy must be most ruinous to the nation which adopts it. But here, in this case, I maintain that the assumption is altogether wrong which presumes that America gains in literature by the absence of international copyright. America loses fully as much as England can lose. Indeed, whenever protection is named as the principle under which rights shall be defended—protection by acts of parliament, or of congress, or of government—we may be quite sure that each party concerned will be the loser. It may be thought that certain booksellers in the United States may gain by the protection to them of property which is not their own—though they,

the booksellers, do not themselves so believe—but no one can think that the readers of the country, that is, literature itself in the States, can gain by it.

And now I will ask you to let me explain what is the present system of republication of modern books in the two countries; for, of course, as there is no international copyright, the system is the same in each, equally dishonest in the one as in the other. I will speak of the republication in America of English books, not as showing any wrong stronger than might be shown on the other side, but because it is the view of the question to which my own attention has naturally been drawn.

Mr. Smith shall be a popular English author,—or rather an author gradually becoming so popular that a reprint of some one of his books in the United States is considered desirable. The reprint is made by some firm there, probably without any question asked—or if asked, it is asked of Mr. Smith's English publisher, and not of Mr. Smith. Mr. Smith, when he hears of it, is not a whit displeased; Lord Camden's theory holds good for the nonce, and Mr. Smith is satisfied with his American glory. But things progress, and Mr. Smith begins to find that he has an American public at his disposal. He is read in the United States, and tidings come to him of editions very wonderful in number which are printed and sold, and for which he receives no further payment than that which comes to him from his American glory. Then he arouses himself and becomes dissatisfied. "What! copies by the thousand, by five thousands, by ten thousands, and no return to me, Smith, for all that I have done for this ungrateful people!" Upon this he inquires and learns that the American publisher who has reprinted him to this extent beyond all his aspirations, is very willing to deal with him, though there is no law of international copyright. Perhaps he goes to New York, and sees the American publisher. The result is this—the American publisher will deal with him. The generous publisher, although he undoubtedly has Mr. Smith in his grasp, scorns to republish Mr. Smith's works without paying for them. He will pay for what are called early sheets—or, more intelligibly, for the receipt of early sheets, which will enable him, the American publisher, to bring out the work on the same day as that on which it appears in England. Mr. Smith is delighted and thinks of his price. But the American publisher has also thought of his price, and knows more about it than Mr. Smith knows. He will pay a price for Mr. Smith's great and favourite work, on receipt of the early sheets, which will, perhaps, nearly defray the cost of Mr. Smith's journey to America. Mr. Smith demurs, thinking that if there is to be a matter of bargaining, each party to the bargain should have a veto. But here the American publisher closes upon the English author, and demolishes him at once: "No, Mr. Smith; I have taken you up at a great outlay of capital, and must go on with you. I will deal with you willingly at so many dollars, or on such and such terms; but if that do not suit you, I fear that I must go on without the payment to

you of any dollars at all, and on no terms as between you and me. I can afford nothing else. How can I pay you a high price for your work, when my neighbour in the next street can reprint it from the first copy he gets?" And in truth this argument is not to be answered. That absence of international copyright which militates against the English author, — which militates equally against the American author, — acts with far greater strength against the American or the English publisher. The publisher can, in fact, buy nothing beyond that almost surreptitious value of early possession. The moment that Messrs. A. and B. in Broadway have brought forth an English work, Messrs. C. and D., in One Hundred and Nine-street, can reprint it from the reprint of their Broadway neighbour. I have fought—I should rather say have attempted to fight,—this battle with American publishers, and have retired from the contest wounded and sore discomfited. It may be that I have had my own peculiar little quarrels. But I am firmly convinced, first by the arguments and operations of certain American publishers in whom I have great faith, and secondly by conclusions drawn from my own experience, that the publishers of the United States would, as a body, be willing that a law of international copyright should be passed, so as to prevail between the two countries. For them the certainty in their property would be more valuable than the catching, dodging, disreputable mode of business which they are now driven to adopt. That for the authors of both countries an international copyright would be desirable, no one, I think, can doubt. I may, perhaps, be allowed to mention that Longfellow, when he showed me, with an honest cheery pride, copies of the exceedingly numerous English editions of his works which have appeared, simply shrugged his shoulders when I asked him as to the pecuniary results from England. I discussed the question of international copyright with him, and it was his opinion that no American who knew aught of literature common to the two countries would doubt as to the expediency of an international copyright. I presume it may be taken for granted that the authors in both countries would desire such a defence of their rights.

But it will, perhaps, be argued that great public interests should be held to be paramount, and regarded as overruling altogether the rights of authors on commercial enterprises of publishers. For myself I will say that I cannot see how any interest, however great, can override justice. If justice demand that the author shall have his copyright, either home or international, no public interest should be allowed to rob him of it. But I altogether deny that public interest in the United States demands any such robbery. The true interest of international literature between England and America is altogether *antagonistic to the present system. The American publisher who—I will not say pirates—but assumes as his own* the right of republishing an English work, has no legalised property in his venture, and cannot retail to his customers his goods at that price which an assured property in the work would enable him to reach; and, con-

sequently, reprints of English books in America are not cheap. They are brought out in New York at a dollar, or a dollar and a quarter—at 4s. or 5s., we will say—when they are being published in London at 2s. to 2s. 6d. It stands to reason that a certified property in a copyright must enable the publishing proprietor of that copyright to do more in the way of cheap selling than can be done by the unsteady hold of their precarious ventures which the American booksellers now possess.

I have never met an American publisher who has not professed himself to be in favour of international copyright; but I have met American legislators of both houses who have shaken their heads when I have ventured to suggest that the mutual interests of the two countries demand such reciprocal justice. It was their duty, they thought, to protect the American reader. If there be one great political lesson to be preached, the wide world over, it is that lesson which would teach us to abandon the task of protecting anyone, when protection means injustice.

But how are we who are desirous of obtaining an international copyright with the United States,—how are we to proceed to the attainment of our object? All Englishmen,—with such exceptions only as may prove the rule—desire it. The English legislature is willing to take the necessary steps to-morrow, or let us say, next February. American authors wish for it, as do also American publishers and booksellers. But still there is the American Congress to be overcome. In England we are now pretty well aware that public opinion will at last move a mountain;—will at last move any mountain! Our House of Peers, which is the greatest mountain I know, is always movable at last. I believe that the same means will effect the same result in the United States. Agitate; agitate; agitate! International copyright with the United States will, in all probability, never benefit you and me; but I think that we may do something towards assuring the benefit which will accrue from it to those who will come after us. By insisting we shall carry our point,—not in opposition to our brethren in America, but in full accord with them. In the hope that such urgency may be of avail, I have addressed these few words to the congress now present in furtherance of Social Science.

THE TREATMENT OF SUBJECT RACES.*

What is the Duty of the Mother Country as regards the Protection of Inferior Races in her Colonies and Dependencies? By CHARLES SAVILE ROUNDELL, M.A., Fellow of Merton College, Oxford.

FOR the purposes of this paper the native races with which we have to do in our colonies and dependencies may conveniently be considered under four heads: namely, perishing races, such as the aborigines of Australia, or the Indians of North America; stationary or slowly progressive races, such as the Hottentots, or Negroes of the West Indies; progressive but uncivilized races, such as the Maoris and Kafirs; and lastly, the ancient but backward civilizations of China and Hindostan. With these last, however, it will be unnecessary to deal, partly because the principles which ought to govern our relations with the less civilized communities, will be found to be applicable, in a higher development, to the case of the ancient civilizations of the East; but chiefly because India, China, and Japan, each raise special questions belonging rather to the sphere of international morality and imperial politics.

It is a dark page in history which records the contacts of Europeans with Aborigines. We call to mind the deeds of Cortes and Pizarro. We are told by the historian of the West Indies that, "on a moderate computation, the conquest of the islands of the Spanish Main was effected by a slaughter, within a century, of ten millions of the species." The aboriginal inhabitants of Australia can now be scarcely said to survive; the Maoris, who were estimated by Captain Cook, about a century ago, at about 100,000, do not now exceed 56,000; the Caribs of the British Antilles are now extinct, save in one island; while the native races of Newfoundland and Tasmania have long ago wholly disappeared.

But then it is said that the history of colonization is the history of the annihilation of native races: that, in the order of Providence, *savage man is destined to disappear before civilized man*: that in the "*struggle for existence*," *the inferior races must give way to the* superior: that brown and red men have no right to obstruct their superiors in fulfilling the divine command to be "fruitful, and multiply, and replenish the earth, and subdue it."

This is a short and simple way of salving over our consciences. Perhaps, if it had been less simple, it would have less suggested the ugly misgiving that "the wish was father to the thought." What may be in the designs of Providence we know not. This, at least, we

* For the Discussion, see Summary of the Department.

do know, that it is not for us to usurp the functions of Providence, and arrogate for our own rash assumptions the sanction of an inscrutable decree.

I pause to consider whether indeed the progress of the human race involves the extinction of its least favoured members, or whether another and a better solution of the problem can be suggested by the teaching of modern philosophy and religion.

Several practical considerations here present themselves. In the first place, we may look at home, at the presence amongst ourselves, in the heart of our great cities, of our own civilized savages, the pariahs of our own civilization. The lessons, which are being forced upon us by the spectacle of our own degraded and debased classes, will not be without their instruction with respect to the question before us.

Then it should be remembered that (as has been well observed*) extermination, in the interest of this doctrine of human progress, really rests on the same ground on which barbarous tribes justify—as even some nations of classical antiquity justified—"the extinction of individual life, as in the case of female infants, children physically defective, and the aged"—a view, which, it is needless to remark, the smallest advance in humanity and real civilization sufficed to reject as equally shallow and barbarous.

Then again, the vices incident to savage nature and society must be borne in mind, as well as the precise mode in which the destructive forces of European contact operate.

There is reason to believe "that the decay of those races the numbers of which have, since their contact with Europeans, so uniformly diminished, was advancing ever more rapidly under the influences of intestine wars, cannibalism, and the habits of savage life at earlier periods of their history." † Nor are we left in the dark as to the particular mode in which these "habits of savage life" have an injurious operation. A competent observer has attributed the rapid decay of the Maori race (already referred to) "mainly to their deficiencies in three matters, themselves the material foundation of all domestic economy—food, clothing, and lodging." ‡

On the other hand, the destructive effects of intercourse with Europeans can be referred to definite causes. The first result of such intercourse is, almost invariably, the introduction of ardent spirits and fire-arms, and, not unfrequently, the communication of diseases before unknown. Another and a deeper consequence is the shock given to native ideas and social systems, which, however rude, have at least maintained the elements of society.

Upon the whole, therefore, we may conclude that, however difficult the task, the problem of the preservation of inferior races is capable of practical solution; that the difficulties in the way are at

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* "International Policy," p. 542, note.
† "North British Review," No. 88, p. 399.
‡ "International Policy," p. 543.

once tangible and preventible; and that, after all, "the problem presented by savage and semi-civilized communities is essentially the same as that which regards the lowest and most neglected classes of European society: namely, their gradual participation in the best results—physical, intellectual, and moral—of Western civilization."*

How, then, shall we arrive at the solution we desire? Is not the first step the rejection of all *à priori* assumptions, and the patient investigation of facts, including the causes of our miscarriages in the past? Now, the principal cause of past miscarriage has been a failure to apprehend the fundamental distinctions between civilized and uncivilized modes of thought, habits of life, and states of society. This misapprehension, precluding a mutual understanding, has also precluded the natural influence of the superior over the inferior race. It has also, in many cases, nullified, or converted into positive evil, measures which were designed for good.

The first step, therefore, is the understanding of our past misunderstandings, with a view to a wiser policy in the future. And, in order to do this, we must have recourse to facts and experience.

The present age seems to be peculiarly fitted for the right solution of such a problem. As modern science is establishing itself upon a broader, more tentative, and sounder basis, so we may hope that modern statesmanship is becoming more philosophical, more experimental, more humane. The colonial minister has, moreover, for his guidance, a multitude of facts, comparative as well as positive. Travellers, missionaries, and merchants are, day by day, opening up to us sources of information, which a quickened public intelligence and keener political tastes eagerly absorb. Out of the abundance of our materials we might, in fact, almost construct (if I may be permitted to coin the word) a science of comparative barbarology. At the same time, we are arriving at a juster appreciation of our national responsibilities, and of the inherent difficulties in the way of their discharge. Under the influence of a wider philosophy, we even admit that there is a great, though unacknowledged, debt which civilized man owes to savage man, while the application of the doctrine of continuity, as regards the history of the human species, leads us to the recognition of human affinities between the most refined and the most degraded specimens of the race.

Acting upon this enlarged and more humane view of our relations towards uncivilized races, our first endeavour must be to estimate aright savage nature and savage manners. This done, we shall find that, in the process, many difficulties will have disappeared, and that such as are inherent in the subject are capable of being overcome by means within our own control. In the words of Mr. Hutton, from whose essay on *England and the Uncivilized Communities*, I have derived much assistance: "The points of difference which separate savage from civilized existence lie much deeper, and concern fundamental aspects of the intellectual and moral nature and social institu-

* "International Policy," p. 544.

tions. This juster appreciation also brings into clearer view the attributes of our common humanity. The exaggerated importance often assigned to the question of races is thus reduced to its just proportions, and subordinated to conceptions at once more general, and affecting matters which fall to a far greater extent within the modifying power of a thoughtful and wisely-directed human intervention; as, for example, the conditions of domestic well-being, laws affecting property, industry, and the administration of justice, with popular education. The deeper points of contrast, when impartially investigated, are seen to be due, not chiefly to physical conformation, but to social influences, slowly accumulating, and transmitted from generation to generation. They connect themselves, for good or for evil, with a long train of antecedents, and constitute stages in the general growth of society." *

"The real interest of this country [says Lord Grey], is gradually to train the inhabitants of this part [the west coast] of Africa in the arts of civilization and government, until they shall grow into a nation capable of protecting themselves and of managing their own affairs, so that the interference and assistance of the British authorities may, by degrees, be less and less required." †

Now, in order to do this, our first care must be to apprehend the distinctive and characteristic features of savage life; to bear in mind their divergence from the European model; and to make it our business gradually to transmute them in the crucible of a higher civilization, by the force of example, and by contact with European institutions.

In this process, we shall be careful to respect whatever rudiments of social organization we may find already existing, not heedlessly breaking down even tyrannical or superstitious customs (unless, indeed, we see our way to establishing something better in their place), but, rather, seizing hold of whatever good points may under-lie the native institutions—family ties, local attachments, the habit of obedience to chiefs—it will be our wisdom to cherish these as points in common between us and them, as rudiments and germs, elementary and imperfect, it may be, but still capable of being built upon, and of being ultimately made to support the superstructure of civilization.

The first foundations of a new social system will have been laid when provision has been made for establishing some security for life and property. The great instrument for effecting this first object, and, indeed, the most potent solvent of barbarous customs, is the strong and impartial administration of justice. Under the shelter of law, and of a system of police, habits of settled industry will begin to grow up, and with these Nomadism will tend to disappear. Then, when these foundations of material order and industry have been laid, the ground will have been prepared for the action of moral agencies, and the barbarous people will have become amenable to the most potent

* "International Policy."

† "The Colonial Policy of Lord John Russell's Administration," vol. ii. p. 287.

and only efficacious instruments of civilization—namely, education and the influences of Christianity.

If it be objected that this is paying too great respect to barbarous customs, that the process of building up a new civilization on the basis of a gradual transformation of barbarous habits and manners is necessarily tedious, and unworthy of engaging the energies of a highly-civilized imperial government, it must be answered that, at any rate, more ambitious and compendious schemes have hitherto failed; that, after all, races, like individuals, can only be elevated by self-effort, by effort, moreover, exercised in the development of their own peculiar gifts; and that, though the first beginning may be difficult, yet that, when once the beginning has been made, subsequent progress will proceed in an accelerated ratio.

Before I leave the subject of our relations towards barbarous peoples, I will state a particular case, as an example of the practical working of the above principles, and with a view to show the practical difficulties with which the first steps towards the civilization of barbarous tribes are attended.

The case which I cite is the more instructive in that the civilizing influence is exercised over tribes independent of the British Crown, and by the mere force of contact with, and deference to, a superior civilization.

Lord Grey describes as follows * the position of the British on the Gold Coast of Africa: "The position which is there occupied by this country is very singular and anomalous. The British territory, properly so called, is confined to the forts, and the distance of a cannon-shot around them. Beyond this circle no dominion is claimed on behalf of the Crown; but British influence and authority extend over an area of not less than 8,000 square miles, constituting the territories of various native chiefs, and inhabited by a population estimated at 100,000 souls at least." He goes on to say that "*Justice is administered to this large population, by their own consent, by British magistrates. The principal of these magistrates is an officer who bears the somewhat strange title of the judicial assessor,* who sits principally at Cape Coast Castle, and exercises a superintendence over the proceedings of the magistrates who sit at the other forts. The population of the country under British influence and protection bring their various disputes for decision before these magistrates, on whom the singular duty is imposed of enforcing the rude laws and customs of so uncivilized a people, qualified only by those plain and universal principles of justice which even the most ignorant races understand when explained to them."

It is of course a consequence of this system "that the British authorities must tolerate much of which they do not approve. For instance, the custom of domestic slavery is too firmly established to be suddenly altered." It has been necessary to recognize it within certain limits. So, again, to take a cognate example from another

* "Colonial Policy of Lord John Russell's Administration," vol. ii, p. 270, &c.

part of Africa polygamy is a deeply-rooted institution. "It is one which time only can abrogate, because men and women would equally oppose any violent attempt to destroy it, and morality would suffer more from the effects of such violence than leaving it to the gradual extirpation which natural causes, and judicious but indirect measures, will most probably soon bring about."* The important question which has been raised by the Bishop of Natal with respect to polygamy, as regards converts to Christianity, will doubtless be readily recalled.

Lord Grey goes on to state that "the public administration of justice by the British magistrates, whose practice it is to explain the grounds of their decisions, has been a powerful instrument of improvement, by preventing the infliction of the barbarous punishments formerly in use, and by gradually diffusing more correct notions as to right and wrong, and as to what actions constitute offences which ought to be punished." It is thus that an inroad has been made upon the barbarous and superstitious customs connected with witchcraft and fetishism. The general results, moreover, of this indirect and suasive influence, exercised by our officers by the force of mere moral ascendancy, have been the cessation of intestine wars between the chiefs, and "a slow but constant mitigation of the oppression to which the bulk of the population of Africa is subject from their rulers." And thus we see how, by the institution of a judicial authority, working in consonance with the feelings of the people, wisely restraining itself within limits adapted to a low stage of civilization, and yet enlarging itself with the gradual enlargement of the native moral sense, "the laws and customs which the natives recognize are gradually and silently brought more into harmony with justice, and with the feelings and opinions of Christian nations."

I ought properly to consider this subject, also, in its relation to the higher races represented by the Kafirs and Maoris: but having regard to time, I will confine myself, in what remains, to the consideration of the duty of this country towards that peculiar people, the subject of one of the vastest and most momentous experiments of modern times—a people associated in the public mind with recent painful memories—I mean the emancipated negroes of the British West Indies.

Before I proceed with that part of my subject, I propose to touch upon a point deeply affecting the general relations between this country and all inferior races over whom she exercises control, and notably brought into prominence by recent events in Jamaica.

Much as has been written and said on that deplorable subject, I question whether the public attention has sufficiently riveted itself on that which I take to be at the bottom of all we deplore—the military spirit, the "heritage of triumphant wrong," which descended to our young officers from the Indian mutiny,† and the first-fruits of which we have lately witnessed in the red anarchy of Jamaican martial law.

* Parliamentary paper, quoted in "International policy," p. 523.
† See "Competition Wallah," Chapter IX.

The spirit of which I speak, rooted in an utter absence of reverence for inferiors, is not, however, peculiar to members of the military profession; it exists, in even a more intense form, in the dominant class of a colonial community in which there are sharply-defined contrasts of race. It will suffice to allude to two well-known letters,* relative to martial law, produced before the Commissioners in Jamaica, which embody sentiments not, it is to be feared, limited to the respective writers.

I am well aware that certain allowances must be made, and, in particular, for absence from home, and the consequent relaxation of the restraints which English society and the influence of English opinion impose. The position, too, of an officer or colonist, placed among a subject race, is not favourable to the development of the finer or kindlier feelings of our nature. Yet, after all allowances, the broad fact remains, that (with the exception of the higher officials) English society in India, and in the colonies in which a native race exists, is to a great extent animated with a spirit of contemptuous and almost brutal disregard for the feelings (may I not almost add, the lives?) of the inferior race. The existence of such a spirit is so disgraceful to our humanity that it deserves a moment's consideration. Its origin must, I think, be sought in two kindred motives—pride of race and pride of birth. The former regards the native as an inferior creature; the latter breeds insolence. The two together induce a caste-like spirit, manifesting itself (the military element being predominant in India and the colonies) in the habits of every-day life. It even frames for itself a conventional phraseology, which at length becomes a second nature, and builds up a hard, impassable barrier against the better and more generous feelings of human nature. To such an extent does this second nature warp the judgment and harden the heart, that in times of action the conventional becomes the actual standard of conduct. Hence, in emergencies, such as the Indian *mutiny, or the late disturbances in Jamaica (where the insurrection of the negro was resented as a kind of personal insult), the feeling* which, in ordinary times, is fatal to all kindly intercourse, amounts to a negation of the commonest instincts of the commonest humanity.

The remedy for such a national scandal can only be found in a changed habit of mind; and this can only be brought about by an improvement in the general tone of society. For, after all, English officers are English gentlemen; and society at large is responsible for the tone of its individual members. Perhaps, if theologians could consent for a season to substitute for barren controversy the guidance of the nation in the weightier matters of this law, public morality might not suffer.

The problem presented by the negro in the British West Indies is altogether peculiar. Our West India Islands are neither colonies nor dependencies. The creole negro of Jamaica or Barbadoes raises no questions of political supremacy. We have not to deal with

* See "Report of Jamaica Royal Commission, 1866," pp. 399 and 755.

Maori king movements or Kafir irruptions. Our rule extends over a docile race, speaking the same language as ourselves, leavened to a great extent by European intercourse, alien to the West Indian soil, regarding England as its adopted "home," and venerating the Queen with an almost more than English reverence. The problem before us is, moreover, one of the vastest with which a great civilized nation can engage. It is no other than that which is occupying also the anxious attention of the governments of Russia and the United States—namely, the re-organization of society, after a system of serfdom or slavery, upon the basis of free labour. The problem, as it regards ourselves, involves the consideration of some general questions. Has emancipation failed? Has it failed, at least, in Jamaica, the noblest and most favoured of our West Indian possessions? Or can we perceive the regular operation of cause and effect, and trace in the disregard of ordinary economical laws, the grounds of failure in the past, and therefore of hope for the future?

I will briefly touch upon a question which lies at the threshold of this inquiry—the capacity of the negro for civilization. The answer to this question must needs affect, at every step, the solution of the general problem. The case against the negro, put in its extreme form, is embodied in the dictum that "any attempt to improve his condition is warring against an immutable law of nature." There are, again, authorities, such as Mr. Matthew Foster, who has stated that, after a long life of hope for the amelioration of the negro, he had given it up in despair; or distinguished travellers, such as Captain Burton and Sir Samuel Baker, the latter of whom has recently asserted that the negro "has little in common with the white man beyond the simple instincts of human nature." On the other hand, however, there are authorities at least equally weighty. Dr. Livingstone (who, by the way, speaks to the superiority of the negro in the interior of Africa over the inhabitants of the West Coast—a superiority which he unhesitatingly ascribes to immunity from the curse of slavery), on being asked, by a late Committee of the House of Commons, whether he shared in the opinion recently expressed with regard to the impossibility of elevating the African, answers: "Not in the smallest degree; they are in a state of degradation, and some time will be necessary for their elevation; but with regard to their capabilities I have no doubt whatever."* Again, Sir Benjamin Pine, who has held official positions in various parts of Africa for nearly a quarter of a century, was interrogated by the same Committee as to his impression of the capability of the negro for managing his own affairs. He answers: "Certainly. Perhaps the great mass of them at present may not be capable of managing their own affairs; but they may be as the nation becomes educated. I do not see why they have not the same natural capabilities as we have." He is then asked as to the degree of civilization to which negro settlements may attain; whether

* "Report of Select Committee of House of Commons on Africa (Western Coast), June 26th, 1865," p. 232.

they will become as civilized as any European settlement. He answers: "Not as civilized as any European settlement; but I think that they will be sufficiently civilized to conduct a decent government. In answer to the question whether he considered the pure negro, without admixture of any other blood, capable of arriving at a high degree of civilization, he replies: "I see no reason to doubt it." Q. "Have we any example of a pure negro kingdom arriving at a high degree of civilization?" A. "They have never been in circumstances to do it."* But enough has been said on this point. Where eminent authorities thus differ, it may perhaps be permitted, in the absence of ethnological conclusions to the contrary, to hold by that more hopeful view, which science does not contradict, which the charities of history favour, and which is in harmony with the known antecedents of our human nature.

