nishing which the wealthy men of the city vied with each other, as for one of the great honours of the State. Here the exercises were harder; here emulation was kindled more keenly by the presence of continual spectators; here too, for fear lest too exclusive prominence should be given to the care of the body at the expense of the mind, sat and taught the most renowned philosophers of the day. Attendance on none of these teachers was compulsory. Access to none of them was forbidden. In this cool recess of the building you found a sophist explaining to a knot of pupils the subtleties of the art of reasoning. In that shaded avenue you met a rhetorician, teaching by precept and example the art of persuading. Under the long colonnade you heard a poet reciting part of the drama which (as all his friends knew) ought to have gained the first prize at the great dramatic festival. By the bath, or on the steps outside, or in any out of the way corner, you might stumble upon Socrates with a knot of chance comers around him, demonstrating to them how little, in spite of sophist, rhetorician, or dramatic author, they know on any of the subjects on which they were so self-sufficient, from the deeper mysteries of Being to the lighter matters of Art.

For the superintendence of the bodily exercises in their gymnasia, the Athenians, like the other Greeks, were fortunate in possessing a class of men who devoted their whole lives to athletic pursuits. Victory at the great international games and contests brought so much renown to the victor himself, and to the nation to which he belonged, that the State hardly knew how it could do enough to encourage him. This went so far that, in quite the early days, victory at one of these contests opened an easy road to political place and power. But it was soon found that, unless an athlete gave his whole attention to training for these contests, he could not hope for success. He ceased then to aspire to posts of political power, but continued to gather great renown, and more substantial rewards too, from his admiring fellow citizens. When one of these athletes was past taking part himself in the sports of the arena, or, though still young, was unable to aspire to the highest successes therein, he was placed at the head of one of the State gymnasia.

So much for the superintendence of the bodily training. But I should leave you with a false impression, if I were to omit all mention of the provision made for looking after the morals of the young men during their course of training. At Athens ten officials were appointed for this purpose—unpaid like all, or almost all, Athenian functionaries; but, like them, feeling it their highest privilege to be allowed to aid their country in the way they best could. They were entitled Sophronistæ, or supervisors of modesty, were present at the pursuits of the gymnasium, and were expected to watch over and correct, when necessary, the conduct of the young men approaching manhood, thus fulfilling their part in the task—what nobler one could there be?—of fashioning the characters of those in whose keeping the name and fame of their country would hereafter rest.

At eighteen, education, so far as it was given by others, ceased. What was done thenceforth was to be done by the youth himself. There was little fear that, trained in such a manner as I have described, he would ever be inclined to sink into inglorious ease, or fail in the duties of a citizen. And, so long as this system of education was kept up in its integrity, it did not fail. Many defects are rightly chargeable against the Greek character, but, till the spirit of luxury imported from the East corrupted the fibre of Society, there was no lack of hardihood and energy—no falling short in that pre-eminent virtue of the antique hero, the readiness to lay down life and all in the cause of his country.

II.

Instead of dwelling longer on the historical proof of the proposition that, in proportion as a people cultivates manly exercise as one, and not the *least* element in education, in that proportion is it great and strong—strong not in body only, for mere bodily strength by itself never raised a nation to eminence—but in the higher qualities of mind and morals; instead of dwelling longer on this lesson, of which every page of history is full, I will attempt to set forth the mode in which those manly pursuits are found to operate in strengthening the fibre of the character and in fostering those practical abilities of

which the world, with its mass of unredressed wrongs, its moral and physical evils, never stood more in need than at this present moment.

And, first of all, I say that manly sports and exercises afford the readiest and the most wholesome opportunity, for men or youths to meet together and get to understand each other's characters. It has not been at all sufficiently seen how great a part intercourse of this ready unartificial kind plays in education—not the education of the young only, but that education which is continued from youth to the grave, that education which is of most value in forming a nation's character. Every man can understand the advantage which we receive from reading books written, or hearing lectures delivered by people wiser or more learned than ourselves; but men do not allow at all value enough to that training which is given by familiar intercourse with others, who are perhaps (taken all in all) not very much superior to ourselves. Superior or not superior, they are different from ourselves; and it is from contact with that which is different from itself, that the human mind receives its first, if not its most enduring impulse. I have once before in this hall touched cursorily on this truth as respects the progress of nations. It is not less a truth as regards the progress of each man. If gentlemen, you analyze the source from whence you derived those lessons of wisdom which you most treasure, you will find that they sprang more from intercourse with your fellow men, than from books or from lectures. Books and lectures will give you the materials of thought; contact with the minds of others will stimulate thought itself. To alter slightly one of the truest of Solomon's proverbs, as iron sharpeneth iron, so the mind of a man sharpeneth that of his friend. And, not the mind only, but every faculty of man's nature. Familiar intercourse with others shows to us *all* their qualities: their strength, and their weakness. It enables us to understand, and so to master for ourselves, the source of their strength; it teaches us to make allowance for their weakness. It shows us the different points of view from which they approach the subjects in which we are ourselves interested. It brings us in contact with their prejudices, and thus inculcates forbearance and good temper.

And above all it reveals to us that, in spite of the frailties of our neighbours, there is that in them which will justify us in cleaving to them, and placing reliance in them, in the various occurrences, ordinary or extraordinary, of our daily life.

Now I am merely asserting a fact in which the experience of every man who knows the world will bear me out, when I say that no intercourse produces so many of these good results, as that which arises from companionship in manly pastimes. From whence is such knowledge of the bright side of human nature to be drawn; where is there such unreserved talk, such hearty yet innocent merriment; where are such enduring friendships formed, as in the cricket field, the rowing club, or at the cover side?

I claim for the honoured University of which I am myself a member that, with her sister Cambridge, she has done more than any other institution to train the character of England, and (as was well remarked by Justice Markby at the last Oxford and Cambridge dinner) that she has done so is due, not solely to her libraries, or her lecture rooms or her examinations, but also to the opportunities she gives for companionship in manly recreations.

Haileybury in its time did much good in the same way. So do the English public schools, to a less degree it is true, inasmuch as the boys are younger, and have not therefore reached the age when the set of the character is finally given.

This, however, is confessedly only an indirect result of devotion to manly sports. I proceed to explain the rationale of the large influence which they exercise directly upon the character.

To commence with the most obvious effects, physical training acts directly on the will. There is an almost invariable connection between strength of will and bodily activity. I don't, you will perceive, go so far as to deny strength of will to those who have not strength of body. This would be to deny to all weak-framed men the power of reaching the highest development of the race, for without strength of will what can be accomplished? But *almost* every man, however weak-framed, can at least be active, and thus strong-willed; nay, the very efforts which he makes to resist the indolence which his infirmities so often dictate, being themselves all manifestations of steadfast purpose,

go to strengthen the will, which, like all other human faculties, is invigorated by repeated use, and enervated by long disuse.

Let me, while on this subject, read you a noble passage from Lord Macaulay's History, a passage with which, I doubt not, many, if not most of you, are acquainted, but which, I doubt not, you, like myself, care to hear over and over again. He is commenting on the battle of Landen between the English under William the Third and the French under the fiery but mis-shapen Marshal Luxemburg.

"Never, perhaps, was the change which the progress of civilization has produced in the art of war more strikingly illustrated than on that day. Ajax beating down the Trojan leader with a rock which two ordinary men could scarcely lift; Horatius defending the bridge against an Army; Richard, the Lion-hearted, spurring along the whole Saracen line without finding an enemy to stand his assault; Robert Bruce crushing with one blow the helmet and head of Sir Henry Bohun in sight of the whole array of England and Scotland; such are the heroes of a dark age. In such an age bodily vigour is the most indispensable qualification of a warrior. At Landen two poor sickly beings, who, in a rude state of society, would have been regarded as too puny to bear any part in combats, were the souls of two great armies. In some heathen countries they would have been exposed while infants. In Christendom they would, six hundred years earlier, have been sent to some quiet cloister. But their lot had fallen on a time when men had discovered that the strength of the muscles is far inferior in value to the strength of the mind. It is probable that among the hundred and twenty thousand soldiers who were marshalled round Neerwinden under all the standards of Western Europe, the two feeblest in body were the hunched-back dwarf who urged forward the fiery onset of France, and the asthmatic skeleton who covered the slow retreat of England."

Here were seen two examples of a strong will overcoming bodily weakness. Without strength of will, in truth, nothing, as I have already said, *can* be accomplished. At the root of all obstacles to the improvement of self lies one's own indolence and habitual self-indulgence. At the root of all those which hinder the improvement of the race lies the resistance, passive or active, of others. Strength of will, fixity of purpose, are required to meet these obstacles, whether they exist in self or in others. What is the character that in this imperfect world rises nearest to perfection? Surely that of the man who, studying his own imperfections and shortcomings, strives by continuous efforts, by dogged perseverance, by never giving in, to fill

up his deficiencies, and to complete and exalt his nature. Who, again, is the social, who the moral Reformer? Not the man who, from study in the solitude of his closet, has attained to the clearest notions of where the evil lies, and what is the remedy; but the man who, often in a most unscientific, empirical fashion—still more often by the instinct of a healthy mind—having gained certain convictions as to the practical course to be adopted, clings to them in good repute and evil repute, and by sheer force of character bears down opposition.

In fighting the battle of the world, courage is not less required than strength of will. The two are indeed rarely found apart. The one is seldom, if ever, found dissevered from the other. And I think courage is, even to a greater extent than strength of will, closely connected with bodily activity. I speak not now of courage to endure, of fortitude in suffering. That is given rather to the patient, inactive portion of mankind, and has often been found, in its most perfect form, in woman. A noble quality it is; but I think you will agree with me when I say, that the world could more easily have spared *it*, than the other form of courage—the courage to do and to act in the cause of right, and in the face of danger and opposition. *Is* this form of courage, I ask you, to be found in a man whose nerves have been enfeebled; whose muscles have been relaxed by stagnation, and whose blood therefore creeps through his veins with languid, lethargic action?