Assuming, then, that the problem of our relations with, and duty towards, our negroes in the West Indies is not embarrassed by despair of the future elevation of the race, we must inquire into the causes of the failure, in great part, of our work of emancipation. Taking Jamaica as a crucial instance, to what are we to attribute its present conspicuous state of decay? Is it the result of emancipation, of the abolition of the system of forced labour? Or is it the result of recent legislation as regards its great staple, of the abolition of the protective duties on sugar? Or shall we traverse the planters' pleas, and affirm that the measures for securing personal freedom and freedom of trade have had nothing to do with the vital conditions of the problem? Shall we maintain that it is not a question of race, nor of slavery, nor yet of free trade, but that, in all its essential features, it is the same problem which presents itself in all sparsely-populated new countries—an economical question of capital and labour, supply and demand, which, like all economical *questions, is capable of being grappled with, of being understood, and successfully surmounted? I think that* the best authorities are unanimous in this latter view. It can be shown historically and statistically that the decay of Jamaica had set in long before the abolition of slavery; that under emancipation our other sugar colonies have, by a wise adaptation of themselves to their altered circumstances, not only surmounted the difficulties incident to so great a change, but have (in several instances, at least, such as Trinidad, British Guiana, and the Mauritius) actually attained to a higher, and still advancing, state of prosperity; while statesmen, like Lord Grey, attribute the exceptional state of Jamaica to the exceptional infatuation with which her planters, as a body, have persistently ignored the logic of facts, and continued to hanker after a pestilent and irrecoverable monopoly.

The following graphic account by a contemporary, resident in Jamaica, of the measures pursued by the planters in the first days of emancipation, will at once illustrate their infatuated policy, and throw

* "Report of Select Committee of House of Commons on Africa (Western Coast), June 26th, 1865," p. 232.

light on the vexed question of "continuous labour:" "At the commencement of freedom, the attorneys and overseers rather resembled madmen than reasonable beings. Deprived of the unrequited labours of the slaves, their great object seemed to be to assimilate their freedom as nearly as possible to slavery. Meetings of planters were held, in which they agreed to unite in fixing the wages of the labourers at the lowest possible amount,* whilst enormous rents were demanded for the labourers' cottages and provision-grounds; indeed, in many cases a *per capita* rental, so great as to absorb the entire wages of the labourers, was imposed and enforced. Such a state of things could not long continue. The negroes became impatient of such impositions, and refused to submit to them, which, as the rents were deducted from the wages, led to their refusing to work. The managers next resorted to forcible ejectment; they unroofed their dwellings, cut down their bread-fruit and other trees, tore up their provisions from the ground, and drove the people, with their families, into the open roads. It was this impolitic as well as oppressive conduct that gave the finishing stroke to the alienation of the labourers from the estates. The strong local attachments of the negroes were well known in the island, and had they been wisely taken advantage of, might have been the salvation of the estates; but they were made use of only to coerce and punish, and thus was severed the only tie which held them to their old homes, and led them to obtain land of their own, which would be exempt from unjust extortion, and safe from the rude hand of violence. But this removal from the estates, which first arose from necessity, soon grew to be an all-absorbing passion; multitudes speedily followed the examples that had been set them, and abandoned the properties on which they had been born, to become possessors of their own lands, until many estates became altogether abandoned, and on nearly all the numbers of labourers became greatly reduced, the people preferring the independence and security of their own homesteads to the expensive and uncertain tenure of the dwellings on their masters' properties."†

The length of this paper forbids my doing more than briefly indicate some of the chief elements upon which a right estimate of our own responsibilities towards our negro fellow-subjects seems to depend. The nature of the problem is well stated by one of our most successful West Indian governors. Lord Harris, in a despatch written in the year 1818, says that "one of the many errors which have been committed since the granting of emancipation is the little attention paid to any legislation having for its end the formation of a society on true, sound, and lasting principles. That such an object could be attained at once, was, and is, not to be expected; but, undoubtedly, had proper measures been adopted, much greater progress might have been made. As the question at pre-

* The writer states that he was present at Montego Bay when such a resolution was adopted, fixing the wages of an able-bodied field-labourer at 7½*d.* sterling, although they had before sworn their value to be four bits, or 1*s.* 6*d.* sterling.

† "Jamaica, who is to blame?" London: Effingham Wilson, p. 24.

sent stands, a race has been freed, but a society has not been formed. Liberty has been given to a heterogeneous mass of individuals, who can only comprehend licence. A participation in the rights and privileges and duties of civilized society has been granted to them; they are only capable of enjoying its vices. To alter such a state of things, vigorous and prompt measures are required, in order that the authority of the law should be felt; greater weight must be given to the executive; to humanize the people, a general and extensive system of education must be adopted; to assist in civilization, every encouragement should be given to the establishment and to the easy circumstances of a superior class, especially of Europeans, amongst the population." *

It must be confessed that emancipation, in all but its object, was a sorry piece of legislation. It was possible, indeed, by act of parliament, to confer freedom upon 800,000 slaves, but it was not possible, even by act of parliament, summarily to remove the inveterate curse which slavery had engendered. There is that in the infamous and accursed system of slavery which even the sovereign power of freedom can only gradually, slowly, and painfully extirpate. The problem of emancipation may be briefly stated thus: how, in a tropical country, where the means of subsistence are easy, where wants are few, and nature is lavish in her gifts, with a population thin in proportion to the extent of rich territory—how, in such circumstances, the transition may be made from a system of forced to free labour, and natural incentives to industrious exertion be substituted for the coercion of the whip. It is worthy of observation that the government of 1833 had proposed a plan to satisfy the conditions of this problem, which was, however, subsequently dropped. The characteristic of the rejected plan was "to stimulate the negroes to industry by the imposition of a tax on their provision-grounds, while very stringent regulations for enforcing the payment of the tax, and for the prevention of vagrancy, were to have been established. The design of these proposals was to substitute, for the direct coercion of the whip, the indirect constraint by which the working classes in other countries are driven to exertion—namely, the impossibility of *otherwise obtaining such a maintenance as* their habits render necessary to them." †

It should also be remembered that other nations have profited by our mistakes, and that in the Dutch, Danish, and French sugar colonies emancipation has been treated as a gradual process.

The future of our West India colonies must depend largely upon their government. The experience of Jamaica has shown the unsuitableness in such a community of representative institutions. An elective representative assembly is, in fact, in the conflict of the white and coloured races, an oligarchic tyranny veiled in a popular dress. What is wanted is a government which shall devote itself impartially to the

* "The Colonial Policy of Lord John Russell's Administration," vol. i. p. 86.
† *Ibid*, vol. i. p. 76.

interests of both races, and which, in the interest of the negro, shall charge itself with the triple functions of protection, guidance, and control. Such a government is to be sought, for a time, at least, in a paternal despotism.

The first step towards reclaiming the negro to habits of order and settled industry must be an impartial and trusted administration of justice. If any defect was conclusively established by the late inquiry in Jamaica, it was the need of a stipendiary magistracy. There is an elaborate return appended to the report of the Commissioners, bearing upon the administration of justice in the parish of St. Thomas-in-the-East, which is worthy of attentive study.*

Again, the state not only of Jamaica, but of the other West India Islands, points to the necessity of measures for preventing vagrancy, for regulating native settlements, for encouraging settled industry, and for enforcing the observance of the elementary conditions of morality and health.

The principal agents for effecting these primary requirements will be an efficient police, the enactment of a bastardy law, the establishment of hospitals, and a well-organized system of medical supervision, the construction of roads, the instruction of the people in improved methods of agriculture, and, above all, a system of industrial,† compulsory,‡ unsectarian education.

For these purposes the government must be furnished with means; and, next to a sound administration of justice, a wisely-adjusted system of fiscal economy will be found a potent agent of govern-

* "Report of the Jamaica Royal Commission, 1866," p. 1082.

† "What is wanted is an education that would make intelligent labourers and useful citizens, and no system seems so likely to accomplish this object as industrial schools, where learning and labour should be taught together. Such a system of education would not only have the advantage of economy of expense, by contributing considerably towards its own support, but it would tend to remove the idea of disgrace which, in Jamaica, is attached to field labour, and make it respectable in the eyes of the people. It would also accustom them to the use of better implements of agriculture, as well as improved and more scientific methods of cultivation, which could not but exert a beneficial influence on the prosperity of the island. There is at present one institution of this description, established in the parish of Metcalfe, by the agent of the American Missionary Society, in which not only agriculture is carried on to a considerable extent, but other useful trades, as tanning, smith's and carpenter's work, and a saw-mill moved by water power, and a fair crop of sugar is also cultivated and manufactured. This valuable institution is, to a considerable extent, self-supporting; its influences are seen for miles round in the superior intelligence of the people, their improved methods of cultivation, and general good conduct." *Jamaica, who is to blame?* p. 80.

‡ "The great difficulty which lies in the way of accomplishing such an object [the establishment of schools such as that in the parish of Metcalfe] "arises from the indifference of the parents, who have little or no appreciation of the value of knowledge, and are generally unwilling to incur the least expense for the education of their children, or even to forego any little services they may be able to render them in their work or at their ground. The consequence has been that the schools have been but very poorly attended, and that attendance very fitful and irregular. Under such circumstances, it becomes a question whether compulsory education ought not to be adopted." *Jamaica, who is to blame?* p. 81.

mental civilizing influence. In nothing so much as in the principles of taxation is the difference between civilized and uncivilized communities made manifest. The reasons which induce the governments of Europe to lighten the burden of taxation on the working classes, with whom subsistence is difficult, and the motive to exertion urgent, fail of application in the case of the semi-civilized people of a tropical country, whose standard of physical comfort is low and easily satisfied. In a word, in such a community direct taxation, which presses upon the means of subsistence, is proved to be at once the most productive source of revenue, and incidentally an instrument of high value in the work of civilization. An example of a mischievous system of taxation is to be found in the recent history of Jamaica. There, under the auspices of the planters, an *ad valorem* duty of 12½ per cent. is imposed upon the import of articles ordinarily in use by the negro peasantry. There is also a tax charged upon horses and carts. The obvious effect of these taxes is to obstruct the advancement of the people in ways of industry, in material comfort, and in the habits of civilized life. It should, moreover, be an object of the government to secure, if possible, the intelligent co-operation of the negroes, by publication of the official accounts, and by the specific appropriation of local taxes to local objects, such as education and public roads.

It is impossible, however, to touch upon the question of imports without expressing astonishment at the apathy which, regardless of the prodigal wealth of nature, allows commodities to be introduced from abroad which could be supplied, to the common advantage of estate-proprietor and peasant, by the rich soil and varied climate of Jamaica itself. "I have no patience," exclaims Mr. Sewell, "to listen to their complaints, when I look at the unbounded wealth and wonderful resources of the country. They cry out at the high price of labour, and pretend they cannot grow corn, when corn is grown at *five times the cost in the United States, and exported to Jamaica at a handsome profit. They import beef, and tongues, and butter, though this very parish of Manchester offers advantages for raising stock that no portion of America possesses.* They import mackerel, and salmon, and herrings, and codfish, though Jamaica waters abound in the most splendid kind of fish. They import woods, though Jamaica forests are unrivalled for the variety and beauty and usefulness of their timber. They import tobacco, though their soil, in many districts, is most excellent for its growth. The negroes, who have never been taught these things, are learning them slowly by experience, and a gradual decline in certain articles of import, demonstrates that they now raise on their properties a very large proportion of their own provisions." *

It remains only to glance at the questions which relate to the tenure of land. The fact is that, in Jamaica, as in the other islands, the negro, like the Irishman, has an instinctive hankering after

* "The Ordeal of Free Labour in the British West Indies." p. 223.

the ownership of land. Hence the propensity, since emancipation, to abandon the estates for small holdings of their own, either in the mountains, or on the unoccupied wastes which abound in all the islands except Barbadoes. These plots of land (which are cultivated as provision-grounds, or for the production of sugar and coffee, or arrowroot, ginger, and spices) are either purchased as freeholds, or irregularly squatted upon. The bearing upon the labour question of this propensity for the acquisition of land is obvious. In Jamaica alone, it has been calculated that, out of a population of upwards of 350,000 blacks, some 60,000 are freeholders, while only 30,000 are employed as labourers upon the sugar estates. The bearing, also, of this land question upon the late disturbances in that island will not be forgotten. It is, in my opinion, upon a right solution of the many important questions which turn upon the tenure of land that the future prosperity of Jamaica will largely depend. For instance, accepting facts, cannot this negro propensity for land be turned to account? Is there any necessary conflict of interest between the large proprietors and the small freeholders? Are we to be compelled to believe that, along with slavery, the day of large estates is bygone, and that freedom can best be worked out by a population of peasant proprietors? If I may refer to the result of inquiries which I myself made whilst in Jamaica, I may state it as the almost unanimous opinion of those with whom I conversed that there is no ground for anticipating the gradual abandonment of the large estates for a system of *petite culture*. And, indeed, such a revolution is to be deprecated in the interest of the negroes themselves, inasmuch as the cultivation of sugar, which requires capital, constitutes the chief source of wealth; and still more, because, with the withdrawal of the staple cultivation, the Europeans also would withdraw, and thus a fatal check would be given to the civilization of the negroes. There is, moreover, reason to believe that it is not so much a dearth of labour as a dearth of capital under which Jamaica suffers; at any rate, that the question of capital is at least as material as that of labour; and that, where capital is at hand, and wages are regularly paid, a fair supply of continuous labour may be reckoned upon. Not but that the labour of the negroes must be supplemented by imported labour. Such extraneous supply, in all the islands, probably, except Barbadoes, is a necessary safeguard against the uncertainty of the native supply. Trinidad is a capital instance of the benefits to be derived from a well-organized system of immigration. It is only necessary to add that there is no conflict of interest between coolies and creoles.

Beyond this, the planters, loyally accepting emancipation and free trade, must look to improved methods of cultivation and manufacture, and, above all, to the inspiring new relations of confidence and goodwill between themselves and the freed peasantry. A chief step in this direction will be a fair adjustment, by law, of the relations between employer and employed, such as is embodied in the Master and Servants' Act of Barbadoes.

It is also a serious question whether the government ought not to enforce strictly, with peremptory provisions for forfeiture and resumption, the laws imposing quit rents, or land tax, upon ruinate or abandoned estates. The Crown might, in such cases, lay out village settlements, and allot lands to negro cultivators, at a fixed rent, and on a certain tenure, with provisions for the ultimate vesting in the tenant of the ownership in fee simple.

The possessory law of Jamaica, which gives a title after an occupation for a certain number of years, applies only to lands upon which the quit rent has been paid for twenty years at least. Practically, therefore, the law operates harshly against squatters, and to the undue advantage of the legal owner. It would appear to be well worthy of consideration whether, in a country in which more than two-thirds of the land is unoccupied, and in a community composed of a dominant proprietory class on the one hand, and an ignorant and semi-civilized peasantry on the other, it consists with public policy that the law should be strained in favour of absentees, to the detriment of the public interest, to the perversion of real justice, and to the direct encouragement of disorder and chronic discontent.

I cannot close this paper without referring to the verdict of public opinion upon recent events in Jamaica. In what I have written, I have advocated the supreme exercise, at all times, and towards all—even the most lowly—races subject to our dominion, of a moral and humane national influence. But if indeed, as is alleged, there is one law for the European, and another for the African ; if indeed public opinion reverses the rule of Christian morality, and acts towards the humble negro, not as it would act, or be acted by, in the case of a civilized equal ; then all that I have written has been written in vain.

The capital question, then, before us at the present time is this : " Is the heart of the nation right in this Jamaica matter, or is it not ? " Notwithstanding appearances to the contrary, I venture to think that it is right and sound to the core. I will go further, and even assume *that those who err err not so much from degeneracy from the old English spirit as from ignorance of facts*—culpable ignorance it may be, but still ignorance of the common facts which a Royal Commission has authoritatively established. Those facts are before the nation ; and the ultimate appeal in this great national inquest lies not to a few literary cynics, but to the warm heart and rough but true instincts of the mass of the people. If I do not read the national verdict amiss, I read it in a record of burning indignation, and shame unutterable, at the deeds of blood which, most unnecessarily, were perpetrated against an inferior race during the hell-like saturnalia of martial law.

EXTRADITION TREATIES.*

How may the Extradition of Criminals be best secured consistently with the right of Asylum? By P. H. RATHBONE.

IT seems singular that previous to 1842 there was no single country with which we had a treaty for extradition. The explanation may be the greater difficulty, in those days, of moving from one place to another; and, so far as the continent was concerned, the general belief in the efficacy of the passport system may have had some influence. In 1842, a very short clause was attached to the Ashburton treaty, providing for the extradition of criminals guilty of the crimes of murder, attempt to murder, piracy, robbery, forgery, or the utterance of forged paper. Absurdly meagre as this list of crimes was, the extradition treaty concluded with France the year following (1843) still less approached completeness, providing, as it did, only for the cases of murder, attempt to murder, forgery, and fraudulent bankruptcy.

Even with this incomplete convention there was some difficulty. The Act passed by Parliament provided different formalities to those specified in the convention as necessary to be gone through previous to the surrender of a criminal; and the French authorities, having complied with the latter, felt naturally aggrieved when they found these were not sufficient. Owing to this and other causes, up to 1852, out of fourteen criminals demanded by the French government, only one had been surrendered; and in this case the man was captured in Jersey, whose procedure differs from our own. Great dissatisfaction was naturally the result of this state of things, and the British government, after strong remonstrances from that of France, entered into a new convention. This convention stipulated expressly that no prisoner surrendered under it should be punished for a political offence committed previous to surrender. The catalogue of offences was very carefully drawn out, and was, so far as I have been able to judge, very unobjectionable, though complete. With some alterations and added safeguards, which the French government were quite willing to entertain, this convention received the approval of the most eminent lawyers on either side the House of Lords when the Bill for giving it effect was introduced. Unfortunately, at this time the famous *loi des suspects* was introduced, and created so strong a feeling against the Emperor that Lord Malmesbury thought it prudent to withdraw the Bill. Had it got so far as the House of Commons, the completeness and statesmanlike character of the measure, together with the clear and definite principles upon which it was based, would have probably been fatal to its success in

* For the Discussion, see Summary of the Department.

an assembly so largely composed of men who have muddled their brains away in making sufficient money to buy their seats.

The question remained in this unsatisfactory state until the latter end of 1865, except that a convention was concluded with Denmark in 1862. The patience of the French government at length came to an end, and they gave notice of the termination of the treaty. Considerable negotiation ensued, which resulted in the passing of a provisional Act last Session, with an intimation from the Lord Chancellor that the subject would probably occupy Parliament next Session. This Act, however, only altered the procedure, and did not enlarge the list of crimes, which remained as absurdly imperfect and capricious as before.

We have as yet no extradition treaty with Belgium, and Ostend being as near almost as Calais, it would seem rather superfluous stupidity in any one to fly to France instead of Belgium, were it not that some of the classes of crime omitted by the French treaty are precisely those which are likely to be committed by men in a position, and with sufficient education, to render flight to the continent a feasible means of escape.

As to the danger of rendering the right of asylum for political offences insecure, there does not seem any insuperable difficulty in making that danger void from remoteness. The French government have proved their good faith on more than one occasion, and Lord Cranworth mentioned that in a case when a man had been surrendered by Belgium on a charge of rape, which was found to break down, the government refused to try him for the minor offence of assault with intent, and he was sent back to Belgium. The truth is, we English are too much inclined to treat with foreign governments as if they were destitute of the commonest principles of honour, and we then wonder at the almost universal dislike with which our nation is regarded.

The questions for to-day's discussion would seem to resolve themselves into the following heads:—

1. Is it desirable that there should be extradition treaties at all?
2. To what classes of crimes ought such treaties to be restricted?
3. What guarantees are requisite to prevent abuses?

I. I should have thought it unnecessary to detain the meeting upon the first question were it not that an article in last Saturday's *Examiner* maintains the inadvisability of extradition treaties at all. The principal arguments, so far as I understand them, of this article, are, that the first Napoleon imposed extradition treaties on surrounding nations, that they are of foreign origin, and that the present ones have been the result of foreign dictation. Really these are the arguments of a bygone age, and the last one is especially humiliating. Are we so weak that we cannot afford to do right for fear other nations should suppose we were dictated to? One argument remains, however, of more force than the others (for they are merely appeals to obsolete prejudices), which is, the difficulty that may arise sometimes in distinguishing between political and non-political offences.

Take, for example, the case Sir Hugh Cairns alluded to—namely, supposing Mr. Lincoln's assassin had found his way to England, could we possibly have made up our minds not to give him up? And yet his was said to be essentially a political offence. I should answer to this, that Booth's was not essentially a political crime, but a crime against humanity, committed under the influence of political excitement, and that it would be unworthy of a great country to screen such crimes.

A case of greater difficulty did arise when a slave, in escaping from slavery in the United States, killed his master and got away to Canada; or one might arise should a body of political prisoners overpower their gaolers and break out of prison, and some of the gaolers be killed in the struggle. In both these cases the crime is essentially a political one. The essence of a political crime seems to be that it is rebellion against, resistance to, the action of a certain form of government, whether by armed force or not; and if that resistance involves loss of life, that fact does not take it out of the category of political offences. Assassination has, by common consent, come to be considered as a foul and unnatural way of pursuing political ends, just as the use of poison, or the destruction of unarmed men or prisoners, would be considered a foul and unnatural way of carrying on war; and therefore assassination, being a crime against humanity, ceases to be a political offence. The *Examiner* argues that the prisoner ought to be tried in the courts of the nation where he is caught, not in those of the country where the crime is committed, and from which he has fled. Does the *Examiner* really mean what it says? Take the very case of Booth. Is it expedient that all the witnesses which would have been requisite should have been brought over here? Or suppose he had fled to France, would it have been desirable that he should be tried before French judges, with a course of procedure entirely different, with witnesses probably ignorant of the language of the court, and the accused himself not improbably so? Would it be desirable he should be tried many thousand miles away from where the crime was committed, so that if a link was missing in the evidence, it could not be supplied before the expiration of months? If a man lives in England or in France, he knows what to expect from the laws of the country in which he lives; but to try him in a country with different laws and different punishments for a crime committed in his own, seems to be neither just, nor reasonable, nor expedient. I therefore respectfully submit that extradition treaties are a necessary complement to railways, steamers, and the abolition of passports.

II. But to what classes of crimes should such treaties be restricted?

(*a*). To crimes against the person, murder, attempt to murder, offences against women with violence, manslaughter, &c.

Here two remarks seem required—first, that extradition ought not to take place except for serious offences; and accordingly the 1852 convention provides that only those cases which come under the denomination of felonies in England, and which in France subject

the culprit to severe and degrading punishments, shall be subjects for the action of the treaty; secondly, the crime should in both countries be recognized as such, *e.g.*, in England death ensuing from a duel subjects the surviving principal and the seconds to a charge of murder. This is not the case in France, and therefore I do not think France ought to be required to carry out the extradition treaty in such a case.

(*b*). To crimes against property—first, to those involving no breach of trust, thefts, robbery, forgery, fraudulent bankruptcy; secondly, to those involving breach of trust, such as embezzlement by clerks or servants, or thefts by servants.

(*c*). To serious crimes against private character.

(*d*). Perjury, subornation of witnesses.