Courage is hardly more necessary to the man who aspires to lead his fellows than high spirits, with which indeed it is generally allied. Of all the qualities that give a man influence over his kind, none is more powerful, none acts more naturally, and with less display of effort, than this. Who can resist the attraction of a frank joyous nature, full of vivacity and impetuosity? Such a character, without any arrogant assertion of superiority, without showing the least disposition to trample on the feelings or prejudices of others, simply carries them along with itself, by the force of the current of its own exuberant spirits. Yet which of us is ignorant of the fact that high spirits are only the accompaniment of good health, and that health is dependent on copious bodily exercise?

IV.

I pass on to another and less obvious benefit which arises from bodily training. It promotes bold and healthy, as opposed to subtle and morbid views, of men and things.

Here, as throughout the course of my argument, I start with the axiom that training and exercise are necessary conditions of a robust habit of body, and from a robust and vigorous body, broad, liberal views of life proceed as a natural consequence.

Many a time, when, as the result of over-work, or from over-devotion to sedentary occupation, or from a slight feeling of ill-health, a man detects in himself a tendency to hypercriticism, a disposition to dwell on the pettier and more subtle aspect of all questions that arise, and to neglect the grander and broader point of view from which such nice subtleties are found to be out of sight, he has been able to restore tone to the mind, by devoting a little more attention to the body. A long ride, a good hard pull on the river, a day's shooting, a walk over the mountains, if he is so fortunate as to be near one—quite braces up the nerves of body and mind, and banishes the mists of subtlety in which the man had vainly been endeavouring to grope his way. For, it cannot be too often repeated, truth dwells not in subtleties. In the realm of practical action more especially, the boundary that divides Right from Wrong is no hazy, ill-defined partition, but a clearly marked barrier, which he who runs can discern, provided he trusts to the instincts of a generous nature. Speculative research, it is true, often, unhappily, but inevitably, seems to lead men into nice distinctions and subtle refinements. Even here the most obvious and unmistakeable are also in general the most valuable truths: but it is still the case that in these branches of study there *is* a general tendency to subtilize; and it is this tendency which, by drawing men more and more away from the broad views, by lessening their power of forming the unhesitating decisions that rule the current of practical life, has in all ages prevented the majority of the philosophers of a nation from being its workers. Or, if a speculative thinker has risen to eminence as a worker as well, it is exactly because from his vigorous organization he has been able to fight against the

tendency which I have above described. Such a man, it will be found, has in his own person attained to large yet sensible views, capable of being brought to bear with effect on the existing order of things. It is not, however, so with the average run of thinkers, and it can never be so. They will ever be attracted by that which is subtle—by that which escapes the grosser appreciation of their less cultured brethren. And you will, I think, find that this characteristic is found most strongly in those men, and in those nations, which, in their system of education and in their habits of life, devote most attention to the mind at the expense of the body.

V.

I come to the consideration of a third class of influences which the culture of the body brings to bear on the individual members, and through them on the whole mass of a nation. It has been found to promote a high sense of the dignity of human nature. Now I am not going so far as to say that this sense will be found a sufficient safeguard amidst the various forms of temptation to which a man is exposed. That safeguard can only be fully given by religion—by humble distrust of self, and reliance on the Great Ruler of the universe. But I do say that the consciousness of the dignity of human nature will be found a very valuable aid, to the other and, I admit, higher motive. There are times in the course of each man's life, there are times in a nation's history, when the principle of faith seems dead, when spiritual views seem an impossibility, and when men succeed not at all in raising from material objects and forces that trust which they ought to repose, that reverence which they ought to bestow, on the unseen Master of all. In such times much good is done, much evil is spared, by a strong belief in the surpassing excellence of the human body, as a thing which it is shameful to defile by vice, or to enervate by indolence; as an instrument—the most perfectly fashioned in the universe—which should always be kept pure and ready for immediate use, and be devoted solely to the noble purposes for which it was designed.

I have here touched on the sense of shame as being closely allied with, if not the direct result of a strong belief in the

dignity of human nature. It is confessedly not the highest of motives. It acts less often by impelling men to what is right than by saving them from doing what is base. But it is a most valuable assistant to human nature, which is seldom in the mood for doing noble actions from the noblest motives. It deters men from yielding to the seductions of evil, because it quickens their instinctive perception of the dishonour that will result from yielding. In *almost* everything wrong—in *everything* wrong, indeed, if viewed aright,—there lurks some element of baseness, and this a man with a strong sense of shame will instinctively detect and avoid. And the restraint which he thus puts on himself is the commencement of a training in self-sacrifice, which again is the foundation of all moral discipline.