Care should be taken that mere offences against morality, however outrageous, should not be subjects of extradition, and it would seem almost questionable whether bigamy should be included, except when it was clearly proved that the fact of the first marriage was concealed from the second wife, and it would then be treated as an injury done through fraud to her.

III. And, lastly, what guarantees are requisite to prevent abuses?

First—The power should be retained of terminating the convention at a certain notice.

Secondly—Security should be given that the prisoner shall have public trial within a certain reasonable time; and that he shall be tried for the crime for which he was surrendered, and for no other. Notice, too, should be sent to the nearest representative of the country surrendering the prisoner, that he may satisfy himself that the provisions of the treaty are carried out in these respects.

Thirdly—No prisoner should be surrendered except upon a clear statement and full particulars of the crime committed, and upon proof of identity as provided by the convention of 1852.

With precautions similar to those, surely we could safely wipe out the disgrace which at present attaches to us—that, owing to our suspicions of foreign governments, and the inability of our Parliament to examine carefully into the real state of the question, we are the convenient refuge for all the manifold forms of scoundrelism which war against society.

On the Same. *By* JOHN WESTLAKE, *Barrister.*

I HAVE thought it useful to give a short account of the chief difficulty which has been experienced in the practical working of an extradition treaty with France, and of the method of overcoming it which has been taken by Parliament during the last Session.

The difficulty on the part of France was real, and not raised by any captiousness or undue sensibility. I hope that the remedy will prove effectual, as a similar one appears already to have proved in the United States; but if any further question should arise, a full understanding of the case will facilitate its solution.

Locomotion is now so easy that if criminals could safely reckon on attaining impunity by crossing a frontier or a narrow sea, the inconvenience would be quite intolerable. A French criminal escaping to England, or an English criminal escaping to France, must be tried in one of the two countries. Now, whatever the ease of locomotion, it must always be more easy to carry one criminal back than to bring many witnesses after him. Nor are the witnesses only wanted for the day of trial: it is often necessary that they should see the prisoner before that day, in order to ascertain whether they can identify him; and often, again, it happens on the day of trial itself that some point requires to be cleared up, and is cleared up by evidence adduced at the briefest notice, when the trial takes place in the neighbourhood, but which could not be adduced if it had to be sought in another country. We must, therefore, reject, as chimerical, the idea sometimes put forward, that fugitive criminals can be effectually tried in the country to which they have escaped; and unless we are prepared to make the country a den of thieves, we must acquiesce in extradition as one of the permanent and generally-admitted necessities of society. Nor is it less generally admitted that the extradition can only be suffered when the circumstances are such as, by the law of the country which suffers it, would warrant the detention of the criminal for trial if the offence had been committed within its limits. The divergence takes place at the point when that principle has to be applied between two countries which adopt different systems as to the conditions under which criminals are detained for trial.

In England, as we know, there must for that purpose be *primâ-facie* evidence of the guilt of the accused, not only given on oath, but reduced into writing and signed by the witnesses; these are what we call depositions, and they remain distinct from the formal indictment which is afterwards presented against the person detained, not by the magistrate who ordered the detention, but by the prosecutor. In France, the detention is ordered by a magistrate, upon such evidence as satisfies him of there being sufficient ground for the accusation; but that evidence, and all further evidence which is acquired during the detention of the accused, the whole of which period is occupied by the authorities in carefully investigating the case, are worked up into an *acte d'accusation*, which differs in two main points from an English indictment. First, it is drawn up and presented, not by an independent prosecutor, but by a functionary acting in constant communication with the committing magistrate, and, like him, a member of the great official hierarchy of justice. Secondly, it is not a formal instrument, but a copious narrative, in which the facts that have been deposed to are given sometimes in the words of the witnesses, and sometimes in those of the prosecution,

and which in either case are mixed with the inferences and theories of the prosecution, and graced with rhetorical artifice and moral invective. The ultimate trial commences with the reading of this piece, and from it the jury derives all its knowledge of what has preceded. The same or other witnesses may be produced to the jury, but the precise evidence on which the criminal was detained does not re-appear, perhaps does not even continue to exist in a formal or distinct shape.

Most persons are probably aware, from the discussions in Parliament, that the recent difficulty about the *primâ-facie* evidence of guilt, which is admitted to be necessary for extradition, has been concerned, in some way or other, with the mode of authenticating depositions. I shall presently explain more fully what it was, but I wish my hearers, as a preparation for entering into it, to realize that for a French magistrate to ask an English one for depositions, or, rather, for an English magistrate to offer them, since no French one asks for them—is to offer documents, or copies of documents, about which there can be no ambiguity, because our law positively requires them to be signed by the witnesses and preserved distinct; but that for an English magistrate to ask a French one for depositions will be understood as asking for his notes, or copies of his notes, of what the witnesses said before him, and for all other information, possibly even for all theories, which he has received or formed, and may feel disposed to incorporate in the *acte d'accusation*, often too without distinction, or without the means in the memoranda before him of drawing a distinction, between that part of the mass which accumulated before and that part which has accumulated since his warrant for the criminal's detention was issued. The English magistrate has to be impartial between the criminal and a private person who is prosecuting him. This distinction of parts between the magistrate and the prosecutor obliges the former to preserve distinctly the depositions of the latter and his witnesses, verified by their signatures; and nothing can be simpler than to send abroad copies of these depositions, compared with the originals by the officers who take them, and the correctness of which, as copies, that officer can therefore verify on oath before the foreign magistrate, if required to do so. Such, then, as between England and the United States, whose criminal jurisprudence is traced on English outlines, is the natural mode of furnishing that *prima-facie* evidence of guilt on which alone extradition ought to be granted. In the French system, which is also the usual one on the continent of Europe, not only is the prosecution public, but there is no distinction of parts between it and the magistrate. That which prosecutes is the great official machine of justice, co-extensive with the state, of which the policeman and the magistrate are both parts, both charged with the suppression of crime and the investigation of guilt, and whose functions differ less in kind than in the subordination of the one to the other. To ask such a magistrate for depositions is to ask him for the motives of his prosecution; and accordingly, as between two continental countries, the *primâ-facie* evidence required

for extradition is naturally furnished by a report from the magistrate on the supposed facts, possibly contained in the warrant of arrest itself, which would not be so closely tied to formal language as in England, possibly accompanying it as a separate document. And to ask for its verification by the policeman who brings it to the country whence the extradition is demanded could only, in such a system, be understood as asking that the official inferior should certify the propriety of the proceeding of his official superior.

The first article of the Anglo-French treaty of 1843 is expressed in the following terms :—

"It is agreed that the high contracting parties shall, on requisitions made in their name through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes of murder (comprehending the crimes designated in the French Penal Code by the terms assassination, parricide, infanticide, and poisoning), or of an attempt to commit murder, or of forgery, or of fraudulent bankruptcy, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: provided that this shall be done only when the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial, if the crime had been there committed.

"Consequently, on the part of the French Government, the surrender shall be made only by the authority of the Keeper of the Seals, Minister of Justice, and after the production of a warrant of arrest or other equivalent judicial document, issued by a judge, or other competent authority, in Great Britain, clearly setting forth the acts for which the fugitive shall have rendered himself accountable; and on the part of the British Government, the surrender shall be made only on the report of a judge or magistrate duly authorized to take cognizance of the acts charged against the fugitive in the warrant of arrest or other equivalent judicial document, issued by a judge or competent magistrate in France, and likewise clearly setting forth the said acts."

The second paragraph of this article, taken alone, would establish extradition on the basis which I have pointed out as being the most natural one between continental countries, the only thing which it mentions as necessary to be furnished by the country making the demand being "a warrant of arrest, or other equivalent document, issued by a competent authority, and clearly setting forth the acts for which the fugitive shall have rendered himself accountable"—that is, of course, shall be alleged to have rendered himself accountable, or of which an account shall be demanded from him. Lord Aberdeen probably signed the treaty under a conception as to its meaning, the existence of which, at least at a later period, is betrayed in Lord Clarendon's despatch to Lord Cowley of 10th January, 1866. In that despatch his lordship argues that the treaty requires that the demand for extradition shall be accompanied, not as the plain

words of the second paragraph of the first article say, by a "warrant of arrest or other equivalent judicial document," but by evidence. This conclusion seems to have rested on the assumption that the paragraph in question was meant as an addition to the preceding one, so as to leave unqualified and uninterpreted the requirement "that the commission of the crime shall be so established as that the laws of the country where the fugitive shall be found would justify his commitment for trial, if the crime had been there committed." But since either government might naturally expect that the other should particularize in the treaty what it required, and not leave that important point to turn on a vague reference to its own laws, of which the first government could have no official, and possibly no actual, knowledge; since the second paragraph really does particularize what the French government requires on an English demand for extradition; and since the word "consequently," with which it begins, seems to convey that what has before been announced in principle is going to be stated in detail; there is no reason to doubt that the French government signed in the honest belief that "a warrant of arrest or other equivalent judicial document," was all that could, under the treaty, be required from them also.

With the professed intention of carrying the treaty into effect, an Act of Parliament was passed in the same year, the second clause of which is as follows:—

"Provided always, and be it enacted, that in every such case copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person apprehended."

The Act thus proceeds no less distinctly on that which I have *described as the natural English basis* of extradition than the treaty, according to the French interpretation of it, proceeds on the other.

The practice since 1843 has been such as might have been expected. The French demands for extradition have been accompanied by documents in accordance with their view of the treaty, but extradition did not follow, because they were not in accordance with the Act. The English demands were accompanied by evidence in accordance with the Act, but the French authorities appear to have regarded it as superfluous, and gave up the criminal, when they could find him, on looking at the warrant alone.

This want of uniformity naturally led to the French government giving last December six months' notice to terminate the treaty, and a good deal of negotiation followed, resulting in the prolongation of the treaty, and the passing an Act of Parliament which provides that it shall be sufficient if the foreign magistrate certifies that the documents sent are true copies of depositions taken by or before him; that is, in effect, he will have to send a report, but it must not be couched in his own words, like the *acte d'accusation*, which at one stage of the negotiations the French appeared willing to furnish, but

it must contain, and he must certify that it contains, the very words used by the witnesses before him.

A notion prevailed in this country, and makes its appearance even in the official correspondence, that the French took a silly objection to so inferior an officer as a policeman being required to verify on oath the exactitude of copies from written originals, after that exactitude had been once certified by a magistrate; but I hope it will now sufficiently appear that it is not the exactitude of a copy, but the truth of the magistrate's certificate of what the witnesses said before him, which it was refused to submit to the verification of a policeman.

I have no hesitation in expressing my opinion that the Act of Parliament thus passed was absolutely necessary. A great concession is made to our ideas of justice if the French magistrate certifies, not a report of his own, but the very depositions. It cannot be expected that any further concession should be made, or that the forms of preliminary investigation in France should be altered, for the purpose of furnishing evidence to England. The very demand must appear to be, as it is represented to be, a demand that the case should undergo a preliminary trial in this country, which will not be conceded. We have to consider whether it is better that extradition should cease, or that it should be granted on the terms settled by the Act of last Session.

The United States Congress passed, in 1860, an Act of a similar or even more liberal nature:—

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that in all cases where any depositions, warrants, or other papers, or copies thereof, shall be offered in evidence upon the hearing of an extradition case under the second section of the Act entitled, 'An Act for giving Effect to certain Treaty Stipulations between this and Foreign Governments for the Apprehension and Delivery up of certain Offenders,' approved August twelfth, eighteen hundred and forty-eight, such depositions, warrants, and other papers, or copies thereof, shall be admitted and received for the purposes mentioned in the said section, if they shall be properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal Diplomatic or Consular Officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this Act.

"Approved June 22, 1860."

Under this Act, extradition has taken place five times out of ten that France has demanded it from the United States, and there is nothing in the administration of criminal justice in most continental countries which should lead us to feel any hesitation in according credit to a magistrate's certificate of depositions made before him.

I will not detain the meeting by mentioning the provision which

should be made for the temporary detention of criminals before the certified depositions can arrive, or several other points which have been ably treated by Mr. Rathbone and Mr. Miller. But I must say a few words on the crimes for which extradition ought to be granted, and I may be brief in this, because those gentlemen have also already pointed out the absurdity of granting it for robbery and not for larceny, or for forgery and not for embezzlement. But I would add that no enumeration of particular crimes can be sufficient, or guard against the chance, I will say the certainty, that some will be omitted. The only true remedy is broadly to express the principle; to say in the treaty, and in the laws which are to give it force, that extradition shall be granted whenever the facts, if they had occurred in the country to which the criminal has escaped, would constitute any crime or offence other than that of treason or sedition. It need be thought of no consequence that the denomination of the crime may be different, or the penalty attached to it more severe, in the one country than in the other. In matters which in both countries are admitted to be criminal, there can be no injustice in binding the offender to that measure of guilt and punishment which is meted to his deed in the country where he has chosen to commit it.

In cases of trifling importance, which Mr. Rathbone would except from treaties of extradition, I would rather trust to the good sense of the foreign government not to make the demand. If it thought the case worth the trouble and expense which would always fall on it, I can see no principle on which the extradition could be refused, the act, however trifling, being by hypothesis deemed criminal in that country also on which the demand is made. Any inconvenience which might arise would, I submit, be more than counterbalanced by the inevitable incompleteness of any particular enumeration. Moreover, we must remember that the technical class in which an act is placed is far from being always a test of its real criminality, which must often depend very greatly on the circumstances.

I am perhaps bound to explain what is involved in the fact being appreciated throughout by our own law. Take, as an example, the case of *the slave Anderson*, whose extradition was claimed for a so-called murder, committed on his owner who tried to arrest him while making his escape from slavery. The killing was unlawful in the United States, because slavery was there recognized at the time, and the arrest of the escaping slave was consequently lawful, the resistance to it unlawful. But, by the provision I have proposed—namely, that the facts must be estimated as if they had occurred in the country in which the demand for extradition is made—we should not stop at the circumstance that the resistance was unlawful; we should examine the bare facts, stripped of all the legal colouring which any laws, existing in the United States, but different from ours, would give them. So examined, the relation of owner and slave would be eliminated; we should see only a lawful resistance, and should refuse to give up the fugitive. But beyond this, in considering the protection to be given to the right of asylum, I have advisedly chosen to make the exception

only of treason and sedition, or, as it might be otherwise expressed, of offences against the state or public order. God forbid that we should ever hesitate to give up a murderer because he may have had a political motive in committing or attempting the murder.

On the Same. By the HON. W. B. LAWRENCE, *of Rhode Island, United States, Foreign Corresponding Member of the Association.*

AMONG the papers on this subject, we insert the following extracts from two letters written by the Hon. W. B. LAWRENCE to the Foreign Secretary of the Association, in acknowledgment of the receipt of the list of questions for discussion. Mr. Lawrence's views were stated by Mr. Westlake at the meeting, and we are now happy to lay before our members at length the copious information contained in his letters.

"Ochre Point, Newport, Rhode Island:
"*September* 18*th*, 1866.

"The recent notice of France to terminate her treaty of extradition with England, in connection with the reasons which have rendered it practically inoperative, so far as British rendition is concerned, might, perhaps, justify a discussion of a more searching nature than the third question proposed would seem to invite.

"Though the science of private international law has of late years received great favor with the tribunals of Christendom—'when,' to use the language of the Supreme Court of the United States, 'there is no positive rule, affirming, denying, or restraining the operation of foreign laws, courts establish a comity for such as are not repugnant to the policy or in conflict with the laws of the state from which they derive their organisation'—yet no case has occurred in which one country has given effect to the criminal legislation of another. No text-writer, no state, disputes the rule that all foreigners in a country are subject to its criminal law. May it not be asked if extradition, whether exercised as a matter of international comity or by means of treaties, does not effect, indirectly, what no nation would propose to do by the direct action of its own courts? By delivering up to a foreign government an individual within the jurisdiction of the state making the surrender, whether he be a permanent subject or a temporary resident, this latter state goes still further than admitting the authority of foreign law in its own tribunals. It not only subjects the party charged with an offence to be tried by a system of law which has not received its own sanction, but that law is administered by judges over whom it has no control.

"What is deduced from the Roman law, as implying the obligation of a state to exercise jurisdiction over a person charged with offences in another country, or to remit him to that country, is well shown by Dr. Twiss to have resulted from the imperial supremacy. In either

case, whether the criminal was tried in the place where he was found, or sent back to the place where the crime had been committed, the authority under which the trial or remission took place was one and the same paramount authority. The law applied was also in either case the same.

"The same principle may be recognised in those cases where the English courts have refused to interpose by *habeas corpus*, to prevent persons being sent from England to Ireland or to the colonies to be tried for offences committed there.

"In cases also of confederations or federal unions, especially where, as in Germany and the United States, the general system of criminal law as well as of the organisation of the tribunals is the same, similar considerations, justifying extradition, may exist. In the case of the United States extradition was provided for under the federal constitution, as well in the case of fugitives from labor as of fugitives from justice, though in the former case no previous requisition on the state executive was necessary for the arrest. It was this clause of the constitution, regarding the extradition of slaves (wholly unimportant for the protection of the interests of those intended to be provided for), which was more efficient than any other cause in producing the rupture between the northern and southern states, resulting in the late gigantic civil war.

"In what was recently the Germanic confederacy, no provision for extradition was inserted in the organic code, but a general law existed. The principle, however, would even with the advocates of extradition receive no additional support from a decree of the Diet, which rendered reciprocally obligatory, upon all the states of the confederacy, the surrender of individuals accused of political crimes. The case of Count Teleki, delivered up in 1860 by Saxony to Austria under this law, at the time excited the attention of Europe.

"Not only has the expediency of treaties of extradition been maintained by publicists, but great names are cited to show that, independently of any conventional stipulation, there is an obligation on a state to surrender up persons charged with the commission of criminal offences in another state.

"The force of the authority of Grotius, and of those who support his views, is in no small degree weakened by the cases to which they would apply them, as will appear by a reference to the passage in which the doctrine is expressed. The text, as well as the note, which is by Grotius himself, is especially addressed to state crimes. Burlamaqui follows him implicitly, while Rutherforth applies his reasoning to extradition generally, omitting to state the cases to which Grotius would exclusively confine his rule.

"Vattel, whose enumeration of offences does not extend to those of a political character, seems to have had in view mainly the arrangements subsisting among the Swiss cantons, and which, like the constitutional provisions in the United States, were of an exceptional character.

"The proposition of Chancellor Kent, requiring, in the broadest terms, the extradition of fugitives, is, I find, recognised as indisputable by Dr. Abdy, in his late learned treatise, which, from the extent and ability of his contributions, might well have been issued in his own name. The text of the 'Commentaries' is derived from a case decided by the Chancellor in his court, in the state of New York. His opinion, besides a reference to the publicists to whom I have already alluded, is supported by two cases, where the right of taking persons accused of crime from England to other portions of Her Majesty's dominions was maintained, and by another in Keble, where the court refused to bail a person committed to Newgate on suspicion of a murder in Portugal. In this latter case, what was done with the man is left in doubt, but it certainly does not appear that he was sent out of the country.

"The question, both as to the duty of a nation, independent of treaty, to make a surrender of suspected criminals, as well as the right of the President of the United States, without a law of Congress, to act in the matter, has been frequently a subject of discussion, as has also the question whether the power of extradition could, in any event, on the application of a foreign government, be exercised by the individual states. The decision of Chancellor Kent, in the case referred to, was in favour of such power, and the act of the legislature of New York, passed in 1822, of which a summary is given in Abdy's Kent, was based on it. But, though the case went off on another point, the views expressed by the judges of the supreme court in *Holmes* v. *Jamieson*, decided in 1840, are understood to have settled the matter in the courts of the United States, against the authority of the states as assumed by Chancellor Kent.

"In 1791, the governor of South Carolina applied to the President to demand the surrender of certain persons who had committed crimes in that state and fled to Florida. The report of the Secretary of State, Mr. Jefferson, is founded on what he deemed the law of nations, as recognised by Great Britain. 'England,' he said, 'has no convention with any nation for the surrender of fugitives from justice, and their laws have given no power to their executive to surrender fugitives of any description; they are accordingly constantly refused; and hence England has been the asylum of the Paolis, the la Mottes, the Calonnes—in short, of the most atrocious offenders, as well as of the most innocent victims, who have been able to get there. The laws of the United States, like those of England, receive every fugitive; and no authority has been given to our executive to deliver them up.'

"In 1793, Mr. Jefferson answered an application of M. Genet, the French minister, in the following terms: 'The laws of the country take no notice of crimes committed out of their jurisdiction. The most atrocious offender coming within their pale is received by them as an innocent man, and they have authorised no man to seize or deliver him. The evil of protecting malefactors of every dye is

sensibly felt here, as in other countries; but until a reformation of the criminal codes of most nations, to deliver fugitives from them would be to become their accomplices.'

"Mr. Monroe, Secretary of State, in his instructions, in 1814, to the commissioners for concluding peace with Great Britain, uses similar language. And in 1825, Mr. Clay, Secretary of State, answers the Governor of Vermont that 'the request of the Governor of Canada cannot be complied with under any authority now vested in the executive government of the United States.' The application was for the surrender of two British soldiers, who had committed a robbery on two officers of their regiment.

"But, in that same year (1825), Mr. Clay replied to the British minister at Washington, who had asked his aid in procuring the arrest of a person who had fled from Scotland, charged with forgery, that he would without delay transmit a copy of his note, with the documents, to the Governor of New York, who is most competent to decide whether, consistently with the laws of that state, he can cause to be rendered the requisite assistance to arrest the accused, and deliver him over. He adds: 'I hope that he may find himself justified in giving this proof of a friendly disposition towards His Britannic Majesty's government, and the administration of justice.'

"Referring to this case and to one at Savannah, where the agent of a Scotch bank had obtained without hindrance, and carried back, a person charged with having robbed the bank, I was instructed, in November, 1827, to make an application to the British government to have a teller of a Virginia bank, who after embezzling the funds had escaped to England, delivered up to be returned to the United States. The application was not to be made on the ground of right. 'It addresses itself solely,' said Mr. Clay, 'to the courtesy and discretion of that government, to its sense of justice, and to the interest common to all nations that notorious offenders should not escape with impunity.'

"The return of the culprit, with the police officer sent after him from Virginia, in whatever way effected, occurred before the despatch reached me, and consequently no note was addressed to Lord Dudley on the subject; but on speaking of the affair at the Foreign Office, I was assured that no application for rendition could have been entertained.

"Nor would it seem that any reciprocal concessions were made by the provincial authorities, in return for the facilities accorded by our border states. Lord Aylmer wrote to Governor Marcy of New York, 27th May, 1833, in answer to an application for the surrender of four individuals charged with murder, that 'in the absence of any treaty or legislative enactment on the subject, the attorney-general was of opinion it was not competent to the executive to dispense with the provision in the *habeas corpus* act.'

"A case of extradition, of an exceptional nature, and which it was supposed at the time would have undergone judicial investigation, as well as received a full examination at the hands of Congress, occurred

in 1864. A Spanish officer, understood to have used his position as lieutenant-governor of one of the districts of Cuba, in order to seize and sell for his own profit a large number of negroes illegally landed in the island, escaped to New York. There was, confessedly, no treaty of extradition between Spain and the United States, and if there had been any, it is scarcely probable that it would have reached the case. The matter was brought confidentially by the Spanish minister to the notice of the Secretary of State, and on the 15th April the consul at Havana was instructed to inform the captain-general that, if he would send a competent officer to New York, measures would be taken to deliver up to him Arguelles. On the 26th the captain-general sends Mr. Tassan a list of the persons designated to take charge of Arguelles, and on the 19th May he announced to the minister the arrival of his aide-de-camp with the person in question, who was also accompanied by two deputy United States marshals. Mr. Seward, in a report of May 30, 1864, sent to the Senate, declares the extradition to have been made in virtue of the law of nations, and of the constitution of the United States, and adds that 'although it may be conceded that there is no national obligation to make such a surrender upon a demand therefor, unless it is acknowledged by treaty or statute law, yet a nation is never bound to furnish an asylum for dangerous criminals.' He also maintained that the President had, from the nature of the executive office, the power to make the surrender. I shall have occasion to refer in the sequel to the distinction between sending out of the country persons dangerous to the tranquillity of the state itself, and the exercise of a police for the benefit of a foreign power.

"In considering Arguelles' case we should not lose sight of the internal state of the country at the time that it occurred. Though in no wise connected with the contest between the North and South, it is not possible that it would have been tolerated had we not been familiarised to the violation of personal liberty in the case of American citizens, as well as of resident foreigners, by the illegal arrests daily occurring through the suspension of the writ of *habeas corpus*. As an authority it can have no weight against the precedents established by former administrators of the federal government.

"The cases of extradition treaties to which Mr. Ward would refer us carry us back to the twelfth century, but the nature of such treaties, to which England was a party with France, had in view, according to Grotius, the surrender of rebels, to whom Ward applies the common term of outlaws. Coming down to more modern times, it was to political offences that the attention of Charles II. was directed. Extradition of the regicides who might take shelter in that country was stipulated for in the treaty with Denmark of 1660, and the surrender of others was obtained from the United Provinces.

"At the time of the conclusion of the treaty of 1794 between Great Britain and the United States, neither party had any similar conventional arrangements with any nation, and during the twelve

were deemed not to be within the extradition treaties. It has been held, moreover, that those treaties do not apply to offences cognisable in the courts of the country to which the application is addressed. Thus, it has been decided that piracy, in the treaty between England and the United States, means statute piracy, and not piracy under the law of nations. It may not be irrelevant to notice, in reference to the criticism on these decisions, that such was also the view taken by Sir G. Cornewall Lewis, writing in 1859, and consequently before the American war.

The rule as to the non-exemption of citizens of the country from extradition has not been followed by the United States in the treaties concluded subsequently to those with England and France. After one treaty with Prussia, negotiated by Mr. Wheaton in 1845, had been rejected by the Senate, in consequence of the restriction, the point was yielded, and in the treaty of 1852 with the German powers, as well as in most of the subsequent ones, a clause is inserted excluding the subjects of the country making the extradition.

So far as regards England and the United States, though as to the former there exists an exceptional provision in the case of murder, there is a reason why the treaty rule should be different from that applied to states of the continent, where, in case of a crime committed abroad, it is cognisable in the country of the accused. And among the objections offered by the United States to the proposed rule, was the difficulty which might, in making the discrimination, grow out of the different views entertained as to the effect of naturalisation.

"England has made but one extradition treaty, that with Denmark of 1862, in addition to those already mentioned. The United States, besides the treaties with the German states, have them with Mexico and most of the states of South America.

"The existing treaties of France with the other countries of Europe are of an earlier date than those now obligatory on England and the United States. Moreover, on the continent, apart from treaties, the laws afford facilities for extradition which do not exist either here or in England.

"It may be remarked that no treaty made by England or the United States includes political crimes, and the views of the English nation, as elicited in the discussions respecting a new law to meet the case of the conspiracies against the life of the Emperor of the French, are a sufficient manifestation of their repugnance to any measure which would restrict the right of asylum. It was, also, strongly urged by England, in the case of the Poles and Hungarians, whose extradition was, in 1849, demanded of the Porte by Russia and Austria, that a surrender for political offences was not consistent with the modern law of nations.

"So far as regards the protection of a state against the intrusion of individuals either offensive to its policy or objectionable on account of danger to its foreign or domestic tranquillity, no treaty with another

power is necessary. It is always competent to a state to expel persons of whom it may for such reasons desire to be relieved. Before the war, some states of the Union where slavery did not exist excluded from their territory, as a police regulation, free coloured men, though they had been recognised, even as citizens, in other states; and in this they were sustained by the supreme court of the United States.

"It was enunciated by Lord Palmerston, in 1853, that the British government has never pretended to provide for the internal safety of other states. The *droit de renvoi* would meet, so far as a state itself is concerned, all that an extradition treaty could accomplish, and would avoid those international difficulties to which an attempt to carry the treaty into effect might give rise.

"Both the United States and England have passed laws in furtherance of these conventions, but no warrant of extradition has ever been granted under the treaty with Great Britain, on the application of France. Indeed, the first British act was so inoperative as to lead to a supplementary treaty in 1852, and to the introduction of a new Bill into parliament. The same unwillingness to permit foreign intervention in our criminal legislation, which interfered with the execution of the first law, prevented the passage of the second Act.

"It seems that in the five years 1854-8, eleven applications were made under the treaty of England with the United States, on behalf of the latter, and that six were granted, all of which occurred, on account of cases of homicide committed in American vessels, on the high seas. In all these instances, it is presumed that no general extradition treaty was necessary to secure the detention of the seamen on board of vessels of their own nation till their return to the United States.

"I have purposely avoided referring to the exceptional cases arising in those Mahometan and Pagan countries where the independent jurisdiction of the Franks is recognised; but it may be remarked that there have been, if there are not now, states of Europe where a foreigner would be no more secure as to the administration of criminal justice than a Frank, without the existing immunities, would be in Turkey.

"Nor are we always sure that these extradition conventions will not be used to effect political objects. Even in the late domestic contest in the United States, the federal government frequently made demands, under the forms of extradition, which, if accorded, would have delivered to them citizens of the seceding states, whose offences, if any, were of a political character, and connected with the pending hostilities.

"In view of all the circumstances, and especially looking to the little practical benefit derived from extradition, compared with the evils to personal liberty which may result from it, I am induced to consider it a serious question, whether the system of the surrender of persons within the jurisdiction of one state, on the demand of another,

either by the intervention of treaty or from comity, should be maintained."

"*September* 25, 1866.

"I had not, when I last wrote, seen the debates in the House of Commons on August 3rd. So far as the details of the Bill were involved, the only importance arose from the fact that, if the principle on which extradition treaties are based is erroneous, the less effective they are the better. I am quite aware that the proposed Act, which I presume has now passed, agrees with ours of 1860, but that does not affect my views respecting it. I have just noticed the reluctance of a United States commissioner to admit, on the authority of the usage of the French courts, written depositions as adequate evidence in a criminal charge, in a case of extradition at New York.

"Only a few years ago we were about putting an end to our consular convention with France, because the consul at San Francisco availed himself of the right to refuse to give his testimony in open court, as inadvertently inserted in the treaty. This was only settled by a renunciation of the privilege for the future. In 1856, the Netherlands minister having declined, as he had a right to do, appearing as a witness in a case of homicide at Washington, and at which he alone was present, his recall was requested. He, with the concurrence of his government, proposed to give his declaration under oath, but the district attorney at once stated that it would not be received in evidence.

"It may be true that, in cases of extradition, it may not be practicable, without sending the witnesses expressly to the country where the arrest is to be made, to confront them with the accused, but demands of extradition have never been numerous; and, certainly, no ordinary inconvenience should be allowed to interfere with those time-honoured principles on which the personal liberty of all within the jurisdiction of England or the United States is understood to depend. The existence of fifty-three treaties which France has with foreign powers—fifty-one of whom have a different system of criminal jurisprudence from that which we have derived from our ancestors—is no argument to affect our legislation, nor is her decree of October 23, 1811, if still in force."

MUNICIPAL LAW.

BANKRUPT LAW.*

On what Principle should a Bankrupt Law be founded?
By ROBERT WILSON.

THE main object of a bankrupt law is to enable the creditors of an insolvent debtor to administer his estate for payment of his debts. Insolvency is the breach of an implied condition of the tenure of the debtor's property; the event that gives vitality to a general mortgage, incident to the state of indebtedness, but dormant till the fund for payment seems likely to be unequal to the discharge of its total liability. Presumptively, there is a surplus, which carries with it a right of administration; for, the fixed charges being covered, it is only the surplus that can gain or lose by good or bad management. But, to the extent of the debts, the property of the debtor belongs, in truth, to the creditors; and, when proof of insolvency shows an expectation of deficiency, the government ought to pass to the virtual ownership. Appearances, indeed, may be deceptive; the insolvent debtor may retain the confidence of his tradesmen and his business connections; the bankrupt estate may yield more than twenty shillings in the pound. But as the debtor has the ordering of his estate till insolvency is proved, notwithstanding the chance of a deficiency, so the creditors ought to have power to take possession when legal proof of insolvency has been given, notwithstanding the chance of a surplus.

Bankruptcy shifts the insolvent's debts from his person to his property. Before bankruptcy, the debts are several charges upon the person, reaching the property separately and indirectly. After bankruptcy, the debts are portions of a consolidated total of indebtedness, forming the primary interest in the property, and, in general, co-extensive with the proprietorship. By agreement or common misfortune, the creditors, with interests numerous and diverse, have among them acquired all that was their debtor's. They are a partnership or co-proprietorship, such as usually works by the legal personality called incorporation. It follows, I think, that they ought to be incorporated; the welfare of their union requiring that they should have power to hold property, to contract, to sue and be sued, by a common name, and power to govern themselves by meetings.

The Association has propounded, as a question for discussion at Manchester—"On what principle should a bankrupt law be

* For the Discussion, see Summary of the Department.

founded?" That principle, if I mistake not, is the election of the creditors, on proof of insolvency, to transform their several claims upon the debtor's person into a joint ownership of his property, subject only to the duty of accounting with the debtor for any ultimate surplus. Bankruptcy ought, I think, to be an assumption of proprietorship by the creditors, expropriating the debtor, and promising to the debtor, in exchange for his property, a discharge from his debts. An acquisition optional and corporate; or, for brevity, corporate appropriation.

"On what principle should a bankrupt law be founded?" On corporate appropriation: a principle comprising or involving four distinct but connected notions—namely, first the co-proprietorship of the creditors; secondly, its optional acquisition; thirdly, its corporate character; and, fourthly, its substitution for the aggregate of personal claims.

As the bankrupt law now stands, the creditors have little else to do but to look on and see the estate devoured, like the oyster in the fable, by a court and its officials. The Bill of the late government borrowed from the law of Scotland a remedy for this scandal. In effect, though not by name, it accepted the principle of corporate management after adjudication. The order of a court, declaring the debtor to be a bankrupt, was to vest in the creditors the power of administration. At a meeting to be convened by the court when the sentence of bankruptcy should have been pronounced, the creditors were to appoint a trustee, whose duty it should be to wind up the estate, as their paid agent, under their control, and, in legal matters, under the control of a court.

To liberty of management I would add liberty of acquisition. The proprietorship of the creditors ought, I think, to be assumed, not imposed. The court should determine only that, in point of law, the debtor is liable to be made bankrupt; leaving it for the creditors to determine, at a meeting simultaneously convened by the court for the purpose, whether, in point of fact, he is to be made bankrupt or not. A refusal by the creditors to give their sanction to the bankruptcy should, unless judicially reversed, remit the pauper debtor coming to be whitewashed to the burden of personal responsibility. We might abolish what remains of imprisonment for debt (with or without provision of some other penalty instead of it), and yet give to the creditors, as a body, under judicial control, the option of refusing to substitute for their several claims upon the debtor's person, and through his person upon his property, a joint ownership of his property. Acceptance or refusal of the bankruptcy should be the primary business of the first meeting of creditors; and their negative decision, unless reversed on appeal to a court, or by the contrary decision of a later meeting of creditors, should, for some moderate time, say a year, preclude any further resort to any bankruptcy jurisdiction.

In this way, protection might be withheld, year by year, from the debtor's property; not, as the Bill proposed, by stripping him first

and punishing him afterwards, but by refusing to strip the man that is already naked.

Bankruptcy without assets would still be possible; but only if the debtor's explanations should be such as to induce a meeting of his creditors to accept a nominal cession of his property, for the purpose of enabling him to apply afterwards to be discharged from his debts.

Judicial control would ensure regularity of proceeding; and might sometimes, on grounds of equity, annul or modify an arbitrary exercise of legal power; as when the Court of Chancery gives relief to the contractor against an inequitable suspension of the engineer's certificate.

The meeting might be convened either at the instance of a creditor or at the instance of the debtor; for, if bankruptcy were the act of the creditors, and not of the court, there would be no need to deprive the debtor, as the Bill proposed to do, of the power that he now has to initiate the proceedings. On a creditor's petition, there would be proof, judgment, and a sufficient number of advertisements; on the debtor's, a virtual confession, and, besides the advertisements, a circular based on a verified list of creditors filed with the petition.

The creditors having come together, their first business would, as we have seen, be to accept or refuse the bankruptcy. On acceptance, they would determine whether the estate should be got in and distributed in the manner prescribed by the bankrupt law, or in some other manner; whether, to state the distinction more concisely, the liquidation consequent on bankruptcy should be statutory or conventional. It would, for example, be within the competence of a meeting to determine that the estate should be wound up under inspection; to do so, I mean, on obtaining the debtor's consent to dispense with the general law. Yet, to follow that law would be an exceptional resort to official aid, not the normal method of adjusting the relations between the debtor and his creditors. For law is usefully active only where there are legal disagreements, or difficult legal requirements; and men of business need not be taught by Act of Parliament how to wind up an estate.

Here I must pause to settle the question of a name. Between the judicial warrant for the co-operation of the creditors and their choice between the two methods of liquidation, there is to come an assumption of proprietorship, What shall it be called? I have been calling it bankruptcy; meaning by that term expropriation of an insolvent debtor by a meeting of creditors judicially convened.

Self-action being the rule, and legal intervention the exception, the conventional method of liquidation is entitled to take precedence of the statutory method. Precedence in rank, so to say; with which is coincident an immeasurable precedence in value. For statutory liquidation seldom comes into play when there is an estate to divide.

But conventional liquidation has its peculiar difficulty. For the convention is in general made, not with all the creditors, but with a certain large majority of them. The bankrupt law empowers a majority in number, representing three-fourths in value, of creditors

for £10 and upwards, to bind a dissentient or absent minority. Why so? Incorporate the creditors as co-proprietors, and the vote of a meeting might be the utterance of their composite personality. But, while they are independent holders of separate claims, there is no principle that I can see in giving to numbers or amounts, however proportionally large, a power to govern the concerns, distinct though similar, of persons who are not united. If I am merely an individual claimant, I have a right to expect payment of my little bill of £20, though a hundred other creditors, claimants for tens of thousands, be content to take less than what is due to them.

The worst criminal has an impartial hearing; a creditor may be bound, without a hearing, by the compact of relations and friends of the debtor, foisted into the list of creditors.

We have to do with the binding of a minority by an empirical law; a law aiming at a result, but resting on no intelligible principle. Moreover, in the want of a principle of binding is an element of weakness which loosens the bond; the binding being done, as it were, half-heartedly, with a reservation to each member of the minority of an ample facility for unbinding himself. For unbinding himself individually—for taking exception to the arrangement, so far only as it affects himself—and for doing this leisurely, in the course of years, if he thinks fit to wait.

I have been contending that the bankrupt law is faulty, in principle and practice, at the point at which alone it touches conventional liquidation; namely, in the binding of a minority. The practical fault may be seen at a glance by observing how conventional liquidation works.

The debtor may be supposed to have come to an understanding with the body of his creditors, to have executed a deed in their favour, to have procured the required proportion of assents, and, having deposed to this fact, to have registered the deed, and to have obtained, for the protection of his person and property, the usual certificate of registration.

Some ten or twenty creditors, however, as is usual in such cases, stand aloof in the selfish hope of getting more than their share of the estate. These are bound, if the proceedings are regular; but each of them is separately licensed to worry the debtor at discretion till the validity of the arrangement shall have been established against himself. Each dissentient may, at any time between the six or more years prescribed for the limitation of actions, contest the validity of the arrangement by a separate action for the recovery of his claim. He may urge before the court, as matter of law, that the deed of arrangement made behind his back is wrong in form; and the judges, acting as if voluntary cession were "against common right," spell each word for a flaw. Their criticism is commonly successful; something, they say, was put in that ought to have been left out, or something left out that ought to have been put in. Moreover, each dissentient may, by denying that the deed has the required proportion

of assents, go to trial on an issue of fact, wide enough to let in evidence for and against every credit and every debit contained in the account of every creditor, assenting or dissenting. Meanwhile, the unhappy debtor has no means of knowing whether he has made an arrangement with his creditors or not. He may have to defend a dozen heavy law-suits, of interminable duration, all about the same question, or miscellany of questions; and, being told by his advisers that, of three deeds which are tried, scarcely one has a chance of standing, he may decline, as an honest man, to accept—as an uncertificated insolvent he may not easily obtain—assistance for the revival of his business. In short, he may be ruined, and an arrangement beneficial to the creditors may be frustrated, not by proof that the arrangement is illegal, but for want of proof that it is not so.

In the contest between the convention of the body of creditors and the claim of the individual dissentient, a presumption of validity may belong, and must be confined, to one or to the other of the two opposite titles. We might imagine an arrangement so constituted as to hold good unless reversed; but our actual law awards a presumptive right to the opposing creditor, and treats the arrangement as nothing, till established, in the particular contest, by affirmative proof of the fulfilment of the complex conditions of validity.

Now, is it possible, consistently with a due regard to any right that may belong to the adverse claimant, to transfer the presumption of right from the claim to the arrangement? This is possible; for a like transfer of presumption has, without injustice, been accomplished, under like conditions, in statutory liquidation.

Bankruptcy was at first introduced, some three centuries ago, as a sort of private warfare—as a raid of petitioning and accepting creditors on the domains of the debtor, in derogation of his ordinary rights, and to the prejudice also of the rights of dissentient creditors. The inroad might be resisted, not only directly, by proceedings to annul the commission, but also indirectly, at any time within the ordinary period of limitation, by an action at the suit of the debtor to get back his property, and by as many other actions as there were dissentient creditors earnest enough to sue for their several claims.

But modern bankruptcy is something very different from this; binding the debtor, unless promptly contested; and binding dissentient creditors provisionally during its ordinary progress, and finally on the allowance of the certificate. Bankruptcy has undergone a change in some degree similar to that which, in old times, transformed the customs of a tribe into the law of a territory. It has become, in effect, an act of the state, careful, indeed, of private rights, but in the main binding upon everybody. It may be said to have assumed the character of a judgment *in rem*.

Under the modern bankrupt law, the adverse claimant is, in effect, deprived of power to disturb the statutory liquidation otherwise than by a prompt and direct impeachment of the bankruptcy. Under our still more recent law for the winding-up of joint-stock companies,

a like deprivation is immediately consequent on the order or resolution to wind up. In conventional liquidation, immunity from disturbance is wanting, and ought to be supplied.

Of course, each dissentient creditor must have leave to stand up for himself against any attempt on the part of his fellow-creditors to prejudice his rights. But what should be the method of his resistance? Not to lie in wait outside the camp of the majority, for the purpose of hostile entry at some unguarded point; but to take part with his fellow-creditors in the exercise of a common, indivisible, corporate ownership. If bankruptcy is a change of property from the debtor to the creditors, the multiform character of the new proprietorship necessitates a power to govern by majorities. A power subject to judicial control; but, except as controlled, implicating each member, though dissentient, of the governing body, in the competent acts of those majorities.

If conventional liquidation ought to be the normal consequence of bankruptcy, the binding of a minority—the question why to bind, how to bind, and how to make the binding manifest—is the essence of the bankrupt law. To that subject, accordingly, I have been giving a chief share of attention. My remarks on it may be summed-up in three propositions namely (1) the convention, unless promptly contested, should be final; (2) finality should be the maturity of presumptive validity; (3) the presumption should be an incident of incorporation.

The resolution accepting the bankruptcy would, on registration, incorporate the creditors by the name of "The creditors of so-and-so," naming the bankrupt person or firm.

It would also be a judgment *in rem;* conclusive on the debtor, the creditors, and all other persons, unless reversed by a court, on application made by the debtor, or by a creditor or creditors, within a fixed and moderate period.

Acceptance of conventional liquidation, in place of statutory liquidation, by the same or by a subsequent meeting, would, unless reversed in like manner, be alike conclusive.

The court empowered to reverse ought rather to correct errors and supply deficiencies. Let us cease to look on statutory liquidation as the proper fate of insolvency, and on conventional liquidation as intrusive, and arrangements of creditors will be regulated by a supervision as gentle and considerate as is that which the Court of Chancery gives to schemes of charity, and the courts generally to awards.

Not that the resolution of one bare majority must for all purposes be sufficient. Let acceptance of the bankruptcy be carried or negatived by a majority in value alone; but anything out of the common rule—or example, an inspection—should, like the special resolution of a joint-stock company, be dependent on the sanction of some large majority, such as a majority in number and three-fourths in value: and perhaps it might not be amiss, following the same precedent, to require confirmation of the resolution, at a second meeting, by a mere

majority in number and value. A single majority in number and value, perhaps a majority in value alone, ought, on principle, I think, to be enough for any purpose of administration; but lest the insolvent's friends should pack a meeting, it would be prudent to require, for any special purpose, an excess of majority large enough to eliminate the disturbing element of sinister interest.

The power of the creditors, as a corporate body, to get in the estate, and to convert it into money, must, on principle, include an unlimited discretion as to the mode of sale. Whether that discretion should be intrusted to a majority in value, or number and value, simply, or to a majority representing a larger proportion of value—whether the resolution of the prescribed majority should take effect immediately, or should need confirmation at a second meeting—these are questions to be determined on an estimate of the average extent by which friendship for the insolvent diverts the votes of the creditors from the common interest, and on an estimate of the risk of surprise. But to some sort of majority, to a resolution single or double, should be conceded an unrestricted authority to offer the estate for sale in the best market, and on terms the most likely to be acceptable. There should be power to sell on credit; power, therefore, to sell to the insolvent or his friends for a composition on the debts. This power the law now gives, but the Bill proposed to take away.

Why prevent a composition, if the parties choose to make it. Because choice is incomplete without unanimity? The fact is not so where the subject affected is a corporate ownership, and not a schedule of debts.

Connected with administration and composition, yet in part distinct from them, is the debtor's acquittance.

To the creditors the power to give acquittance is valuable, as a commodity that may be bartered for an increase of composition, or for assistance in winding up the estate. And the debtor who is adversely expropriated is entitled to expect that an acquittance should, on the fulfilment of his duties under the bankrupt law, be awarded to him judicially by the creditors themselves, or by a court, unless cause should be shown to the contrary.

The Bill proposed to withhold both the conventional and the judicial acquittance, unless the estate should have yielded six-and-eightpence in the pound.

Discretion and discrimination were alike to merge in a pecuniary test of innocence. Imprisonment for debt was to cease; but whoever should not pay six-and-eightpence in the pound was to be coerced for six years. The man who should have the ill-luck to be robbed was to be a citizen or an outlaw, according to the extent of the robbery. From debts contracted under limited liability, even the dishonest debtor might escape, on giving up so much of his property as his debts could reach; yet the debtor without limit—it is my friend *Mr. Hawes who has suggested to me this contrast*—the debtor without limit, although he were altogether blameless, the victim, perhaps, of fraud or misfortune, cheered on to new exertions by the respect

and sympathy of his creditors—such a man, when stripped of everything, was to remain a debtor still, condemned to inaction and starvation, huddled up with the spendthrift and the swindler in the indiscriminate penalty of a merciless law. Alas for bankruptcy reform, if this is a specimen of it! We have learned from Mr. Buckle that right and wrong are things of small account, and that intellect is the single motive force of human progress: Mr. Moffatt's later inspiration teaches, that the third part of a pound sterling is the measure of honesty and justice.

We might give to the creditors, on a principle recognised by the law of Scotland, a power over the acquittance, considerable at first, but becoming less and less as time elapses. For some moderate time, say for six months from the date of the bankruptcy, we might require, in favour of the acquittance, a majority equal to that required for a special arrangement; and, quarter by quarter, diminish the requisite majority, till, in two years or so, the power to give acquittance should lapse entirely to a court. I do not lay much stress on particular periods of time, or proportions of votes: what I contend for, in the matter of acquittance as in other things, is the principle of corporate action, at a meeting, or at successive meetings, as opposed to the collection of separate votes or assents by canvassing individual creditors out of doors.

The creditors ought to act judicially; but would they? At a meeting, I think they would; their jurisdiction would be a rough sort of jury trial.

At anyrate, the dose of punishment of which they had the dispensing would be, comparatively, a mild corrective. Positive crime would be left to the criminal law; but there are minor shades of criminality more fit to be punished by the censure of a man's fellows than by the formal decision of a judge. We may, if we please, call the power to censure a debtor by delaying his acquittance an exception from the civil right of acquittance; I prefer to call it a limited summary jurisdiction in the separate department of crime.