The high sense of the dignity of human nature which gives birth to the sense of shame above described, acts also, in other and more obvious ways, to fit men, and the nation which is composed of them, for the loftiest positions. From it flows a high sense of personal honour, a habit of mind which, when extended to the nation at large, engenders that exalted virtue—patriotism. From it comes manly self-respect, an independent bearing, which is equally removed from cringing subservience on the one hand, and flippant impudence on the other. From it again comes that individuality of character, the want of which, though I did not hear the late lecture at the Canning Institute, I doubt not the Lord Bishop noted as one of the greatest deficiencies of the age. Civilization is more and more tending to reduce men to conformity with a few well-known types, and there is need of a strong belief in the dignity of human nature, to enable each man to assert his individual peculiarities in the face of opposing conventionalisms.

Will it be felt that I have sufficiently set forth the benefits which flow from a strong belief in the dignity of the race, but that I have failed to show how this is, in its turn, the result of a devotion to bodily training? I will at once fill up the break in my argument.

In the first place, that on which men expend care and attention will assume in their eyes an importance which it would not otherwise have, and will be regarded by them as a thing so exalted that it should not lightly be degraded.

Secondly, the man who takes care of his bodily powers feels himself twice the man he would otherwise have been. The pluck, the high spirits, the sense of elasticity which are the results of a vigorous organization, itself again the result of free air and copious exercise, all give a man a sense of power in dealing with his fellow men or with the forces of nature. Feeling therefore in himself a power of combating worthily any difficulties that come across his path, he cannot help thinking more highly than he otherwise would of the race, to his membership of which he owes the possession of these treasured faculties.

Thirdly, no man can bestow much thought on the culture of the body without finding it easier to realize the true idea of man as a complex being which it is the aim of education to complete in all its parts, not merely to develop in this particular direction or in that. Now this true ideal of man is at the same time one so very exalted, that he who has fully realized it must perforce believe strongly in the dignity of the race. He may see, and see strongly, that the greatness of which mankind is capable is far from having been fully attained, and that at present there are in many places hardly more than germs of good obscured by accompanying masses of evil. But having once thoroughly comprehended the variety of excellence of which human nature is capable, if skilfully developed, he will not consent to believe, that it is the lot of himself as an individual, of the society of which he is a unit, or of the nation of which that society is but a part, to halt in the path of progress onward.

I am, I know, herein claiming much for devotion to bodily training, as the path by which man is to be led to the conception of the completeness, the many-sidedness of his nature. If I saw that, in the educational systems of this country, there was little danger of neglect of the body, and much danger of neglect of the mind, then the converse truth is the one on which I should dwell. In such a case, I should say ; "you *have* attained to the conception of one branch of education; but in your exclusive devotion to that branch you are in danger of forgetting the rest, and so long as you forget the rest, you fail to realize the true object of education—to complete and perfect man in *all* his parts. For *you*, then, the path by which to

succeed in reaching that truer notion of education is greater "devotion to the wants of the mind."

But for you, young men of Bengal, the lesson is different. Starting from the same premises, and pursuing the same line of reasoning, I say unhesitatingly, it is the exclusive attention paid to the mental, to the neglect of the bodily faculties, that makes your course of education partial and incomplete.

Closely connected with this class of benefits derived from physical training is the originality of mind which it nurtures. I have already mentioned individuality of character as one of the fruits of a strong belief in the dignity of human nature. Now one of the forms of individuality is an original habit of mind, as distinguished from a disposition to imitate servilely either our contemporaries, or our ancestors. No one, I think, will challenge my assertion, that unless the fabric of society gives room and scope for the growth of original views, there is not much chance of progress. But originality implies in its owner a vigorous and elastic organization, a fearlessness of responsibility, and a readiness to face opposition in defence of one's own distinctive opinions.

And this brings me, (not, as you will perceive, very directly, but by a process of association of ideas) to the last of the benefits which attention to bodily training confers. While listening of late to the stirring address of your gifted countryman at the anniversary of the Brahmo Somaj, I asked myself what chance there was of the noble truths to which he gave utterance, finding a cordial reception among his audience. As to their acceptance by a strong and stalwart race I could have felt no doubt. The men of such a race, after once making up their minds that the truths set before them were sound, and sensible, and capable of elevating them to a higher place among the nations of the earth than they could otherwise attain to, would have taken shame to themselves if they had suffered any fear of the results to deter them from adopting those truths as the guide of their life. If friends quitted them in consequence, they would (being warm-hearted men) have felt a natural pang, but would not on this account have turned back. The mere ridicule and opposition of the world they would have laughed to scorn, having in themselves such sources of self-

respect as to be quite independent of the opinion of those whom they did not see reason to reverence. But it would, I felt, be otherwise with a weak-framed, lethargic race. They would linger, and listen, and admire; but they would not carry admiration into practical action. Practical action, would certainly involve exertion, and probably involve opposition. It would be a stepping from the known to the unknown —an abandonment of all the familiar comforts of the former, and a braving of all the possible risks that might lurk in the latter. In such an enterprise a man must be supported by courage, high spirits, a taste for adventure; all of them qualities which are not less requisite in facing moral than in facing physical uncertainties. Nay more, the faith, the strong convictions which move men to take a bold step of this nature, are not, as a rule, given except to men of energetic temperaments. The Almighty does not give this—his choicest gift—to those who will not turn it to account.

VI.

Higher than this I cannot go in tracing the several effects of a proper attention to the claims of the body. I have shewn that manly sports afford to men of all ages, more particularly the young, the best opportunity of meeting in a manner which at once shews each what is in the other, and also engenders confidence and mutual reliance. I have shewn that the healthy organization that ensues, begets strength of will, courage, high spirits, and individuality of character; that it is the enemy to undue subtlety of thought, that its possession raises a man's sense of the dignity of his race, and thus guards him from base actions. And finally, I have shewn that without it there is seldom that strength of conviction which carries man on in the path of duty, in face of danger and difficulty. I have throughout been anxious to guard myself and my subject from the notion that *all* the benefits which I have attributed to bodily training flow from it alone. Of some it *is* the exclusive source. Some qualities it combines with other forces to foster. *All* are so powerfully developed by its means that it cannot be suffered to be absent from any complete scheme of national education.

I have dwelt chiefly on the benefit resulting to *individual* men, and may therefore seem to have fallen short of a full treatment of my thesis—bodily training as an agent in the regeneration of whole *nations*. But I beseech you to remember that the strength of a nation consists in the strength of its several members. It is by directing attention to the improvement of the individual citizens,—not this class or that, not of the upper orders alone, nor of the masses alone, but of ruling classes and subject classes alike,—that national regeneration is effected. If you look at the history of your own country, its pristine greatness, its premature, but, we all trust only temporary, decadence; or if you look at the history of other countries, which have occasionally flashed forth, but only for a time, into great brilliancy, you will see that the cause of the decadence in the one case, the cause of the speedy evanescence of those bright flashes of brilliancy in the other cases, lay in the absence of strength from the *average* character of the citizens. Few of us, I think, are likely to forget the striking sketch of the character and career of the great Akbar, delivered before this Society by our late President last year. Why did this, the greatest of men and of kings, though achieving unparalleled success while he was alive, and able himself to give a vivifying spirit to his institutions, nevertheless fail to establish an enduring order of things? Why, but because it requires men and not machines to carry on administrative systems, after the force that has set them in motion has stopped; and because neither the men on whom the conduct of Akbar's schemes devolved after his death, nor the individual citizens for whose benefit he worked, had a particle of Akbar's spirit. History abounds with similar instances. I shall select two, the most striking with which I am acquainted.

After having long been an insignificant unit among the Republics of Greece, Thebes suddenly, with one effort, bounded into the foremost place under the leadership of Epaminondas and Pelopidas. They died, and there was found none to succeed them. In the very next generation after them, Thebes had sunk to be (considering her size) the least important of Greek States. Connect this with the fact that the Thebans were noted throughout Greece for lethargy in body and mind,

and you will have no difficulty in tracing to its proper cause the evanescence of their power. There is in modern European history one instance at least as striking. Sweden was of no account in European politics, till one of the noblest men of modern times (Gustavus Adolphus) overran Germany with a Swedish Army and dazzled Europe with the brilliancy of his victories in the cause of the Reformation. For a time he and his Court were the pivot on which revolved the fortunes of Europe, but, when he died, the importance of his country died with him. Again, a century later, a descendant of his revived the name of Sweden, filled Eastern Europe for a time with the fame of his projects and his victories, and found himself and his country courted as an ally by the mightiest States of the West. When he was killed, Sweden again sank to be a fifth-rate power, and was indeed long the scene of anarchy and corrupt intrigues, all for want, not of able men in high places, (for nations have been known to pursue an even and prosperous career without such) but for want of a body of honest and patriotic citizens to give tone to public opinion, and vigour to the administration. The cause is not far to seek. The standard of virtue and patriotism has long been low in Sweden. The pursuits of the people are frivolous, their habits are luxurious.

From such a nation a great man may occasionally arise, and for a time, by the mere force of his talent, brace up the relaxed fibres of society. He *may* even appear to have succeeded in permanently regenerating his country, but the fallacy of such hopes will be discovered at his death. He will, it is almost certain, have lacked time to train up a fresh generation imbued with his own lofty spirit, conscious of the obligations that they owe to their country, determined to pay those obligations even at the expense of loss to themselves, devoted, in a word, to truth, honour, and duty. Till such a character has become common, few reforms can produce an enduring effect, from want of reliability in the instruments by whom they are to be executed. When such a character *has* become common, few storms from without can shake the Nation.

THE HINDOO JOINT FAMILY.

A LECTURE DELIVERED AT THE BETHUNE SOCIETY.

March 18, 1867.

BY

MR. JUSTICE PHEAR.