What a bankrupt law ought to do is to continue, after insolvency, under the ownership of many, the management which, before insolvency, existed under the ownership of one. In order to continue the management, we must, in a manner, reproduce the unity, by giving to the creditors the means of acting together. These are at present almost wholly wanting; the Bill would have supplied them, for administrative purposes, in statutory liquidation. It has been my object, in this paper, to show how the supply might be rendered in fuller measure, in connexion with liquidation statutory or conventional, not for administration only, but also, earlier and later, for acceptance of the bankruptcy, and for acquittance of the bankrupt.

Bankruptcy commissioners are judicial managers, whose occupation would be gone if management should cease to be judicial. Bankrupt law, properly so called, might then be administered by the County Courts; or rather—as my friend Mr. Hastings has, with good reason, suggested—by one stationary County Court in the chief town of each

county; and by the Court of Chancery, always excellent in its principles, and now rapid in its movements, as a Court of original and appellate jurisdiction. The Court of Chancery, already the superior Court of Bankruptcy, has jurisdiction likewise in the winding-up of estates of deceased persons, and of joint-stock companies. Its several functions, in matters of insolvency, might be, to a great extent, assimilated; and its existing practice might be enlarged for the reception of an extended jurisdiction in the winding-up of estates of living persons. Insolvency might be a province of equity, till law and equity shall blend into one comprehensive code of the rules and principles of civil justice.

The Court of Bankruptcy: is it to be abolished or retained?

By WILLIAM HAWES, F.G.S.

IN again calling the attention of the Society to our laws of debtor and creditor, especially in relation to bankruptcy, I propose to consider the subject entirely from a commercial point of view.

All will admit that, from some cause or other, the administration of the law by the Court of Bankruptcy does not produce results satisfactory to the commercial community, and that it requires immediate improvement.

It does not quickly or economically realise the assets of insolvent traders. It does not check commercial frauds, or punish them when exposed. It does not in its procedure discriminate between *misfortune* and *fraud*. It does not meet the exigencies of modern commerce, in its relation to limited liability companies or to insolvent chartered companies. But it interposes most unnecessary obstacles in the way of the distribution of the funds placed under its control, in the general management of estates, and in their final settlement.

It causes a most extravagant waste of creditors' property, and injures the character of debtors, by the charges and losses it inflicts upon them in their progress through the Court, thereby reducing the fund belonging to their creditors, and seriously affecting their future prospects.

It offers great facilities for the concealment of fraud, and withholds from creditors that control of their property which is required for its most advantageous realisation and speedy distribution.

The object, then, of this paper is to suggest such alterations in the administration of the law of bankruptcy as will remove the objections now almost universally entertained respecting it, and to submit for consideration a procedure which it is hoped will equally protect the interests of creditors and debtors.

It is of great importance that this question should now receive the fullest investigation, for a new Bankruptcy Bill would, in all proba-

bility, have been passed in the last session of parliament but for the unexpected change which took place in the government, and which Bill, whilst it would have removed many defects in the existing law, would have retained the Court of Bankruptcy, with its expensive machinery and tedious procedure, which have proved to be injurious to the public. In order, then, to assist in arriving at a sound judgment upon the alterations I venture to suggest should be made in the administration of our law of debtor and creditor, I must briefly notice the changes which have been sanctioned by the legislature during the last few years in the relations between creditors and their debtors: (1) by the abolition of the tyrannous pressure of arrest on mesne process, which, when resorted to, deprived the main body of creditors, often through the vindictiveness of one, of the services of the debtor when they were most required for the benefit of his estate; (2) by the establishment of county courts, in which nearly 1,000,000 of plaints, involving sums from £50 downwards, and amounting in the aggregate to little short of £2,000,000 sterling, are heard annually; (3) by the suppression of antiquated forms, and the removal of technical and artificial obstructions to the progress of suits in the superior courts, that formerly so choked the avenues of justice that the approach was practically denied; (4) by improvements in the law of partnership, including the introduction of limited liability; (5) by widening the area from which evidence may be collected, and by means of which creditors can give evidence in their own causes; (6) by the abolition of the Insolvent Court, and of the distinction between traders and non-traders.

The effect of these improvements, and of the increased facilities afforded by railways and electric telegraphs to debtors and creditors for communicating rapidly one with the other, has been most beneficial to trade. Dishonest debtors now seldom appeal to law, as was frequently the case in former times, to delay, or to defeat by special pleas, the payment of a debt; and creditors can so easily and so quickly sue their debtors for payment in the ordinary tribunals, that courts for the exclusive purpose of managing the affairs of debtors and creditors appear to have become useless to trade and commerce. Indeed, the creditor now only needs legal assistance when his insolvent debtor refuses to give compulsory power over his property, whereby his affairs may be inquired into, and immediate measures taken for the security and the subsequent equal division of the assets among his creditors.

The mode in which this aid may be given, and the authority by whom the first steps should be taken, form the subject of this paper.

The question, therefore, for consideration is, whether a special court for the settlement of the affairs of insolvent debtors is necessary in the interest of creditors or debtors?

I contend that no such court is required, and that its existence, unless proved to be beneficial, must be injurious to trade.

The Court of Bankruptcy appears to me to rest on unsound principles. First, it assumes that, through its officers, it can administer

insolvent estates better than the parties interested can do—the creditors and the debtors: it therefore entirely deprives them, if not of all power of action, of so much, that their interest in the realisation is so weakened, and their inducement to exert themselves beneficially to influence the administration is so neutralised, that practically the entire duty of administering bankrupts' estates devolves upon the court and its officers.

Now, no solvent trader, retiring from business, would ask a court to collect his debts, and settle differences existing between him and his debtors and creditors, or to collect his good debts while in business; why, then, should a Court be maintained to perform this duty for traders in respect of debts due from their insolvent customers"

To relieve creditors, by the compulsory action of a Court of Bankruptcy, from the duty of carefully watching the settlement of the estates of insolvent debtors, is to prevent their acquiring experience in one of the most important departments of business. It deprives them of the opportunity of inquiring into the causes of each insolvency—of tracing the steps by which it has arisen—of benefiting by the experience or imprudence of others engaged in their own trade. Were all insolvencies wound-up by creditors, or by trustees appointed by them, thoroughly cognisant of the risks and details of each business, not only would a vast amount of information be utilised which is now lost, but traders who pass through the Court of Bankruptcy with scarcely a remark would either be precluded from too easily re-entering into business, and again running the downward career which has been fatal to so many, or they would, from the evidence of their integrity furnished to their creditors in the course of the inquiry into their affairs, receive support which would ensure future success.

And, further, the Court treats debt as a crime, and therefore, by its first steps, denuding the debtor of all his property, and, treating him as entirely unworthy of trust, sells it off, generally by public auction, without any regard to his interest. It obliges him to pass through forms destructive of all self-esteem—for honest and dishonest are treated alike by the Court of Bankruptcy—and, whatever may be the opinion of his conduct or of his means to pay his debts, it releases him from his liability to pay them, publicly stigmatised as a bankrupt trader paying a small dividend, the smallness of which has to a great extent been caused by the heavy charges of the Court, and from the estate being realised under its direction in a manner most prejudicial to the interests of the debtor as well as to those of the creditors. Everything that can be done to lessen the probability of a trader's re-establishment in trade, after passing through the Court, appears to be carefully attended to, and the result of the operation of this vicious and unjust system appears so obnoxious to the public that nearly all insolvent estates of importance—especially those in which imprudence and error of judgment are the greatest faults which can be attributed to the partners—are carefully kept out of Court, as well to protect the property as to relieve the debtor

from the stigma which must attach to him for years after he has passed through the unjust ordeal.

But if the Court of Bankruptcy does not fulfil the duties for which it was originally established, it is so entirely unsuited to meet the progressive wants of trade and commerce that insolvent trading companies, recently formed under the Limited Liability Act of 1862, and chartered companies, are excluded from its jurisdiction, and are wound-up in the Court of Chancery; and not only are they so excluded, but the principles which govern the liquidation of such companies are as directly opposed to those which regulate the proceedings in bankruptcy as the reputation of the Courts, and the learning of the judges presiding over them, are superior one to the other.

The Court of Bankruptcy assumes the entire management of the bankrupt's estate, collects his debts, decides all questions of law and custom of trade, and releases the debtor from his liability to his creditors, not because he has done his utmost to assist in winding-up his estate for the benefit of his creditors, but because he has complied with certain statutory conditions.

The Court of Chancery only superintends the administration of the estate of an insolvent company. It hears objections to, and, if satisfied, sanctions the appointment of liquidators selected by the shareholders or parties interested in the collection and distribution of the company's assets; indeed, where there are ample assets and no differences among the shareholders or creditors, the Act provides for a voluntary liquidation without any interference by the Court.

The entire spirit of the administration of estates of limited or chartered partnerships in Chancery is to leave the realisation of the estate to proper persons selected by the parties interested, the creditors and shareholders, and approved by the Court. Why entirely different principles of liquidation should be applied to partnerships trading under limited liability, which have only recently been known to the law, from those trading under unlimited liability, it is difficult to understand.

In a few years, in all probability, the change which is taking place in mercantile partnerships, large and small, by converting them into limited liability companies, will leave to the Court of Bankruptcy those cases only which were till recently exclusively wound-up in the Insolvent Court; and it will become a Court, not for traders in the commercial sense, but for those who belong to no class, whose estates are almost too insignificant to be noticed by the public.

If, then, it be not abolished, it will become an inferior court, maintained at an extravagant expense for the work done, and will continue in existence only so long as it can escape the exposure of its uselessness.

The more this question is considered, the more satisfied, I think, the public will become that a Court of Bankruptcy is no longer required; and that all the legal action that is necessary to ensure the proper distribution of the assets of insolvent debtors' estates may

be satisfactorily performed by the County Court judges, who, on the application of creditors, supported by sufficient evidence, should have authority to grant a peremptory order for the attendance of a debtor, and, if the debtor have no just defence to the claim made against him, or does not obey the summons, then to call a meeting of such debtor's creditors, for the purpose of appointing trustees for the management of his estate; or, on the application of a debtor, the County Court judge should, upon receiving from him an undertaking to call, within an early fixed date, a meeting of his creditors, and lodging with the Court a list of his creditors and the amount he is indebted to each, grant to such debtor protection for his person till a meeting of creditors can be held and trustees appointed for the management of the estate, and then such further protection as may be approved by the meeting or the trustees.

The legal forms required to secure the proper issue of the notices to creditors, and to coerce an obstructive or absent debtor, and for the subsequent management of the estate, are not for me to suggest. The principle of giving bankruptcy adjudication to the County Court judges has already been admitted, but their authority originates under, and is controlled by, the Bankruptcy Act of 1861, by which the estate at once vests in the Court, and it is to this procedure, as opposed to that of management by trustees elected by the creditors, that I am endeavouring to call public attention.

The advantages offered to men of business from the limitation of their pecuniary liability, and by relieving them from responsibility, either personal or social, if they lose all the capital entrusted to their management in a limited company, and incur debt beyond that capital, for the payment of which no provision is made (and into the cause of such debt being incurred there is no public inquiry), must, ere long, if the present law and Court of Bankruptcy be retained, convert every partnership into a limited company; for who, with unlimited liability and subject to the bankrupt laws, can compete successfully with rivals trading under such superior conditions?

And the argument in favour of converting private partnerships into small limited liability companies will be infinitely stronger if the unwise provision of the late Attorney-General's Bill, requiring the payment of a minimum dividend of 6s. 8d. in the pound before a debtor can obtain a release from his liabilities, becomes law, for all experience shows that it is rare for insolvent estates wound-up in bankruptcy to realise that sum, after paying the enormous expenses in bankruptcy, and bearing the ruinous loss caused by the peremptory sale by auction of stock, property, fixtures, &c., &c., as bankrupt's effects, as well as the destruction of good-will, and the loss of interest on *money paid into* Court—all severe sources of loss, moderately estimated at 50 per cent. on the value of a working business, but which would be more or less avoided were estates liquidated by the parties interested in the realisation of the assets.

Looking, then, at the law of debtor and creditor as it is now administered, having *one court* and one procedure for one class of

traders, who, when obliged to submit to its jurisdiction, are subject to much public opprobrium, to severe loss and great personal inconvenience, and, under certain circumstances, to heavy penalties, and who can only obtain a discharge from it by giving up all their property for peremptory realisation by officers having no interest in the estate, and *another court* accessible only to a special class of traders, who, though equally in debt, and whose misconduct equally requires exposure and public condemnation, can obtain relief from their debts without public opprobrium or any personal inconvenience, can any one hesitate a moment in arriving at the conclusion that such anomalies ought to be removed, and that a vigorous effort should be made to provide an uniform law and procedure applicable to all traders and trading companies and non-traders, rather than to attempt, as the Attorney-General did in his Bill of last year, to maintain a court and a course of procedure which are universally condemned as unsuitable to the present and constantly-changing demands of commerce at home and abroad?

All that traders require to enable them to arrange with their insolvent debtors is a simple, ready, and inexpensive mode of obliging debtors to surrender their property, and for enabling creditors to meet to elect trustees to collect and distribute their debtor's property, and to give legal authority to the resolutions of such meetings.

To initiate and to direct the first proceedings for this purpose the County Court judges are eminently suited. They hold courts all over the country, are always on the spot to receive applications, either by creditors for the summons of debtors, or from debtors to summons creditors, and also to direct responsible officers to take interim possession of property before a meeting of creditors can be held and trustees appointed.

These steps being taken, the entire management of the estate should vest in the trustees, subject to such rules for proper accounting for, and the security of, receipts and the speedy and proper administration of the estate as the County Court judge may, on the application of the creditors or debtors, deem requisite for their mutual protection. But to enable this system, cheap and inexpensive as it would necessarily be, to act beneficially, two principles must be conceded, and legislation introduced to settle them conclusively.

The first is that dissentient creditors shall be bound by the decision of a majority; and the second that the release of a debtor from his liabilities shall exclusively vest in a majority in number and value of his creditors.

I am aware of the arguments used in opposition to the application of these principles, and in support of the assumption that no majority has a right to deprive a minority, or even a single creditor, of his right to his share of the entire property of his debtor, or to release the debtor from his liability; but those who support this view of creditor's rights ought to advocate the repeal of the present law of

Bankruptcy, for under it the debtor can obtain his release, whatever may be the opinion of his creditors.

There is one point of view from which a debtor's position may be considered that is too often overlooked, viz., the too great facility with which much credit is given, and whereby he is led into transactions that, in the event of any unforseen pressure, prove too much for his capital; and it is to be feared that those who frequently in the first instance encourage debtors to trade beyond their means are the most persistent in the use of unfair means to coerce them to give undue preferences. The law ought, if possible, to prevent the possibility of such proceedings, and this would be accomplished if certain fixed majorities of creditors, at meetings duly convened, determined all questions arising in the administration of insolvent estates.

I need not here adduce reasons in justification of the principle of government by majorities—they are of universal application. Why, then, should a minority, even of one, have the power to control the proceedings of all the other creditors, and keep a debtor for an almost unlimited period in uncertainty as to his future course in life? and, further, why should each member of a minority be able, one after the other, to institute proceedings till a debtor is driven, at all hazards, to give unfair preferences, dependent for their realisation mostly on his future success, and which success is thus mortgaged almost beyond redemption? In fact, this indirect power of creditors—only used by an unscrupulous minority—is the source of a large amount of misery and ultimate misfortune, the cause of which cannot be revealed.

I do not, however, wish it to be supposed that I advocate the determination of all questions at meetings of creditors by a bare majority, or by the same numerical majority in all cases. In particular, I think, that at meetings of creditors convened for the consideration of the discharge of the debtor, the majority should be large in value, such majority decreasing as time progresses.

But it may be said the Court of Bankruptcy has other duties than those of collecting and distributing debts. Theoretically, no doubt it has, but one of the main grounds upon which I urge the discontinuance of a separate court is, that it has never performed these duties, and that year by year the appeals from its decisions on points of law have increased, till at length the decisions of the Commissioners of Bankruptcy have become merely the stepping-stones for appeals to higher *tribunals*. The proceedings in bankruptcy being conducted in a public court, has also been thought of importance, as tending, by the exposure of bad and fraudulent trading, to commercial morality; but in this respect the operation of the law has been singularly ineffective; first, because nearly all interested in important estates carefully avoid the court, and wind them up without reference to it; and, secondly, because the court never has attempted to exercise a careful judicial control over the conduct of insolvents. It has never administered justice between the debtor, his creditors, and the public. The consequence is, its proceedings are rarely reported, and when reported are of little interest to the public.

In fact, the greater portion of the law of bankruptcy is not required for the benefit of the creditor or the debtor, but to give effect to the law itself, to fix the duties of its numerous officers, and to oblige appellants to proceed in conformity with its provisions. If, then, the administration of the bankrupt law, since the improvements which have taken place in our commercial legislation and in other branches of the law, no longer demands a separate court, there can be little doubt that the highly remunerated offices established under it, and the forms required to comply with its rules and regulations, became a sad hindrance to trade, and a source of costly and useless expense to debtors and creditors.

Many even now consider that a bankrupt law is required to punish fraudulent debtors; and, judging by the prominence of the penal clauses in all our Acts relating to bankruptcy, this has been one of the great objects of the law. But if there be any portion of it which has more signally failed than another, it is the attempt to combine the punishment of insolvency with the collection and distribution of insolvents' assets.

The principle is wrong—the mode in which it has been carried out is as bad as the principle is wrong; and the result of this long persistence in an erroneous course is now found in the desire of many to remove every remaining restraint upon the debtor's person by the entire abolition of imprisonment for debt on final process, and substituting for it a punishment, to be administered indiscriminately, which is more severe than any debtor could be subject to under the present law, and infinitely more unjust than anything which has been proposed in our bankruptcy legislation for the last fifty years.

The limit necessarily assigned to the time to be occupied in reading each paper prevents my indicating the details by which the first proceedings relating to meetings of creditors, the election of trustees, the mode of voting, the reception of proofs of debts, should be regulated; and I have also abstained, as out of my province, from suggesting the alterations which would be required in our law of debtor and creditor if the Court of Bankruptcy were abolished; but I have endeavoured to show that the gradual improvement of our laws relating to imprisonment for debt, to partnerships, to procedure, and by the general adoption, wherever practicable, of deeds of assignment and composition in lieu of proceedings in bankruptcy, have so reduced and altered the character of the legal and commercial business of the Court, that there is not now sufficient to occupy the time or the mind of a judge of high legal acquirements, or to employ the staff of an independent Court; and it will be admitted that a Court with little business, of one class only, and that of a very secondary character, will never command public respect; indeed, were evidence of this required, it would be found in the gradual decline in the authority and usefulness of the existing Court of Bankruptcy, established little more than thirty years ago, with a chief and three assistant judges, and an ample executive staff, the duties of nearly all of whom are abolished or are proposed to be abolished.

It is, then, manifestly for the interest of trade, and essential to the administration of justice, that all matters of contention arising out of the insolvency of limited or unlimited partnerships should be heard in the first instance by the Court of Chancery, the County Courts, or the Criminal Courts, as the circumstances of the case may require.

This business being taken from the Court of Bankruptcy, the maintenance of a central court in London, and subsidiary courts in the country, could no longer be justified; and restricting, as I propose, the interference of the County Court judges to the initiation and regulation of the first proceedings in insolvency, and to affording protection to the person of the debtor, leaving the subsequent management, the collection and distribution of assets, the discharge of debtors, and the final settlement of the estates, to the creditors acting through trustees elected by themselves, but approved by the Court, there could, I think, be no difficulty in securing their adequate performance.

Convinced, then, that everything which is required for the economical and just administration of insolvent estates can be better done without the Court of Bankruptcy than under its control; looking at the unavoidable delays, expenses, and uncertainties which attend its procedure; considering, also, the injurious effect which follows the removal of the responsibility of winding-up insolvent estates from men of business immediately interested in their most economical settlement to the officers of a public court, and also to the bad effect produced upon trade—indeed upon the community at large—by the operation of a law which by statute relieves debtors from their liabilities to creditors, and teaches insolvent traders to look to it, and not to their creditors, for protection from the natural and certain results of over-trading, of improper speculation, of undue credit, and even from fraud, I cannot see any sufficient ground for maintaining the present Court of Bankruptcy, when other more efficient means can be found to obviate all the important objections to the existing law and practice.

CODIFICATION OF LAW.*

On the Expediency of Digesting and Assimilating the Laws of England, Scotland, and Ireland. *By* J. F. MACQUEEN, Q.C.

THIRTY-EIGHT years ago, the most useful and the most productive of all orations was delivered in the House of Commons by our illustrious President;† an oration remarkable for the multitude of

* For the Discussion, see Summary of the Department.
† Lord Brougham.

its suggestions and for the singular fact that almost all of them have been carried out, or are now in the progress of accomplishment.

Instigated by the profound sensation which that speech created, the Government issued two Royal Commissions for three distinct purposes: to consider and report upon the laws of real property; to consider and report upon the laws respecting crimes; and to consider and report upon the public statutes of the realm.

These commissions an dthe proceedings had under them have left wholly untouched the bulk of what we technically call the unwritten civil law of England; that law (the most interesting of any) which, governing our civil and our political rights, is evidenced partly by usage and partly by text-books, but mainly by the reported decisions of our superior tribunals, dispersed, as we are told, over 1,200 volumes.

The question is, can the valuable ore be extracted from these repositories, and can it be presented to the country in the form of a pocket volume, similar to the Code Napoleon? I am humbly of opinion that it cannot. But I readily admit the great advantages of codes, where they are practicable. Many persons in this country deride them, and say they have proved failures. But those who live under them, those who best know them, give a different account; and we have the strongest testimony in their favour delivered by eminent jurists, writing, not from theory, but from long practical observation. Accordingly, it is, we believe, a fact that of the several nations that have codified, not one has turned back, or repented. Strange as it may seem to the English lawyer, they all prefer order to confusion, and they all agree that laws are better in a single volume than in a thousand.

What higher attestation can be desired than that of M. Dupin, who speaks of the Code Napoleon, not with approbation merely, but with fervour? He says: "The civil code is the first and best of all. It is clear and methodical; neither too long nor too short; the language of the legislature is noble and pure; the rules are well laid down. The code of civil procedure has simplified the forms and diminished the expense of law-suits. The commercial code is also generally esteemed. The code of criminal procedure and the penal code are the last, and are those to which the greatest objections have been raised. Despotism dictated them. In many instances state policy has made them her instrument, and liberty has suffered accordingly. Their revision has therefore been demanded. But all these codes, such as they are, have been productive of the greatest benefit; they have delivered us from the chaos of our ancient law."

Notwithstanding the example of foreign states and of despotic governments, the predominating sentiment of this country is against codes. The reason is obvious. Codes imply organic change; change effected by the legislation of a board, as the *Conseil d'Etat*. What is sought, therefore, is a digest to pourtray the law as it stands, setting forth its merits and its defects, so that the people for whom

it is made may behold it with their own eyes, and judge of it and deal with it as to them may seem expedient.

When the Queen's Judges resisted in 1856 the proposed code of criminal law, they said not a word against a digest. And now we have the express declaration of one who has evinced great power in this discussion, that what he desires to see established is properly a digest, and not a code—a digest having, Sir James Wilde remarks, these advantages :—that "it admits of gradual formation;" that it "may be worked out piecemeal;" and that "it displaces nothing."

In the face of these and many other authorities, it is not very likely that any government of this country will adventure upon a code. But that we shall some day have a digest, seems within the scope of probability. Four years ago, Lord Chancellor Westbury charged the individual who has now the honour of addressing you with the consideration of this subject, and the inquiries incident to it. His lordship's powerful representation to the House of Lords followed in June, 1863. Much reflection and many conferences ensued. Hence my reason and my apology for troubling you with this paper.

The things chiefly needed in English jurisprudence are order and delineation; to be followed by legislative improvements.

What is proposed, therefore, is to eliminate the settled living law: to digest and arrange it: to publish it by instalments: to correct it periodically: and, in the words of Bacon, to prepare and propound to parliament the required alterations.