THE last meeting of the Bethune Society for the Session of 1866-67 was held on Thursday evening, the 18th, in the Theatre of the Medical College. The room was crowded to excess, and every available place of standing ground was occupied. The President of the Society, the Hon. J. B. Phear, was in the chair during the transaction of the ordinary business of the meeting; but as soon as that was over, he vacated the chair in favour of Mr. Woodrow, and proceeded to deliver a Lecture on the "Hindoo Joint Family."

Mr. Phear commenced in nearly the following words:—

Mr. Chairman and Gentlemen,—It is now the practice, and has, indeed, I believe, almost become the duty, of your president once at least during the Session to deliver a lecture before you. In your kind desire to be complimentary towards me, you have pressed upon me your wish that I should not this year escape from this presidental obligation, and thus it happens that I am standing at this desk now. I am not about to ask your indulgence for anticipated shortcomings, because I know that you are at all times ready to extend it to me without any petition on my part; but I think I ought, by way of preface, to mention to you two circumstances in connection with my lecture. In the first place it is a written one, and I must add that I never before ventured upon anything so formidable as to read a written discourse to any audience. I have never pretended to put

forward anything which could claim to bear the character of a considered essay, and whatever I have said in this place or elsewhere, carried with it no greater weight or importance than oral utterances in general deserve. Even the lecture which I lately had the honour of delivering at a neighbouring institution forms no exception to this; for what I there read was but the printed report, with a few additions, of what I had previously spoken on another occasion in another place. And although my present lecture is in writing I must beg you still to treat it as if it were merely an extempore production. It is, in truth, but a hasty compilation of scattered notes. After I had pledged myself to give the last lecture of your season, I found that I had no topic at hand, except such as these notes furnished me with, and I soon came to the conclusion from the number of references and quotations, at length, from Manu, which these contained, that I could not hope to present the matter to you with any smoothness, unless the different parts were first arranged and put together in writing. I wish that the time at my disposal had been sufficient to do something more than this; unfortunately, however, I have barely had leisure enough to make what I have written consecutive and coherent. The second point, to which I have referred, relates to the nature of the subject which I have undertaken to approach; no one knows better than myself how little qualified I am to attempt either to instruct or to advise you in regard to it. I am a foreigner; but very lately come among you; very superficially acquainted with your habits and customs; even less informed in regard to your literature, and, by necessity, absolutely ignorant as to your inner family life. Still, crude and ill-formed as must be the views of any one so situated, they may have a value for you, were it only for this, that they are taken from a point in which you can never place yourselves. At any rate, they may have materiality enough to afford subject for discussion, and in the hope that this may be the case, I now propose to lay them before you.

Mr. Phear then proceeded to read the address as follows:—

To an Englishman coming to this country for the first time probably the *Joint Family* is the most novel and remarkable feature of your Hindoo Society. It is a remnant, among others

still manifest among you, of an archaic stage of civilization, which has so completely passed away from Western Europe, as to have left but slight distinguishable traces behind; you, who are born, live, and die, with the institution in active existence among you, doubtless either take no heed of it at all, or, if by chance it arrests a passing thought, are content to see in it a very common place and most natural social fact. Shall I succeed in exciting your curiosity by telling you that it seems to me, a stranger, to be in a very high degree worthy of attention, on account both of its antiquarian importance, and of its effect as an element in the political economy of your country.

Perhaps I ought in the first place to remind you that in Western Europe society some long time ago arrived at that point in its development where the unit, to which rights and responsibilities, whether moral or proprietary, attach before the law, is the individual man, and you are probably aware that our best historic jurists (among whom we of India ought to be specially proud of being able to number Mr. Maine) hold the opinion that before society can have arrived at this part of its career, it must have traversed a long distance of time, and passed through many changes of form. It is not difficult to understand that the first distinct form in which *authority* would make itself felt among men would be the patriarchal form, or that in which the father is the sole and irresponsible ruler of the family, and its dependants: then families become grouped in tribes under one head, and tribes become subordinated to one leader. At last by some such steps as these, the *State* is reached, and a central power (whether in a monarchic or oligarchical shape) asserts itself over an area which includes not only a variety of tribes, but it may be even a diversity of races. But in the earlier stage of its history, the state power does not concern itself with the acts or well-being of individuals; it descends no lower than the families of which the individuals are members. Within the family, as before, the father or other head remains absolute: the liberty, and even life, of every son, daughter, wife or servant, hangs upon his will. No one acquires property for himself. Land is occupied, tilled, and moveable property enjoyed by the whole family collectively under the directions and supreme ruling of the family head.