The task will be much facilitated by the consolidation of the statutes which has already taken place. The chief difficulty will arise from the reported cases: these will demand the most careful scrutiny and the most profound consideration. Voluminous, confused, and perplexing as they are, they yet secure one conspicuous advantage. They sanction a wholesome discretion, and even a large licence, in the administration of justice; for by their ever-varying circumstantial details, they furnish precedents and supply resemblances, which enable the judges to resolve satisfactorily the most novel and startling combinations. Hence in this country it is usual to say that every wrong has a remedy; and every right a vindication. To sustain intact the characteristic expansive energy which produces these results, will be a constant aim of the digest. But, it may be asked, in what manner can we preserve, under a didactic exposition, the indispensable elasticity? Let us see how the French go to work. When their code is express, they look at nothing else. When it is silent, or when it fails, they resort to the anterior jurisprudence. They have a clause for this purpose. So with ourselves, when a statute is in point, it governs the decision. But, as Lord Mansfield observed, no legislative enactment "can take in all the cases." Therefore, the courts go often "on rules which," his lordship tells us, "are drawn pure from the fountains of justice." To this well-known practice of our tribunals the digest will be auxiliary and subservient. Its delineations and its definitions will be verified by references, so that the text and the authorities may be compared and construed together.

What is contemplated will be, in fact, a help and a relief, but not an imperative director; for, although likely to prove of incalculable assistance to the judges, they must not repose on it, or forget their first duty, which is to decide conformably to the law of the land, wherever that law may be found. Its all-sufficiency will thus remain undisturbed; its power of conjuring up analogies will continue; its faculty of adaptation will be the same as ever. The judges will still resolve unforeseen questions precisely as they resolve them now—by the application of those rules which are frequently unknown until they see cause to disclose them.

By the course here indicated, the difficulties, the delays, and the perils of direct codification will be avoided.

But we are not to suppose that the digest is to continue always without authority. On the contrary, in the fulness of time, after it has been repeatedly revised and corrected; after the judges and the profession have again and again tested it in practice: after criticism and experience have established its sufficiency; and finally, after it has become familiar to the people, as the safe and ready exponent of their rights and their duties, it will doubtless receive, as it will assuredly deserve, a definitive sanction from parliament. In other words, it will become a code, "the work of the people themselves;" * but even then it will not absorb, or profess to absorb, the law, except in so far as *posteriora derogant prioribus*.

The proposed digest ought not to be confined to England. It should embrace Scotland. The work must be concurrent. A contemporaneous exposition of the law of both countries, by presenting differences and resemblances, will give rise to the most useful of all criticisms—that of contrast and comparison. As a whole, the Scotch law is excellent. So is the English law; but each has defects from which the other is free. And even if injury were not felt, uniformity would surely be desirable rather than discordance.

Precious as the law of England is, many find fault with it. What does Sir Samuel Romilly say? He, first of all, dilates on the evils of an unwritten law generally. He then says of the law of England, that it is often uncertain, arbitrary, capricious, absurd, and contradictory; he says that much of it is built upon analogies, metaphors, and fictions; he says that, in a large measure, it is the progeny of ill-considered dicta, never meant for promulgation, though carefully reported; he tells us that its chief architects, the judges, are precluded from proceeding upon principles of utility, or enlarged jurisprudence; and he notices a circumstance well deserving of attention—namely, that certain parts of English law, though usually deemed obsolete, prove occasionally mischievous and sometimes fatal. Hence Lord Brougham's happy simile of the dormant snake which awakes and turns upon us when we are least prepared for it.

Such are the selected characteristics of a system deemed by some so sacred, but of which, perhaps, a good moiety is ripe for abrogation

* Portalis.

upon principles recognised by Coke, by Blackstone, and by Tenterden —for these have all declared that what is contrary to reason cannot be law.

Now, with respect to the laws of Scotland, Lord Bacon noticed "how near," as he expressed it, "they came to our own." That they were originally identical seems probable, for it is still an unresolved question whether the Scotch institutions were borrowed from Glanville or Glanville's from the Scotch. The jurisprudence of each continues, in a great measure, still the same, but with puzzling variances, chiefly in feudalities, in forms, and in jargon. The Scotch procedure, undoubtedly, is tedious, circuitous, and costly. This was well shown, two years ago, by the letters of a Scotch magistrate in the *Times* newspaper.

At the union in 1707, each country retained its own laws, with this exception: that the Scotch law of treason was abolished, and the English law of treason substituted in lieu of it, on the principle that "rules of public right should be the same throughout the United Kingdom." The blessings of the English constitution, however, were not extended to Scotland. The Scotch consequently have no Magna Charta, no Bill of Rights, no Habeas Corpus. They have, indeed, the Act of 1701; but that Act is denounced as "a mass of imperfect protection and practical confusion." Lord Cockburn, the distinguished Scotch judge, was indignant on this point. In his pleasant memoirs he asserts that there is no security for liberty on the north side of the Tweed. Personal freedom depends on the temper of the existing government, or rather on the discretion—peradventure the caprice—of the Lord Advocate. When that high functionary incarcerated a gentleman supposed to entertain dangerous political opinions, the Lord Advocate justified himself in the House of Commons by the proud boast that he represented the Scottish Privy Council, and that his powers were unlimited. It is curious to observe that the work of a celebrated Glasgow professor, published in 1787, on constitutional law (in four quarto volumes), treats, not of Scotch constitutional law, but of English constitutional law, from which the people of Scotland are excluded. That the individual described by Magna Charta as "*liber homo*" is to be found in that part of the United Kingdom, Lord Cockburn does not allow me to affirm. One thing is certain: agricultural slavery, or serfdom, was not abolished there till 1780.

Before the union, Scotland, now so prosperous, was the worst governed country in Europe. And long after that happy conjunction its want of liberal institutions became frequently conspicuous. Read the interesting account just published, of the excellent Maclaren, who started, forty years ago, the first independent newspaper ever published in Scotland. The political state of that country, and of Edinburgh especially, half a century ago was frightful. "Corruption and arrogance," says the writer, "were the characteristics of the party in power; a power in a sense of which, in these days, we know nothing. A cowering fear covered all the rest. The people were

absolutely without vote or speech. Such a thing as a public meeting, to remonstrate against grievances was unheard of." All efforts at liberation, Lord Cockburn tells us, were suppressed either by legal tyranny or by rigorous social persecution emanating from authority.

Under the sway of a benignant Sovereign, Caledonian grievances have practically disappeared; but the grave question remains, whether it be fitting and consistent with the dignity of a great and intellectual people that their political rights should depend on the clemency of the government.

The marriage laws of Scotland and of the whole empire are now undergoing investigation by a Royal Commission. I will, therefore, say nothing of them, except that, when settled, the digest must unfold them. Our northern neighbours have had, for two centuries and a half, what we are only now trying to acquire—a satisfactory system of registration. To imitate their code of bankruptcy will, next session, form the study of the legislature. Law and equity they do not set in opposition to each other, but by one high tribunal administer both. Their criminal law is admirable. The impossibility of appealing against wrong convictions and wrong acquittals is a blemish not peculiar to Scotland. It was pointed out by Mr. Burke; but it remains still in Scotland as in England, unremedied. The Scotch have no grand juries; they don't desire to have them. They have no coroner's inquests, nor do they feel the want of them. But they have public prosecutors, which the English have not. And they have allowed always—that which the English have allowed only recently and reluctantly—counsel to prisoners.

The borrowings, therefore, in the event of a united digest, will be pretty nearly balanced, and the advantages reciprocal.

To digest the law of England alone, without any reference to Scotland, would be a pretty sure way to widen the existing segregation; but to digest the two systems harmoniously together, would be to realise quickly that amalgamation which was desiderated by Bacon at the union of the crowns, and desiderated by Somers at the union of the kingdoms.

I have not mentioned Ireland; but if my argument be correct, it must apply to the sister country, which cannot well be overlooked in a work essentially imperial.

I ought to have sooner mentioned that the digest will have notes, pointing out defects in the laws digested; and setting forth what should be done with the laws not digested—those so strikingly described by Sir Samuel Romilly.

Codification of the Law of England. Digest and Code, their Expediency and Practicability. By R. M. PANKHURST, LL.D.

THE justification for the conviction of the expediency and practicability of reducing the positive law of any country to the state of a code, whether through the preliminary and intermediate stage of a digest or not, is to be found in the nature, form, and operation of the legal system itself, and in the notions, definitions, and classification which it involves, and of which it is susceptible. It must be admitted, however, that the scientific constitution of a body of positive law, according to the procedure of a philosophic method, must be a late product of intellectual activity. In order to produce such a result, the contributions of practical law and of historic and philosophic jurisprudence must be collected, organised, and applied. The relations of the processes of history and the method of philosophy are, in fact, united by the closest and most necessary bonds; for the essentials of a complete system of law derived from the principles of human nature, must be verified and modified by the experience supplied by historical knowledge. It is necessary that the fruits of experience should be rich and varied, and that their results should have indicated, if not distinctly discovered, the existence of certain general principles and leading maxims capable of extended application, before it is to be expected that the effort can be successful, in the case of many complicated branches of human knowledge, of establishing upon a scientific basis the body of truths about which they are conversant. In this predicament is the law of England. The triumph of philosophic jurisprudence, for it will be nothing less, which shall result in the true codification of the law of England, can only be effected by the aid of the constant and consistent application of a sound scientific method.

But though the codification of any particular body of law must wait for the accumulation of the results of experience, yet it is possible to hasten the time when it becomes expedient and practicable to deal with it philosophically, by drawing examples, illustrations, and guiding principles from other systems. The Roman law in Europe has been a constant monument of the possibility and expediency of putting a legal system upon a scientific footing, and it is precisely in those countries where that law has been most active in its influence that codification has been most readily and soonest realised. As to the present case, it is only necessary to mention the evil of the implication and immersion of legal rules in a multitude of facts, constituting a *rudis indigestaque moles* of particulars and details, involving the consequent evils of unwieldy bulk and of practical inaccessibility, aggravated by the distribution of the subject-

matter to be known over a vast field of authorities, standard records, and valued treatises, and yet more complicated by the supplemental and subsidiary action of the statute law. From these evils arise confusion and uncertainty, bringing with them, in practice, injustice, delay, vexation, and expense. If it is hopeless to expect the public at large to be acquainted with the entire positive law of the land, it, at least, should be made a prime object of desire to secure, that the profession may know it in all its range and fulness, by reducing it to a scientific and symmetrical system.

Another ground claims independent notice. Everywhere there exists a wish, a necessity for the extension and fuller acknowledgment of the great principle of the local administration of justice. But the degree of wise and safe diffusion of which that great public want of our time is capable is now distinctly conditioned by the existence, in a compact and fitly classified shape, of the law to be administered by the local tribunals. In its present state the law is diffuse, obscure, and conflicting. The mere element of time operates essentially in regard to many of the evils complained of. By reason of the time needed in order to come to a satisfactory conclusion in a given case, the profession are embarrassed in giving advice, the judges are driven often either to decide without settling anything, to force the litigants to a reference, or to allow the case to pass from before them on a determination which rests, not upon the substantial merits of the matter, but upon some merely technical point. A codification and consequent simplification of the legal system would, besides giving in the processes and incidents of litigation more satisfactory results, enable the profession to advise and decide with more success and efficiency. Codification is thus a necessity of the time, in the interests of the judges, of the practising lawyers, and of the general public.

The fact of the alleged failure or only partial success of former attempts at codification does not of necessity lead to despair of a happy result in other cases. Indeed, the very defects and failure of former efforts will prove the possibility and the practicability of final success, if it can be shown, as in fact it can, that the evils deprecated and in part admitted arose either because no method was employed, or a bad method, or a good method without consistency. If those codes fail which are defective as to time, place, or method, then there are good grounds for believing that, those defects supplied, a code will succeed. When all attempts are futile, either wholly or *pro tanto*, in which every instrument has been used but a sound scientific method, then the presumption is very strong that in proportion as that instrument is employed the result of failure will cease to appear, and the desired success arise. This is the position taken with respect to the codification of the law of England. But the argument, from the partial failure of former efforts, is open to the two following observations: 1. The systematised body of law which in any country has been introduced by way of substitution for a previously existing system has confessedly in every case proved

superior to that which gave place to it. 2. As soon as a code comes into existence, it is compared, not with that which it supplanted, but with an ideal standard. In proof of this it should be distinctly noted that the definition of a code has steadily progressed, and become more and more scientific and precise as codes have been attempted, and as juridical science has advanced. The conception of a code in modern times puts its demands upon higher ground than that taken by the jurisprudence of former times. That conception demands that a code should satisfy the four following conditions. It demands—1. That the code should constitute a complete body of legal rules. 2. That it should be scientifically arranged. 3. That the rules should be expressed in precise and abstract terms. 4. That the rules should be established by direct legislative action.

The characteristics involved in this conception of a code present in distinct shape the reasons upon which rest the necessity, expediency, and practicability of codification in general. It will be a compendious way of dealing with the entire question to discuss successively each of these attributes. The whole matter may then be thus progressively stated:

I. A code considered as a complete body of legal rules.

II. A code considered as a complete body of legal rules expressed in precise and general terms.

III. A code considered as a complete body of legal rules expressed in precise and general terms scientifically constituted into an organic whole.

IV. A code considered as a complete body of legal rules expressed in precise and general terms scientifically constituted into an organic whole and established by direct legislative action.

For the convenience of treatment it will be expedient to take these incidents of the definition of a code in such an order that these four ideas of expression, of arrangement, of direct institution, of completeness, may be handled in the succession in which they are now stated.

I.—A code considered with reference to its expression in precise and general terms.—The soul of the codification question is a question of expression. Two points, indeed, arrangement and expression, involve substantially the whole subject of discussion. The arguments proper to the present position are best presented by considering the different forms of case-law and statute-law. By the terms statute-law and ca-e-law, respectively, it is intended to designate these laws *by the characteristic difference of the mode of their establishment*, the former being instituted by direct, the latter by indirect, legislation. In dealing practically with the rules of a legal system we have three things:—1. The rule of law. 2. The case to be adjudicated upon. 3. The relation of the rule to the case. There are here in practice as to the rule two difficulties:—1. The discovery of the rule itself. 2. The application of it to the case in hand. Now, it is the first of these difficulties which is at this point under discussion. In regard to case-law, the rule of law exists involved and implicated with

the facts, circumstances, and peculiarities of the decision, or series of decisions, to which it has been either once or successively applied. The first duty, then, obviously is by a process of induction to collect from the case or cases their *ratio decidendi*, the principle of their decision. But this duty must be performed under the following serious embarrassments:—1. The cases are scattered over a wide field. 2. They are numerous and often conflicting. 3. The rule to be discovered is closely bound up with those cases, and often cannot be eliminated without an exhaustive induction applied both to the details and to the general principles established in the cases. 4. The rule itself has been originally established in many instances in haste, in view of a particular emergency, and never with the direct and avowed purpose of establishing it. 5. The rule must, in most cases, be collected under the same disadvantages of pressure and of the urgent claims of particular cases. Let this state of things be contrasted with the procedure of discovering the rule in the case of statute-law. But first it should be stated that the statute-law of England has never had a fair chance of putting forth its real superiority to case-law, because the statutory element of the law has been in general supplemental to case-law, and has been almost always established with reference to existing conditions of the common law. A statute presents the rule of law to be discovered under the following aspects:—1. It expresses the rule in general and abstract terms. 2. It has established the rule deliberately and with the direct and avowed purpose of being used as a rule. Therefore the form of the expression, unlike case-law, constitutes an essential index for discovering the nature and scope of the rule. But language, it is said, is ambiguous. This objection is insisted upon by many who oppose the codification of our law, and in particular by Sir J. P. Wilde, in his address at the York Congress of this Association. What is the value of this objection in the present case? The objection may be dealt with thus:—1. The objection of the ambiguity of language is common to all expression of thought. 2. The difficulty is great, but it is the chief difficulty of codification. 3. The difficulty is, however, in a code distinctly acknowledged and reduced to a minimum by—(*a*) the scientific character of the method employed in constituting the code; (*b*) the care directed to the avoidance of the difficulty in the expression itself; (*c*) the deliberative character of the occasion upon which the rule is expressed. Admitted, then, that the difficulty of codification resides in the ambiguity of language. But this reduces the matter to a question of interpretation. Now, it is possible to put the principles of interpretation upon a scientific footing, and certainly the work of interpretation cannot be regarded as in any sense so toilsome, or as in the result so uncertain as the process of the inductive discovery of the principles of case-law before considered. Moreover, the difficulty of discovering a rule of law in nearly every case arises from its indeterminateness or inconsistency, or both; but it is precisely the vices of indeterminateness and inconsistency that codification undertakes and puts forth its most powerful efforts to cure.

II.—A code considered with reference to its scientific constitution into an organic whole.—The fact of the progress of the definition of a code is nowhere more conspicuous than in the demand for scientific unity in any body of legal rules, considered as an adequate expression of a system of jurisprudence adapted to govern the conduct and relations of any great modern community. It is precisely here, too, that there is most ground for confidence in the successful codification of the law of England. The progress of thought in every region assists here. The systematising of theories of scientific inquiry, the improvements in the methods of philosophising, the increased insight into the laws of the operations of the faculties in the investigation of truth—all these things constitute important aids toward the practical realisation of the idea of a code. These considerations add further proof of the dependence for the success of a code upon conditions of time, place, and method. The dominant conceptions which should preside over and pervade a soundly-constituted system of legal rules must, in all essential respects, be drawn from the very facts and materials over which they are subsequently to exercise a sovereign sway. History must confirm what philosophy institutes. The labours of other nations and times help us in this work. The codes of Prussia, Russia, and France, and, above all, the last great work of the kind—the "New York Code," just completed by Mr. D. D. Field and his colleagues—stand for us as so many *experimenta lucifera*. The indispensable conditions of success are really present. There exist in sufficiency the necessary instruments of precise and adequate terminology and nomenclature. The materials and methods are possessed upon which a definition of the essence of the subject-matter of positive law may be framed, and an exhaustive analysis made of the necessary and related notions and principles involved in the clear and complete conception of the incidents of a soundly-organised legal system. Hence arise the means of defining the conditions of a scientific arrangement with leading and subordinate division, based upon a definition of the principles upon which they respectively rest. After the law has been distributed, according to the procedure of a right method of classification, it is imperative that that method should be constantly and consistently pursued. By the action of this procedure two results would arise of immense consequence. This scientific classification of the legal system—1. Would raise to its highest power the knowledge of that system in its whole extent. 2. Would provide the best opportunity for extending it upon right principles, and in the best form. The possibility of organising upon such a basis the entire law of England is assured to us by the very notion of law itself, by the field which it occupies, by the nature and compass of the rights and duties about which it is conversant, considered with reference to their subjects, their objects and purposes, and to the persons in whom they reside, and upon whom they impose obligations. In the practical realisation of this scheme two things are, of course, essential—design and execution; but the former is by much the most important, for there can be no success without a clear

and adequate grasp of the principles and mechanism of the organisation to be operated upon. The various provinces of the kingdom of the law are to be reduced to harmony by being placed under the empire of the leading principles which govern their relation to each other. As to the preliminary stage of a digest, it is a question of expediency. A word here as to the meaning of terms. A digest gives form to what antecedently exists as law, while a code at once gives form and law; the latter furnishes the shape and constitutes the law, the former only formulates what comes to it through other authority. A digest would therefore be a safe experiment, a source of education and a means of preparation in every way desirable. As to procedure in regard to codification, it may be added that it will be necessary that the results of the re-arrangement and re-expression of both statute and case law should be fused into a consistent whole, according to the method and classification previously discussed.

III.—A code considered with reference to its establishment by direct legislative action.—The advantages of arrangement and expression fully considered in the comparison of statute and case law receive a practical realisation in the introduction of the element of direct institution. Here is plainly seen the difference between a rule of law coming into existence in an abstract form not only designed to be, but distinctly appearing to be, a rule for future use, and one established indirectly in view not of a class of cases, but of a particular emergency, and presented in a concrete shape, involved in the matter and circumstances of the occasion to which it owes its origin. By direct legislation the procedure necessary in dealing practically with the law is reduced to a matter of ratiocination. The inductive process is performed by the legislature. The general propositions are furnished directly by supreme authority, and their particular applications are eliminated from them by deductive reasoning. The inquiry is thus reduced to an investigation into the meaning of forms of expression, into the application in particular cases of a given form of words. This brings the entire work to a question of interpretation. It is asserted in the introduction to that able work, *A Compendium of Mercantile Law*, by the late Mr. John William Smith, that the "codification of our mercantile law would be a national evil." Codification, it is thought, would impose fetters upon its freedom and power of improvement. It may be answered, however, that the customs of merchants and the exigencies of commerce, which enter so largely into the composition of that law, would, if that law were codified, be as much causes and reasons of the law as they now are, but system, and method, and directness, which are now absent, would then be supplied.

With a legal system constituted into an organic whole, having its departments distributed upon scientific principles, and the minor and more complicated divisions placed in due relation and subordination to the larger and simpler, it would be an easy thing to detach and throw into a separate shape the law affecting particular classes and

interests of the community. Abundant illustrations of the advantage of such a course might easily be found.

The law affecting commercial interests in countries where a code exists is found in the hands of the mercantile community in a short compass and in an inexpensive form.

IV.—A code considered as a complete body of legal rules.—With regard to completeness, a code may be considered from two points of view, as to the existing state of the law and as to the future. A code looked at as a methodised compendium of existing law is, it is affirmed on the principles of the arguments before submitted, far superior in point of comprehensiveness to the present position of things. As to the objection urged by Sir J. P. Wilde and others, that a code is not perfect in relation to future litigation, the answer is, that that is an objection applicable to all law. But that which is a defect common to all systems of law is, in the case of a code, less extensive and susceptible of readier address. Upon this point it is possible in the interests of codification to assert, in view of this common defect as compared with other states in which legal systems exist, that in the case of a code, first, the amount and nature of the defect itself is more clearly defined; second, the best mode of supplying the defect is more distinctly suggested; third, the means of giving effect to the suggested remedy are more readily provided and more safely applied. Here, therefore, is an inevitable imperfection of every system which requires the creation of law, but a code reduces that imperfection to a minimum, and causes what remains of defect to be furnished with the least mischief, and in the easiest way.

An ideal system of law would be a high triumph of scientific method, classification, and expression. In such an ideal and "elegant" legal system the rules of which it is composed are in all their range and variety precise and determinate, marking with clearness and perspicuity the essential properties of the several accurately-defined classes, in view of which these rules have been framed, and to the government of which they are assigned, so that every case as it arises is easily and surely referred to its class, and is also readily and with certainty subjected to the incidence of the rule under the cognisance and dominion of which it properly falls. Possessing the virtue of internal consistency, because the power of a true unity pervades and animates the whole, this system demonstrates its worth and usefulness by the commanding attributes of largeness of view, simplicity of constitution, directness of application, and perspicuity of language. Towards this ideal standard a good code approaches by the process of a constant approximation. The law of England can and ought to be put upon this career of advance towards this high standard. The constitution of the law of England upon such a philosophic basis is a debt which the juridical intellect of the time owes to the profession and to the public; and it is of the highest consequence to many interests, vitally affecting the common weal, that this obligation should receive an early and adequate discharge.

CHARITABLE BEQUESTS.

What Conditions or Limitations ought to be imposed upon the power of disposing in perpetuity of Property, Real or Personal, for Charitable or other Purposes? By THOMAS HARE.

THE subject of charitable trusts has been several times considered by this and the Law Amendment Society, and various papers upon it have been printed in their *Transactions*. I will, on this occasion, do no more than present a summary of the rules, or principles, which it appears to me should govern legislation on charitable endowments. I will, at the outset, by way of definition, observe that I include in that term every permanent application of property to a public purpose in relief or aid of the nation, or any classes or persons within it, in the performance of a duty or service which it is, or from time to time may be, thought necessary to perform. It will, therefore, comprehend objects of the most diverse character in their nature and magnitude; all those referred to in the statute of charitable uses, from a national, British, or parish school, to the estates dedicated to the maintenance of Eton College, Greenwich Hospital, Bartholomew Hospital, or London Bridge.

In the first place, I see no reason for preventing any one from giving his property to the State, or to its necessitous members, or for discouraging such gifts. I have no fear that public or general objects will occupy too high a place, or supplant those which arise from private and personal feeling and regard. The first rule I therefore express thus—

1. Let no restriction whatever be imposed on the disposition of property, real or personal, to charitable uses, either by deed or will.

The provision required by law for proof of the fact that the testament is that of the testator, and that he was of sound mind, if good for anything, ought to be sufficient for all wills. Our courts of equity, in their jurisdiction over trusts, impose the only limitation of object which is necessary — that it shall not be contrary to public policy.

The next rule is—

2. Let all land settled, or devised, for charitable uses (with the exceptions contained in Rule 3) be sold within a definite period, not exceeding (say) ten years from the time of the conveyance or devise; and the proceeds invested under the direction of the Department of Charities; and let all land now held on charitable uses be also sold, within a period not exceeding (say) twenty-five years from the passing of the law, and the produce invested under the same direction.

Having regard to the vast extent of the land of the kingdom held

not only technically in mortmain, but by trustees appointed from time to time, I think it not unreasonable that a quarter of a century be given for bringing into the market gradually the existing charity estates. The sale would be regulated by a public department, viewing the subject as a whole, and prescribing the time and manner in which the sale shall take place in the various localities, that the full value may be obtained.

3. The exceptions to such sale and conversion shall be all land necessary for the use and occupation of the charitable institution itself.

Thus, if it be a school, there may be the school, playground, and master's or mistress' residence; if a hospital, the building, courts, garden for the exercise or recreation of the patients, and all that is necessary around it; if a school for agricultural instruction, there may be so much land as would be necessary for practice and experiment.

I am not insensible to the magnitude of the proceeding to which I here point, nor to the obstacles in the way of my proposal. In the paper read by Sir James Kay Shuttleworth, on Friday, the land held by charities was stated to have been estimated some years ago at between 400,000 and 500,000 acres. I can pass for miles through streets in London which I personally know to be charity property, and I believe that a quarter of the metropolis consists of such property. The private interests opposed to the alienation of such property would be multitudinous. I need not refer to the interests of the lawyers, who act for the charitable bodies, and have the preparation of the leases and agreements, and the conduct of other legal transactions; for though their influence is very considerable, it may be said that there are still more lawyers who would have a chance of participating in these profits, if the property were brought into circulation, and therefore we may set the larger portion of the profession against the smaller: and this is true with the qualification that the possessors of this business at present are all very much more sensible and tenacious of what they would lose, than any of the non-participants are of the share which they may probably gain. But these estates are held by large numbers of trustees and governors, *who thereby acquire a very considerable and pleasing* amount of personal importance. They appreciate the authority and influence of proprietorship. The estates in the country must be visited, and committees of trustees have agreeable excursions for that purpose. They are, of course, treated with great respect by the tenants, and in the shooting season there are many courtesies, which the trustees and their friends are tolerably sure of receiving from the farmers of the charity estates. It happens, also, that trustees and governors, from their active influence in many of our old corporate cities and boroughs, have often as much or more to do with the machinery by which members of parliament are made in this country, than any other class among us; and owing to this cause, and to the clamour they can at any moment raise from the multitude, who are looking with open mouths

for what those trustees have to give away, they are a very formidable body, and no government we can at present foresee will dare to encounter the host of noisy enemies which a disturbance of those valued privileges would raise up. Nevertheless, in the discussions of this Society, we can speak freely; we can aim at the public good, and can disregard all narrow, selfish, or illegitimate influences. The tying up and preserving from generation to generation, in unalienable ownership, such a large and daily-increasing proportion of the land of the kingdom, and the buildings which cover its surface, where the people dwell, is an incalculable public evil. It excludes all this property from commerce, and from the changes of proprietorship, which lead both to individual and national improvement. Not only are the governors and trustees of such estates generally subject to all the objections which apply to absentee proprietors, but they have not the inducements of private owners, either in respect of conscientious duty or of profitable enterprise. They stand persistent obstacles, more or less, to the national well-being. It will be remembered by some, that a year or two ago, in a committee of this Association, I prepared a bill, one point of which was to deal with the town estates of charities, by placing them under a board composed of persons representing the trusts, the city, and the state, and administering them as one whole, and as the most powerful means of meeting the want of suitable habitations; but no member of parliament could be found willing to undertake the advocacy of such a measure. I think we can form no sufficient estimate of the impulse which would be given to public improvement, if we had a parliament wise and powerful enough to enforce the sale of those estates in the rural districts, and to deal in a comprehensive manner with those which are situated in populous towns.

The next rule I propose is one that limits the period during which the directions of the founders of charities shall be imperative.

4. Whatever the period may be during which the law of the state shall permit property to be settled inalienably on a particular person, for a period equivalent thereto, property may be made inalienable from specific or charitable objects, but for no longer period.

If, as the case is, a settlement may now be made for an existing life, and a subsequent minority, so a donor of property for charitable uses shall be able to render it inalienable from the trust which he has prescribed for what, on the average, would be an equivalent time—say for thirty years after the settlement or devise takes effect. Land coming within the exceptions in Rule 3 may not necessarily be subject to this resolution.

Not only in preventing real estate from being held by any bodies in perpetuity, but in other important respects, the difference between the law which now prevails in England, and a law founded on the principles I suggest, would be very great. The proposed law substantially repeals the so-called Mortmain Act of 9 George II., c. 35. It makes the power of a testator over the devolution of his property precisely the same, whether it be real or personal, and it abolishes all

the practical distinction between the validity and incidents of the trust estate, whether vested in corporations, or in individual trustees by conveyance from time to time. It leaves unrestricted power of appropriating sites and buildings, and preserving all the necessary centres of institutions for education and culture, for the relief of disease or suffering, or the repose of age and infirmity. It affords unbounded scope to all living and voluntary charity to maintain such institutions in their greatest plentitude and most perfect efficiency, and to distribute the benefits of the institutions which they thus support amongst the objects of their especial favour. Not only does it thus admit and encourage the bounty of the living, but it allows of the disposition of property after death, to the specific purposes indicated by the giver, for a period equally durable with that of any settlement he could make in favour of a personal object of his bounty. But here it stops. A just law, in its limitation of perpetuities, should recognise no right in one man or one generation to dictate to the generations which follow, as to the manner in which they shall deal with the produce of the earth. It is enough for each generation to do its own duty to its contemporaries, and leave the noblest example it is able to succeeding ages. Let those who desire to benefit posterity accomplish their object by devoting themselves to the good of their fellows, to the best of their understanding and power—by laborious efforts, by great deeds or great sacrifices, and not by the puerility of telling those who come after them, and will probably be wiser than themselves, what they ought to do.

This brings me to the fifth and last fundamental rule—that for the appropriation of the income of endowments, at the expiration of the power of the settlor, say, at the end of thirty years after his death, a term I have supposed to be equivalent to the present powers of a testator in regard to private property. And here I can but repeat a principle which I endeavoured to explain in a report on Christ's Hospital, which was last year laid before parliament. Every man, woman, and child in the kingdom is, in relation to the state, entitled to *an equal share of its protection and its benefits; and in the framing of impartial laws, must be regarded with equal respect* and tenderness. *I look upon it as radically unjust in the state to set aside* or reserve a part of the permanent wealth of the country to the special benefit and maintenance of particular classes, or the objects of special patronage and favour, with the purpose of giving them an advantage over others less happily situated or connected. Private property and private beneficence may be bestowed according to the prejudices and partialities of the giver; but the state has no prejudices or partialities. The inequalities of hereditary fortune, the varieties of natural endowment of mind and body, the more or less perfect education and culture by parents and teachers, create infinite diversities in the condition of mankind. The great multitude of every people must begin and pursue the race and toils of life with slender powers and resources, and must accept its more painful labours and lower rewards. But it seems to me cruel for the state to permit the

establishment and maintenance of permanent endowments, that increase the pressure with which fortune, and nature, and accident, bear upon the masses of the people, aggravating their difficulties by diminishing their chances of emerging from them, in the degree in which exceptional advantages are given to the favoured classes. It will be observed that I speak of no institutions which are maintained by the subscriptions or co-operative labours of living persons. I speak only of the dedication of the income of property, with the dominion of which the owners have altogether parted, and which is necessarily left to the care of the state. I say that such property should not be administered for the narrow purposes of private patronage or private favour. It should not be perpetually confined to localities or classes, but its benefits should be so distributed, that every person, and family, and class in the kingdom should, in time of need, have equal chances of participation.

5. The annual produce of all property dedicated to charitable purposes, whether for schools, for hospitals, or for eleemosynary distribution, shall be applied, as far as possible, for the use of those who are most in need of it, without preference of place or class, and, as far as possible, in aid of those whose necessity or privation is not, or is in the least degree, owing to any fault or negligence of their own, or who may be regarded as, under any special circumstances, requiring or deserving public assistance; and the rules from time to time adopted for the apportionment and distribution of the produce of such endowments, shall be prepared by the Department of Charities, and laid before parliament at least for two months during its session, before the same shall be acted upon.

I may illustrate what is meant by such a law, by referring to the discussions which lately arose, on a proposal to establish an orphan asylum for the reception of the children of parents who died of cholera. I see no reason for rejecting or discouraging the spontaneous bounty of the public for that or any other charitable purpose. The question whether children would be brought up better in such asylums, or distributed amongst families, is a fair one for experiment, in which each method should be tried under its most favourable circumstances. The utility of such a foundation, however, was asserted on the ground that provision for destitute children in our workhouses is so unsatisfactory. I presume that those who used this argument did not at the same time fail to see that if such be the fact it is not by any partial supplement for a few orphans here and there that it ought to be met, but by a general revision of the workhouse system as to desolate children. If the founders of these asylums have fallen upon any plan more successful than another for bringing up children who are without natural protectors, and fitting them for the duties of life, let their improved system, at once, and with as little delay as possible, be applied by the administrators of the poor law to every such child alike, without favour or preference, and thus secure the benefits of such culture as widely as may be to the whole of the poor of the generation now entering, or hereafter to enter, upon existence.

But supposing such an orphan institution to be established, it must then derive its support either from contributions year by year, or by permanent endowment, or both. With his voluntary bounty every subscriber would do as he pleases, but so far as it depended on endowments, the object should be to administer them with the utmost equality to those in need of them throughout the kingdom, avoiding the evils of patronage or partiality towards any class. It would not be confined to the victims of cholera, or to the distressed of any particular neighbourhood. In distributing the benefits of the great national endowments, the department of the state charged with the business of charities, the councils of education and of the poor law, would be in communication with the municipal authorities, the managers of schools and public institutions, the boards of guardians, and other bodies executing public functions in every locality: they would be able to form an estimate of the wisdom and judgment displayed in each district by the success of the measures adopted; and would be able to encourage effort by special aid wherever such aid might be usefully given. Such communications on the special educational wants of each spot, and the means by which they might be best supplied—how local difficulties may be encountered—sufferings arising from accidental causes or failures of the ordinary means of support alleviated—the transport of labour aided from places where it is in excess to others where it may be usefully employed—the condition of the dwellings of the labouring classes improved and made what it should everywhere be—and on all other subjects affecting the well-being of the vast and mobile population of this kingdom, would be invaluable, and would gradually pave the way for social improvements, the extent of which we cannot now conceive. From the information thus gathered, even the great fund of living charity, instead of being wasted, or often worse than wasted, would learn from day to day, and month to month, on what purposes it could be best bestowed, whilst no one would be tempted to look to charitable endowments as the means of relieving them from personal duties or personal sacrifices.

I will conclude by observing that the power reserved to the state by the last rule, to change and modify the disposition of all endowments at the end of a certain period after their foundation, does not necessarily involve a departure from the prescribed object of any charitable gift so long as it is beneficial in itself, and operates fairly and justly towards the rest of the community. The principle enunciated by the rule is, that the state assumes the power to alter the disposition of all such property where the public welfare requires it. It puts an end to all the questions and absurdities of *cy près* application, and to the jurisdiction of chancery, or any other court, on such matters. Instead of leaving subjects to be dealt with as questions of jurisprudence, it brings them within the domain to which they properly belong—that of administrative policy—to be exercised constantly under the control of parliament, as the authoritative exponent of public opinion.

On Perpetual Charitable Trusts. By PERCY W. BUNTING, Barrister-at-Law.

THE form in which this question concerning charitable endowments has been proposed carries us back, and, I presume, was intended to carry us back, to a paper read before this Association at Bradford in 1859, by the Vice-Chancellor, Sir W. Page Wood.* That paper, equally with Mr. Hare's, is the foundation of our discussion to-day, which is to be a continuation of a discussion seven years old; and the remarks which I have to make arise out of a consideration of the criticisms and suggestions of a writer of the first authority. But, as I do not find that his opinions have commanded by any means universal concurrence, I may perhaps venture, without presumption, to express dissent from them.

No dissent, however, of course, from his view of the fact that glaring anomalies deface our law of Charitable Trusts. Now that the improvements and artifices of law are more and more closely assimilating real and personal property, so that the one can almost as readily be put into and withdrawn from settlement as the other, it is, of course, unreasonable to permit money to be bequeathed to purposes to which land is not devisable. And this general obsolete distinction covers, under the quaint phrase, "savouring of the realty," refinements much less defensible on any political ground. We shall probably all agree that any scheme for the amendment of this branch of our jurisprudence must sweep away all such legal subtilties, and treat all kinds of property alike.

Four reasons may, perhaps, be assigned for the original difference in the mode of treating land and money. In the times when the older statutes of mortmain were framed, it was not so easy or so common to settle personal property. Money now takes the general shape of investment producing income; and land is but one form of capital. Nor was it formerly easy to bring into the market estates once settled. To the same past condition of society belong the feudal incidents of land, the evasion of which provoked the first legislation operating against charities. Again, there has always lingered in our system a bias in favour of heirs-at-law. Only by slow degrees made subject to their ancestor's debts, it was a concession even to allow the land to be devised away from them at all; and to this day they enjoy a far more favoured position than the relatives who succeed to personalty. Of these reasons, the two latter have certainly ceased to guide our policy. The interests of feudal lords are gone; and it is no longer an object to protect an heir at the expense of the ancestor's devising power. The danger of withdrawing land from commerce alone remains to distinguish land from money in our considerations. But the word "commerce" must include not only the buying and selling of land, but its thrifty management while in mortmain. (I use the term "mortmain" in the popular sense of a dedication to perpetual charitable uses).

* See *Transactions*, 1859, pp. 184-192, 255-259.

The statute of George II., so far as its aim is indicated by its provisions, seems to have struck, not so much at the power of devoting land to charity, as at the abuse of that power—to have intended to protect, not to fetter, the right of perpetual alienation. In this view, again, we have no rational distinction between land and money. But we have to consider whether sound policy requires any check upon superstitious gifts.

And, besides these two points—the land question and the superstition question—there are two things which have very much influenced of late the discussion of the law of charities; namely, the sentiment that endowments are a mistake, and that each generation should attend to its own almsgiving, and the fact that very many of our endowed charities have been found either radically mischievous in principle, or, at least, infected with the gravest abuses. I propose to remark upon all four points by and by, but the mere enumeration of them leads me at once to turn and ask, What in the world have they to do with the doctrine of perpetuities? How are their difficulties to be solved, or their evils to be redressed by adverting to the restrictions placed on the duration of private bequests? Surely, in turning to such a quarter for a remedy, the mind of the judge has rather been struck by a theoretical anomaly than dwelt upon the effect of his suggestions on the mischiefs complained of. And it is curious that a similar course has since been taken by an even more illustrious theorist, who, thinking that he descried an anomaly in the exemption of charities from the income-tax, allowed himself to defend their taxation on the ground that most of them were pernicious, and all mismanaged. If it be extravagant to keep land in mortmain; if the death-bed need additional guards; if charities have preposterous objects, or be habitually wasted; surely some more stringent measures are necessary than the toning down of these evils by cutting off a remote or insignificant portion of their influence. It would be like sentencing a convicted thief to an imprisonment to commence twenty years hence, or to be shut up one day in every week.

But I venture to submit that to limit the duration of a devise to charity is not only an inadequate, but a mistaken remedy. Mistaken, perhaps, even in principle. For, though it may be striking at first sight that a man should be able to fix his property more permanently with trusts of a public than of a private nature; yet, when we ask what is the reason of the rule against perpetuities, the anomaly seems by no means so clear. A man ordinarily devotes his property to the benefit of his family. They look for it. Their benefit has been a principal motive to its acquisition. Although we allow him to give it to strangers, yet the ordinary course of things is not so. Perhaps it is because it is not so, because the power will be sparingly exercised, that we can allow him to give the property to strangers. It comes to the family as a family; in succession; tied up for one generation—why not further? Because it is as much, probably, as the ancestor can wisely do to forecast the interests of the two genera-

tions which he can personally know. To do that wisely, it is customary now, as to personalty, at least, by means of powers, to leave, as it were, the will to be filled up afterwards. Because it is for the good of trade that most property should be in the hands of some one who can risk it. But also, mainly, because the property descends in the family; and the living generations, from time to time, checking each other, will make their own arrangements. And so the rule against perpetuities is adjusted to the exigencies of ordinary family convenience. Otherwise it would not stand. Would it be tolerated for ten years, if the habit grew common among testators to use it to the full—to put their money or their land into ordinary settlement for a life and twenty-one years, and then shift it suddenly aside to a stranger, or to their heirs at-law? Would a rule be tolerated which fixed the limit of settlement simply at a term of twenty or thirty years? Does not the stability of the rule depend upon the probability that the absolute—that is the perpetual—interest will be left in the unfettered hands of the second generation? It is the interest of the nominated owner to have his ownership free, and not a jealousy of the authority of the testator which gives life to the law.

But, setting aside this fancied analogy, the discussion of which is, perhaps, too speculative to be worth pursuing here, the application of the rule against perpetuity to gifts of a public nature is embarrassed with practical difficulties which do not beset limitations to private persons; difficulties so insurmountable that even the writer of the paper I have alluded to has not ventured to work out his suggestion. A testator exercising his legal powers in the usual way, has, at the end of his series of limited interests, some persons to whom the absolute property falls, expectedly, in the order of natural succession, on the failure of the persons nearer in blood to the testator. But suppose a fixed term prescribed, during which, and not longer, the income of property might be devoted to charity, what is to become of the corpus at the end of that period? (A fixed term it must be, because the duration of lives in being would have no reasonable relation to the charitable use). Either the state must seize upon it, or it must pass to the heirs or next of kin, or the testator must have the right to take advantage of both periods, and, after exhausting his powers for public purposes, append a series of family limitations according to the usual rule. Perhaps the last would be the best course of the three. Forfeiture to the State is always invidious; it looks penal; its operation would be highly repressive of charitable bequests. It would amount to reading a devise to charity as a devise to trustees for a term, with remainder to the National Debt Commissioners, which would just be a settlement in a very awkward form. Again, there would be no reason why the heir or next-of-kin should take to the exclusion of such persons as now lie within the scope of testamentary power. But can any one fairly contemplate such a state of things? What but misfortune could come from hanging over the successive generations of a family the prospect of an inheritance

deferred in enjoyment for thirty or forty years, which they must consider their own, but vexatiously held back from them during the period when it might be most useful. What sentiment of respect to the ancestor, what habits of prudent industry could be expected from such a position? What family would it not ruin, if the fund were large enough? On the other hand, the charity having only a limited interest, the land or capital would be tied up by the necessity of consulting, in all transactions, not only the advantage of the charity, but the will of the remainder-man. In short, a gift to a charitable purpose would cease to be a perpetuity, but it would become a settlement. Money once left out of a family is best left away from it altogether. I need not pursue this. The only good to be suggested from it, as it seems to me, would be to keep down the accumulation of charity property; and, if that be considered a good end, there must be far more direct ways of compassing it. The question comes round to the same point reached before:—The doubtful analogy between public and private bequests ought not to be made a pretext for measures which are really aimed at our whole policy of permitting or encouraging testamentary benevolence. I have noticed that the Vice-Chancellor shrank from carrying out the principle on which he based his paper. He did not propose to disallow gifts in perpetuity to be established, but only to original institutions, and not even to them, if the charity commissioners should approve the design of the founder. (I am not, of course, here noticing formalities of execution or other provisions against undue influence or hasty improvidence.) Indeed, that very distinction points to another difficulty inherent in the subject. An original foundation will, as a rule, involve a perpetuity, because the founder is sure to direct either the perpetual use of the land, or the perpetual investment of a fund. But, if a charity be once founded, is it a perpetuity to make an out-and-out gift to its trustees? It is, if the income only of the gift be used. It is not, if the capital be spent by the trustees. An absolute gift to a perpetual owner is perpetual or not according to its use. I rely on the fact that the eminent writer whom I am daring to criticise has left in his practical suggestions scarcely a trace of the principle on which he so strongly insists, when I submit to you that the right of perpetual alienation is beside the mark in discussing our policy with respect to charitable foundations; and I shall proceed to say a few words on each of the four questions on which that policy may be thought to depend.

And first, what do we mean by withdrawing land or money from commerce? Of course it is a vague term, and points to the doctrine that the soil of the country should be, to a large extent, in the market, readily bought and sold, and that it should be made the most of, in whatsoever hands; and that money should also be free to be employed in trade. That is our commercial policy. But how is it seriously impeded by allowing land to go into mortmain? If you give trustees full powers of sale, there is nothing wanting but a price which it will be for the advantage of the charity to take. Trustees, no doubt,

will not be active in forcing their property into the market; they are not to go into building speculations; but they will sell to a speculating capitalist; and no more restriction is imposed than by an ordinary settlement. As to management, nothing but an active supervision is necessary—and that is necessary on any theory—to bring the administration of endowment lands to the level of that of private estates. The Vice-Chancellor Wood attests that "no economical evil results from the mere fact of land being held by corporate bodies on charitable trusts," and that "the estates held by the colleges in our universities, and still more the lands held by the public companies of the city of London in Ireland, will bear comparison, as to their cultivation and management, with any lands held by individual proprietors." As to money, it is true that trustees cannot trade with it, but there appears no reason why the liberal powers of investment used in modern family settlements should not, at least to the extent of debentures, be conferred upon the managers of charity funds. Money lent on good security is not lost to commerce. Of the vast sums risked in trade, a large part is absolutely secure, and this includes settled moneys lent at interest. Considering, therefore, how small a proportion of the soil of the country is ever likely to find its way into the hands of trustees for charities—and the experience of foundations which have enjoyed license in mortmain shows how small it must be—the necessity may perhaps be doubted of imposing upon charities the regulation recommended to the Law Amendment Society, in 1861, that their lands, except the sites of necessary buildings, should be sold within a short fixed period from their acquisition. If the interests of the foundations themselves be well looked to, the market will find its own level.

Secondly,—as to the prevention of superstitious or improvident gifts. It is very common to insist that posthumous charity is not truly charity, because it does not involve self-denial; and that relatives are often disinherited from improper motives. I believe this is very much exaggerated, and that the persons who make large bequests to charities do so mostly from motives of pure benevolence, and prove it by also making large gifts for the same purpose in their lifetime. But surely it is contrary to the spirit of our policy to legislate for the protection of a man from his own mistaken opinions. Suppose that a fanatic does think that the pardon of heaven for his misdeeds can be purchased with money, is it the business of our toleration-professing law to step in and fetter his power of alienation? If relatives are to be protected from disinherison, then we must take up the continental system, and give them a fixed reasonable share. If the proposed charity be a bad one, alter it. If such bequests be in excess, check them by requiring, in some form, the assent of the state to their institution. But leave the testator, so far as his motives go, to be his own judge. Whether the present law of wills affords sufficient guards against improper influence, or takes sufficient care that the dispositions it enforces are the thoughtful, deliberate, and settled will of the testator, may, perhaps, be questioned.