I will not weary you by dwelling in detail on the mode in which the family in its simplest and most destructible form, *viz.*, of father, mother, and children only (seemingly by a necessary law) developes itself into a permanent corporation, replenished by adoption, and pruned down by the excision of the female branches. Mr. Maine has worked out this subject very completely in his masterly essay on "Ancient Law." It is sufficient for my present purpose to impress upon your memories that almost certainly at one period of social development, the State, *viz.* the authority which dispenses public law and order, views the family group as the ultimate subject of Government, and only reaches the individual through the medium of his family chieftain. All personal rights, privileges, and obligations, so far as they receive recognition at all, are matters *within* the family, subject at first to the irresponsible control of the chief, though, no doubt, afterwards more or less marked out and acknowledged by family custom. Further advance is distinguished by the gradual disintegration of the family organization, the withdrawal of private topics one by one from the domestic tribunal, and the invasion of public law into the family circle, until at last the relations of men to one another in the same society, their reciprocal rights and obligations, are regulated in the eye of public law without the slightest regard (favourable or the reverse) to their relative status by blood, or any other connection than that which presumably takes its rise in their own voluntary action. At any rate this seems to be the destination to which society in its progress is universally tending—as Mr. Maine shortly expresses it—"the movement of progressive societies has been from *status* to *contract*." We of Western Europe are very nearly clear of subjugation to the family; although not entirely so. The legal position of the wife relative to her husband is not yet referable on all points to a voluntary agreement, and some presumptions as to contracts by implication amount probably to putting so many obligations of status into a disguised form. And our social etiquette, with a potency and universality of influence beyond that of any legislative enactment, condemns the women of our upper classes to a helpless dependence upon the other sex, which is nothing more than the old family vassalage partially concealed by a veil of

modern refinement. Still, on the whole, in practical life, we have shaken off all *family* dependence, except such as exhibits itself in the play of the affections. Every man's aim is to stand by himself in the world, and to have his own separate hearth-stone. Our social unit has been reduced back to its original nucleus—the primitive group of parents, and their youthful children. The period of minority once passed (and often before,) each man and woman, whether he still continues to reside under the paternal roof or not, is taught to look to his own individual means of livelihood and no other: these means may come to him in the shape of an income allowed to him by his father, the daily acquisitions of his own labour, or capital inherited from ancestors: but in all cases alike, the leading idea of his life is that he is his own master and maintainer, and can expect no substantial aid, even from his nearest blood relations, except at the cost of an obligation to which no rightminded person ought complacently to submit. In all classes of people equally the inclination of children is to break away from the paternal home as soon as possible, and to achieve absolute independence of parental aid. It is held to be matter of reproach to any that they should show an opposite disposition. From the moment of birth to the day of death every person's rights and obligations, proprietary and personal, are as distinctly ascertained, and as stringently enforced if necessary against his own father, as against the most complete stranger. No social opinion, even, exists to interfere with the positive assertion of individual rights, however near the opponent, while on the other hand, social opinion very earnestly inculcates free individual action as a high moral duty of personal obligation.

I think I am not wrong in supposing that this description falls very wide of the prevalent state of society among you. In truth, your *Joint Family*, where it exists, negatives every sentence of it. Doubtless, public law here, as in England, now finds its way to the individual man, whether for the vindication of justice, or the maintaining of civil rights; and doubtless every individual man among you has his personal and proprietary rights and privileges completely defined before the Law, both positively and negatively. At the same time, by custom and habit, your every day state of society does still involve a very great deal

of the family element. It might be interesting to inquire how it has happened that the individual has theoretically been so entirely emancipated from family thraldom, while yet so much of the family mode of living has been retained; and possibly if an investigation of this kind were pursued, it would be found that much effect was due to the circumstance that in this country public law has been so long administered by foreigners. But this evening I am not so much concerned to discuss the why and the wherefore of the advance in the one particular as to call attention to one reason, as I conceive, why there has been so little change in the other. This reason is, that your municipal law is identified with, is inseparable from, your religion: the same authority which reveals to you your duty to God and your neighbour, prescribes to you the details of your daily life. As the books of Moses were both the law and the Gospel to the Jews, so in even a yet higher degree is Manu, and others, as well the political and economical as the religious guide to you. We Christians, while confessing the inspired authority of the Old Testament, are able to escape the clogging effects of its civil precepts, by regarding it on this point as a special dispensation to a peculiar people, from whom we trace no lineage, and whom we in no degree represent. You are not able to take a similar course. The most that your commentators can do is to develope and expand by analogy (a process which, I need not say, has its practical limits). They cannot deliberately omit, at least they cannot do so after a certain period of commentatorial aquiescence, and even more than could have been expected in this way *a priori*, was done by your early sages and writers when they excluded some portions of Manu from operation in the Kali Age. Religious considerations have thus fettered your social manners and customs to the model which Manu, and those of his age, held before the face of your ancestors very many centuries ago. You cannot loosen those fetters, whether for good or evil, without risking the loss of your religious faith. The struggle which the very natural dread of consequences to flow from disturbance of accepted beliefs makes so bitter to our physicists, is with you fought out on the comparatively lower ground of social reform. I do not mean to imply that you have not, nevertheless, achieved great progress in this

matter; I only desire to point out, as I have already said, one force among others which cannot be otherwise, as I conceive, than powerful in conservation of a large proportion out of the total elements of the pattern which was originally given to your ancestors as representing a perfect moral and political system of society.