I notice that the late Sir Francis Palgrave, in his very interesting evidence given to the Mortmain Committee of 1844, based a proposal for special precautions against hasty wills in favour of charities, upon the opinion, not that there was anything special in their case, but that the general testamentary law was defective on this point; and it certainly is not obvious why more stringest proof, or an ampler *locus pœnitentiæ* should be required of the will to found a charity, than of the will to disappoint all relatives and enrich unexpectedly a total stranger. At least, if so marked an anomaly is to stand in our law, it should be upon proof, that in some considerable proportion of cases charitable bequests are obtained by the over-persuasion of confessors, or suggested by sudden terror, and not upon the mere possibility of such things. Under any law, a very unnatural and unexpected distribution by will leads to suspicion and inquiry; and the right of testament is so near to being a natural right, that it is not only unwise but useless to load it with artificial conditions. It is not so improbable that a man should bequeath to charity, that a higher degree of evidence is necessary to prove it. Such excessive precautions operate as a limitation of the power of willing; and experience has shown that, like other excessive restrictions, they merely stimulate the invention of schemes to evade them.

The next point is more difficult to deal with, for it appeals to wider and less determinate principles. It is the duty of each generation of men, it is urged, to provide for its own contemporary necessities, and to accumulate wealth, but to transmit that wealth to the next age, unfettered by restrictions as to its use; to place as much power as possible in the hands of posterity, but to confide absolutely in the judgment of the future owners. It is a little bit of socialism, in fact; for it infringes, undoubtedly, on what has now come to be an integral element of our idea of private property—the exercise of posthumous authority over it. The principle applies equally to public and private fetters. Indeed it applies more forcibly to family settlements than to public charities, inasmuch as the former are unalterable, while charities can be moulded from time to time. But it is a view too wide to be more than referred to within my limits; it involves the profound question of the balance between the stability and the vivacity of public institutions. I only remark,—First, that its fatal flaw in principle is, that it infringes on the current right of property: if it be better policy to refrain from endowing particular organisations for benevolence, it is wiser to bring about a change by influencing the opinion of testators, than by attempting—attempting in vain—to tie their hands by force. Secondly, that whatever of wise policy it indicates, is satisfied by a free habit of handling foundations which have proved mischievous or useless. It is good that a man should let charity influence his expenditure through the whole period of his ownership; good that he should consider the public interests, along with his own during his life, and with those of his family after his death; good, also, that the public

should treat his foundations with respect, but not with servility, supplying to them, out of a growing experience, that life which consists in perpetual adaptation to the wants of the times.

It is very much for want of this vitality that so many charities have fallen into abuse. But surely we are not in this day so shiftless that we have no other remedy for the misdirection of force than to quench it altogether. Abuses have been discovered so glaring, that there is danger of forgetting how large a portion of our charities require reform, not so much of their objects, as of their mode of administration. The great offenders are the endowments for bread, clothes, apprenticing, loans, and small money doles. The Education Commissioners cast a longing eye on these ; and if their hopes can be fulfilled with respect to the reform of the endowed schools, few will be sorry to see them sweep into their net a fair slice of these mischief-doing funds. Education is the rage, not unjustly. It is now dawning on us, that charity may be well spent on the reform of small dwellings. We shall soon hear of bequests in aid of Mr. Peabody's fund. Every age has its special sense of need. There is, perhaps, more change in the fashion than in the needs themselves ; and the redistribution of endowments must not be too hasty. But it is always fair to consider that, if the donors had lived in our days, they would probably have been affected by the current opinion. And provided that it is kept in mind that the right use of all endowments is to stimulate and support constant personal efforts, and that no endowment is healthy which does not gather around it eager and disinterested administrators, there need be little fear of wasting money on the one hand, or of disappointing the just wishes of founders on the other. The practical question at present is, whether a new committee of the Privy Council would be a good organ of administration. It seems clear that neither the Charity Commission nor the Court of Chancery can do the necessary work ; neither has authority enough, and the court at least is too expensive and too dilatory. There is constant supervision wanted, as well as a powerful impetus to reform.

It is hardly necessary to remark that religious endowments do not come within our consideration. Churches and chapels are, in general, only charities at all in a formal sense. They are often built by the persons who are going to use them themselves ; and, at all events, there is preserved a perpetual body of beneficiaries, who not only keep the endowment in serviceable use, but who, by contributing to it sums out of all proportion to its first cost, make it, as it were, their own property. It is more convenient and more accordant with sentiment to build a place of worship, and dedicate it to sacred uses ; but there seems no reason, for juridical purposes, why a religious building should not be leased by a private speculator, or held by the congregation organised as a joint-stock company. I have been told that it is common in America for the wealthier members of a religious community to build a church, and either take a rent from the congregation, or even sell the pews ; and that this is not

speculation, inasmuch as money so repaid generally goes to building new churches. It is only a convenient device by which the kind of special public to which a church belongs can hold it. Perhaps these remarks hardly apply to the Church of England; but they may serve to show that all charities of this kind must be separately considered. At all events, the religious question is too delicate to allow of the bold treatment which may be applied to charities, as to whose objects we can arrive, by argument, at something like a general agreement whether they are good or bad, or what will be better.

I must make it my apology for a paper leading to so little practical suggestion, that the question proposed is one purely of principle, and hope that a discussion of the principle will at least tend to strengthen the hands of those who, with larger experience both of the evils of the present condition, and of the difficulties of improving it, are setting themselves to devise a new system of charity administration.

MR. HARE'S ELECTORAL SYSTEM.

*A grouping of Parliamentary Electors that combines a Just and Equal Distribution of Seats, and the Free Expression both of Individual and Public Opinion, with the smallest degree of Disturbance from Corrupt Influences.** By THOMAS HARE.

THE difference between my object and that of all others (except Mr. Andræ) who have addressed themselves to the same political question, is, that they are satisfied if power be conferred on the masses, while I seek to distribute it among the individuals who

* The proposed electoral law (Election of Representatives, Parliamentary and Municipal: Longman, 1865) may be thus shortly abstracted. I. *Size of Constituencies.* §§ 1, 3. The total number of votes polled at the general election to be ascertained and divided by the number of members [658], and the quotient made known to the returning officers. §§ 4, 6. The 658 of the candidates who have severally as many votes as the quotient, or if less, the nearest in number to it to be returned. II. *Distribution of Seats.* §§ 5, 28, 32, 33. The existing constituencies, and all other towns, colleges, corporations, &c., hereafter to be enfranchised, by Order in Council, or otherwise to elect as many members as they have quotients of voters, and if singly too small to return a member, to group themselves at each election with such other constituencies as they may individually choose. III. *Method of Candidature.* §§ 7, 10. To be local, as heretofore, without liability to election expenses, except a deposit of [say £50], but the candidate may offer himself for as many different constituencies, as he may deem necessary, to obtain a quotient of votes. IV. *Method of Voting.* §§ 8 9, 14, 37. Voting papers, in which the voter may place the names of any number of candidates in succession, not being required to confine himself to those for his own constituency. The *Gazette* will supply him with the names of all. His vote will be taken for the first candidate he names, if it be wanted to make up his quotient, if not for the next, and so on, that if possible no vote may be lost; but no vote can be taken for more than one candidate.

The other clauses contain detailed provisions to effect the desired object.

compose the masses. I am satisfied with nothing less than the same measure of freedom of action for the individual, as is conferred upon the mass, and without which, it appears to me, that appeals to the intellect and conscience of the individual are illusory. Hitherto the multitude has been content to be marshalled under certain banners. The progress of education and knowledge, the habit of reading, and of free and broad discussion, have vastly increased the number of the people who are capable of forming opinions for themselves, and communicating with others of like sympathies. Territorial influences, and even the influence of large employers are rapidly disappearing. Now I seek to give a perfect freedom of political action to each person who is able to exercise it, and that not limited to those who are found within any particular boundary, but far and wide, to the extremity of the kingdom. With this view, the system I suggest invites deliberation, and provokes and calls for the exercise of thought on political subjects in all in whom it can be awakened.

I endeavoured to point out the importance of this general action in my evidence a few weeks ago, before a committee on the municipal government of London. The chairman of the committee—the representative of the largest constituency in England—asked me whether the system would not require that the citizens should take a part in the election by inserting in their voting papers the names of the municipal councillors they desired to elect, instead of allowing the election to take place on their mere nomination, as at present, when no poll is demanded; and on my answering in the affirmative, he asked, "Why should society be so worried?" This is, I think, a striking example of the difficulty our practical politicians have in realising the conditions of true self-government, which, if it be worth anything, is worth this care. Their idea is, that of a few bustling or officious persons taking upon themselves the management for the rest. The self-government of the people demands, not the action of cliques or caucuses, from whatever class they come, but the attention and thought of the people steadily brought to bear upon it, and not capriciously, or by fits and starts. If it be neglected, the consequences will, in their measure, be as injurious as the neglect of any other of the businesses or duties of life. The value and importance of active organisation is felt in the developments of modern associations, which are every day assuming augmented proportions; it exists in co-operation, in unions for trade purposes, and for the promotion of art, of science, and of literature. It is the result of the voluntary exercise of personal effort. I cannot help quoting the eloquent words with which Mr. Dudley Field yesterday concluded his disquisition on international law: "the end

§§ 15, 17, 20, 21, 22, 23, 25, for excluding the possibility of error or fraud; §§ 18, 19, 24, for dealing with voting papers in which the first-named candidate is unsuccessful; § 26, for verifying the accuracy of the whole result; and §§ 29, 30, 31, for regulating occasional elections on deaths, &c. Two clauses, §§ 12, 13, are not necessarily connected with the system.

of all government is the freedom and happiness of the individual man."

Volumes may be written on this vast subject. I shall in this paper confine myself to two or three points.

I. The alleged unsuitableness of the system to English habits.

Lord Russell, in the new edition of his essay on the constitution, says, "I trust the suffrage will be extended on good old English principles, and in conformity with good old English notions of representation. I should be sorry to see the dangers of universal suffrage and of unlimited democracy averted or sought to be averted by contrivances altogether unknown to our habits, such as the plan of Mr. Hare." But is anything really proposed which can be characterised as strange or foreign to the present habits of Englishmen? The voter at the polling booth now states orally the name of the candidate for whom he votes: and it is proposed instead, that his vote shall be given on paper. So far as the immediate action of the elector is concerned, this is the utmost extent of the change, and this can hardly be said to be unknown to our habits since voting papers have been adopted for the universities. It is true that the power or weight of the vote is capable of being very greatly increased for the elector, if he has other preferences than for the candidates who have actually addressed his constituency; if he desires to express his confidence in or give his support to, other public men, he is at liberty to place their names on his voting paper, with or without that of the local candidate, but he is not bound to do this. It is left entirely to his own sense of public duty. No elector is required to use any of the larger powers given to him,—he may form his judgment and exercise it by his vote in the same manner as he does at present.

It would be well if we could have some definition of the "old English principles and notions of representation," which deserve to be called "good," that we may discover whether there be in them anything inconsistent with the proposed method. I presume that the true notion is that the elector shall be represented as perfectly as possible, and the novelty of my proposal is simply that, to this end, I seek to give him a very much larger field from which to choose those with whom he most entirely agrees. In early times no doubt it was impossible for the inhabitants of towns distant from one another, and with few roads or facilities of communication, to exercise their franchise otherwise than separately; and even at this day each locality must have its own centre of action. So it was with regard to commercial intercourse; when there were scarcely any means of transporting commodities from one town or country to another, there would be no desire for freedom of trade. That which was first a necessity became gradually to be thought a law of nature or a principle of political wisdom; but with facilities of interchange and of transport grew up new desires. Legislators, however, thought themselves wise enough to prescribe the rules of conduct, which should be productive of national wealth, and to prevent the industry of one place interfering with that of another: they established protections

and prohibitions of every kind. We know the history of the struggle which, within the last few years, has succeeded in emancipating the trade of the kingdom from these trammels. It is the progress of development overcoming the doctrine of repression. It opens to our consideration the improvements which may be made in social science by an equally free interchange of thought and effort in the composition of the representative bodies by whom the political arrangements of society are to be governed. To give perfect and unrestricted scope to the exercise of the knowledge and judgment of every elector, it is absolutely necessary to emancipate him from the bonds by which he is now confined to a particular constituency, and prevented from allying himself with any of those, throughout the body to be represented, with whom he has the greatest sympathy To say that it is not necessary now, because in earlier times communication was difficult or impossible, would be as reasonable as to say hat as free trade was not needed in the infancy of society, when each community depended on its own productions, it is therefore unnecessary now.

II. Tendencies of systems to increase or diminish corruption.

In the essay before quoted, Lord Russell adds :—"Mechanical inventions and physical discoveries have no assignable limits, but it is difficult to believe, in this age of the world, that there are models of government still untried, promising a cup of felicity and freedom which England has not yet tasted." Can nothing, then, be done to avert the general demoralisation of our constituencies, of the progress of which we have so many examples? I confess that I do not believe that civilisation is so impotent in the work of social improvement. The statesman does not, any more than the philosopher, limit his efforts to the material welfare of the people, or to the mere development of their mechanical and physical powers. His higher and nobler labours are directed to their moral and intellectual improvement. Witness the greater part of the discussions of this Association, which, with this end, seek to influence public opinion, and thereby the makers of the laws. "The aim of practical politics is to surround any given society with the greatest possible number of circumstances of which the tendencies are beneficial, and to remove or counteract, as far as practicable, those of which the tendencies are injurious. A knowledge of the tendencies only, though without accurately predicting their conjunct result, gives us, to a certain extent, this power."* The tendency of education has been to improve the moral as well as the material condition of the nations who have had the advantage of it; the tendency of offering to men higher objects and motives of action is to diminish the influence of lower ones; and if our political system can open to the people a wider field of thought and effort, and thus raise the electors of the kingdom to a higher condition of political knowledge and a higher sense of political responsibility, a great step would be made.

In order that the people should pursue the right and eschew the

* Mill's *Logic*. Chapter on the Moral Sciences.

wrong course of action in any given case, it is surely necessary, first that it be made as clear to them as possible that one course is right and the other wrong; and, secondly, it is desirable to take away or counteract, as completely as it can be done, the temptation to do wrong. Now, our electoral system has the very opposite effect in both ways. It gives the voters such a poor choice of candidates as, in nine cases out of ten, to make it difficult to ordinary persons to say which is the best or which is the worst, or why they should vote for one rather than the other; and having thus, in the eyes of the elector, reduced to its minimum his sense of the importance of his act, either to his class, his town, or to his country, the system leaves him to consider what profit can be made for himself. It teaches him to believe that the real objects of the candidate, whatever he may say, are rather personal and selfish than public and patriotic; and then, having tempted the voter to imitate the candidate, and regard his own profit or advantage, it increases that temptation to the utmost by giving an artificial and exaggerated value to his vote. It is the necessity of obtaining the votes of a certain number of electors of that constituency, in order to have the majority and secure the seat which gives to the particular votes therein their great value. The voter is able, not only to sell his own vote, but at the same time he sells the borough. Even the scrupulous candidate is thus tempted at the last moment to permit money to be spent on bribery, in order that he may not, by his apparent parsimony, throw away the benefit of the labours of all his independent friends and supporters, although, in doing so, he, in fact, robs his opponents of their just political rights. But when the seat no longer depends on the local majority—when the member becomes the representative of an unanimous constituency, and the corrupt voter has no longer the power of selling anything but his own individual vote, the bribe, if given, will be reduced to the smallest amount which will be paid for it, taking into account the money to be spent, and all the votes in the kingdom which are to be bought. Even if we supposed that 50 or 100 candidates found their way into the House by this means, it will be an enormous step in the progress towards a better order of things, that the remaining 550 members are elected by the independent suffrages of the electors who are inaccessible to corruption. The moral disease of our political condition is dealt with as the physician would deal with physical evil, such as cholera or other pestilence. The tainted cases are isolated and prevented from affecting those who are in health, and are at the same time placed under conditions in which remedial influences may be applied, as a healthy public opinion shall grow up.

While the demoralising influences are thus incalculably lessened, the disposition of the voter to act according to his best opinion is almost infinitely increased. There are few who are not susceptible of some impressions in which their fellows are concerned, and which would be appealed to if his choice of candidates were unlimited. Indeed, half the objections to the proposed system are that electors would

be able to pursue crotchets of their own of more or less singularity or insignificance;* but, surely, if we cannot expect to inspire them all at once with absolute wisdom, it is better to accept and encourage their imperfect efforts towards a higher standard of motive and a nobler political life than leave them still in the slough of corruption.

III. The distribution or grouping of seats or constituencies.

This should be settled on some equitable principle, applicable alike to all places, and not by any arbitrary selection of towns or districts. Enfranchisement, disfranchisement, and grouping of boroughs, in the manner hitherto proposed in parliament, have been in a high degree unequal and partial and cannot be expected to be satisfactory or permanent. No scheme has ever been proposed which would give to all places the fair share in the representation which is equivalent to their numbers or their wealth, and no intelligible principle has been propounded to regulate the distribution on other grounds than the property or numbers of the inhabitants. What is there in the intellect or the discernment or the honesty of the voters in our smaller towns, that their opinions should be worth so much more than those of the larger cities. It is sometimes said that they elect members who would not be elected by the larger constituencies. But what is it that recommends them to the smaller ones? Their money, the influence of some proprietor over his tenants, or the support of a few skilful managers of the borough, who find their account from patronage or otherwise. None of these are pure influences or the evidences of any superior virtue in the elector or the candidate, and the avenues they afford to a parliamentary career are confined to a very limited circle, and one in which statesmen are not the most likely to be formed.

Representation in politics is the concentration of mental results, and what we have to gather is the collective force of the national mind. To restrict this manifestation of thought by conditions of residence or ownership is irrational for any good purpose; and can only be contrived in order that a comparatively small minority may be able to wield the political forces of the kingdom. The argument is, that it it is wise to keep down the political influence of the large and growing communities and cities, and uphold that of the smaller, the agricultural and stationary ones, in order that the party of preservation may not be overwhelmed by the party of progress; but to do this, they extinguish the very best elements of preservative force both in the greater and smaller communities, and instead of encouraging earnestness and devotion to principle, they expose all alike to negative, temporising, and demoralising influences. But the means are mistaken, even for the proposed end. There is more true and active preservative influence in Liverpool and Manchester, if full play were given to it, than in half a dozen towns which are severally placed on an equality with them. If an arbitrary grouping of smaller boroughs be attempted, Bridport, and Axminster, and Honiton, and a

* See *Fortnightly Review*, March, 1866, pp. 270, 353.

hundred others may have abundant objections to the union offered to them; and the simple solution of the difficulty is to allow them, as this scheme proposes, to group themselves. This may be done with unexceptionable justice, by fixing the number of electors which should fairly be permitted to return a member. A distributive Bill founded on this principle would not require that a single borough should be named in it, but would express one impartial rule that would govern all alike. Where shall we find that monopoly, or even superiority of virtue that entitles any constituency to object to this impartial measure of justice to the whole people? By such means alone can all persons and classes obtain their just weight in the representation. The conditions of this equal distribution would prevent any persons or classes from being swamped or excluded. I ask this power of organisation for the benefit of the workmen, the trader, the capitalist, the professional classes, that all alike may place in the councils of the nation those who best understand the legislation which they need, and that they may no longer be forced to concur in electing the men who can most skilfully affect a regard for the public at large, while they too often know little and care less for the real wants and interests of any.

REPRESSION OF CRIME.

Address by the Chairman, R. CULLING HANBURY, M.P.

AMONGST the many important social questions which occupy the attention of this Association, it may, I think, be said with great truth, that none are more important than those which have to do with the repression of crime. Even to those who have not given to the subject much of their time and thought, and who are mere casual observers, it must be apparent how greatly the social well-being of a country is bound up with the existence or non-existence of a criminal class, and with the success of efforts to repress crime. That crime exists amongst us to a very large extent, we need not stop to prove; our judicial statistics, and the other blue books on the subject show that here, as in every other country, there is a vast population whose very life and existence are dependent on their success in crime. The police know of upwards of 116,000 criminals, and we may perhaps, fairly assume that there are many more not known to the police. Of these a very large proportion show, by the number of their commitments, that they are no mere novices, but that crime has been adopted as a calling. During last year nearly 46,000 prisoners were committed, who had been previously found guilty; of whom about 8,000 had been com-

mitted twice, 4,500 three times, and 8,600 above ten times. To domicile this immense population when not in prison, there are no fewer than 20,000 houses of bad repute.

But the existence of this criminal class comes before us in another shape, when we are called upon both nationally and locally to defray the cost of repressing and punishing crime. Our police force costs us a million and three quarters annually, our convict prisons a quarter of a million, and our local prisons nearly £600,000. Altogether, these statistics show us that we pay more than two and a half millions every year under the head of crime.

It becomes, then, of the first importance to us socially to consider how we may best repress crime. We do not now stop to inquire whether this is by any means possible. Happily we have passed that point, and the experience of years has shown that wise and judicious measures may be adopted which shall not only work good to the individual offender in his own reformation, but which shall be of immense benefit to the community in the diminution of the aggregate of crime. On this occasion, speaking especially of the more serious offences which are punished with sentences to our convict prisons, we are able to refer with some satisfaction to very manifest and encouraging results of our efforts. Most who were not prepared for such a result by their intimate acquaintance with the facts, were doubtless astonished at the statement recently made by the First Lord of the Admiralty, that certain public works, for which provision had been made in the House of Common on the basis of convict labour, were stopped, or their progress delayed, for the very want of that labour. This is a result which may be inconvenient as regards these particular works, but which is most gratifying to the whole community. It appears, from the last Report of the Directors of Convict Prisons, that there has been a steady and marked decrease in the number of convicts, so that not only have the Government ceased to require accommodation in several county prisons, which they had needed for years, but that there are positive vacancies in the convict prisons themselves. Those who have attended the meetings of this section in past years, who remember the long and animated discussions we have had as to our various systems of prison discipline, and who have watched the gradual introduction of those reforms which were so persistently advocated here by many of our colleagues (and first and foremost by our friend, Sir Walter Crofton), will not be slow to attribute, and I think, rightly attribute, much of this satisfactory state of things to the reforms that have been introduced, and which are so well described in the report of the directors. The system in England has been somewhat assimilated to that which had proved so successful in Ireland, and considering the short time that has elapsed, with like encouraging results. Our convicts now know that prison life is no paradise; that a hard life in gaol awaits those who would not pursue labour out of doors; that we mean to punish, but at the same time to reform; that for their sakes as well as our own, we must and will repress crime. And I trust we may assume that the diminution of

with the interests or welfare of a people or community; and thus we find that the duties imposed upon a coroner in former days included investigation into all cases of fire and riot, although unattended with fatal results. It was also his "to know the particulars and circumstances respecting shipwrecks, and to determine who shall be put in possession of the goods."

True it is that society has allowed these matters to pass into other hands, and that laws, officers, and arrangements have been made respecting them; whilst the definition in a modern dictionary of the word coroner has become merely "a civil officer who inquires with a jury into casual or violent deaths."

Although the general use of the office is not, under present circumstances, required, it does seem important that the investigations which are still left as part of the duties should be as largely extended as possible. The very removal of the older responsibilities affords more time and opportunity for enlarging the perhaps most important feature in a coroner's appointment, "investigation into death-causes." And here I would suggest that this does not, in every instance, imply an assembling of a jury, or holding a formal inquest. Much of the opposition that has been felt towards anything like an extension of the coroner's office has arisen from the fact that an inquest was considered a *sine qua non* if any death was brought under public notice. The fear of publicity has thus been the means of checking the disclosure of many valuable facts, retarding science, and frequently also screening and assisting guilt.

The fact that life and death form now the basis and almost the whole of the duties of a coroner points out clearly the class of men suitable for the appointment; and the nature of the evidence offered, with the necessary talent to understand and sift scientific facts, must corroborate the view that a medical coroner is indispensable.

But his duties are not by any means to be included in the words "casual or violent deaths." Any condition or circumstance that produces such a state of affairs that a death results which would, humanly speaking, not have otherwise taken place, is a fit subject for the coroner's investigation; in other words, all preventible deaths come under his especial charge.

Not only, therefore, should the coroner work with the police-court and assizes, but also with the health officer, and in the latter position he should prove a most satisfactory check on, and at the same time an useful coadjutor to his brother officers.

If such views are allowed, it clearly points out that the coroner's office should form a distinct appointment, and that sufficient importance should be attached to it to lead men of position and ability to hold it.

In speaking thus of preventible deaths, of course I do not mean that every death is to be critically dealt with—nor would I for one moment depreciate the advantages and benefits of our present system of registration, when strictly carried out; but marked cases, repeated casualties in one locality, or frequent visits of an epidemic