I must presume that you are all much more familiar with your own holy books than I could make myself with any study. I labour, too, under the serious disadvantage of not being able to consult your Shasters in the original. But I must confess, further, that my acquaintance with them, such as it is, is limited to Manu, and to such further glimpses as the usual Hindoo legal authorities can afford one—particularly those commented on in Jaganatha's Digest, the Dyabhaga, and other books of that class. I will however, be bold enough this evening to submit to your attention, some of the principal features of society, as they appear to me to be delineated in Manu's picture (for I suppose that the work which bears his name is the root of your social and moral system), and I will leave it to yourselves to ask whether they correspond with any position in the onward march of civilization at which you are contented that your country should stop.

I know Manu's Institutes only through Sir. W. Jones' version, and I am consequently quite unable to appreciate the arguments relative to the age of that principal portion of your scripture which are to be drawn from the language and style in which it is composed. However, there is no doubt that the epoch at which it was put into the present form was very distant from our own; the antiquity of the book, as it has come down to us, is incontestable. Whether the work emanated from a priesthood or sacred caste, and consequently bears the impress of the period, reflects the state of society which obtained when it was compiled; or whether, as you are taught to believe, it is the utterance of a divinely inspired author, speaking in anticipation for all time, is quite unimportant for my present purpose. I only desire now to point out to you some few of the leading social and economical facts bearing on the subject of this lecture, which the book either expressly speaks of, or impliedly assumes, as incidental to the Utopia it describes. They are such, no doubt, as characterize

a considerably advanced stage of civilization. The words of the text, too, everywhere speak in the present tense of a long past. One is irresistibly led, whether rightly or wrongly, to suppose that the standing ground upon which the author placed himself for the purpose of teaching his audience was situated some long way down the course of history. Thus he constantly refers to *immemorial* custom, to the customs of *different countries*. He speaks of sacred texts as at that time already existing with different and opposing tendencies. And again having told of the original creation of man in *four* castes as a past act of the deity, he afterwards speaks of *immemorial tradition* in each of those castes, and of the mixture of classes which had taken place. He also gives in detail a large number of subordinate castes resulting from such mixture, each with its specific name and occupation. He mentions hereditary transmission of disease, a physiological law, which cannot be arrived at by observation without the lapse of considerable time, and he founds upon it very sensible directions as to the precautions to be taken in regard to marriage. He further enforces an injunction against certain mixed marriages by remarking that no instance of its non-observance had been mentioned "even in the *recital* of any *ancient history*." I could add to this sort of evidence very largely. But to strangers unprejudiced by religious feeling, the most convincing proof of the comparative lateness of Manu's era relative to the commencement of the human race is to be found in the extent of the knowledge indirectly displayed by him, limited and infirm as it was, on various scientific and economic topics. He was aware for instance that to an inhabitant of the moon's surface day and night together covered the space of a lunar month, and that similarly to one placed at either of the poles night and day would last a year, day at the North pole corresponding to night at the South, and *vice versâ*. These are conclusions to which man, if unaided, could only be led by a long course of intelligent observation and reasoning; and with many other of a like kind they indicate that Manu's philosophy, unless it be considered as a divine gift, in which case it was singularly imperfect, must have been the growth of a considerably advanced period in the development of the human intellect. However, this may

be, let us now look at the characteristics of society as he represents it, and would have it maintained.

You will see at once that the family was treated by him as a distinct unit among the different subjects of Government. It might have its own internal laws and customs which the ruling power was bound to respect and enforce. Thus we read "a king who knows the revealed law must inquire into the particular *laws of classes*, the *laws or usages of districts*, the *customs of traders*, and the *rules of certain families*, and establish their peculiar laws, if they be not repugnant to the law of God." And, "what has been practised by good men and virtuous Brahmins, if *it be not inconsistent with the legal customs of* provinces or districts, of *classes* and *families*, let him (the king) establish."

Of the interior of the family itself we do not get many glimpses. The women certainly occupied a very subordinate position. "By a girl, or by a young woman, or by a woman advanced in "years nothing must be done even in her own dwelling place "according to her mere pleasure. In childhood must a female "be dependent on her father; in youth on her husband; her "lord being dead, on her sons; if she have no sons, on the "near kinsmen of her husband; if he left no kinsmen, on "those of her father; if she have no paternal kinsmen, on the "sovereign; a woman must never seek independence. Never "let her wish to separate herself from her father, her husband, "or her sons; for by a separation from them she exposes both "families to contempt. She must always live with a cheerful "temper, with good management in the affairs of the house, "with great care of the household furniture, and with a frugal "hand in all her expenses."

At the same time Manu inculcates almost a chivalrous bearing towards women, and places it upon the basis of a religious duty. He says—

"Married women must be honoured and adorned by their "fathers and brethren, by their husbands and by the brethren of "their husbands, if they seek abundant prosperity: where the "females are honoured, there the deities are pleased; but where "they are dishonoured, there all religious acts become fruitless. "Where female relations are made miserable, the family of him

"who makes them so, very soon wholly perishes; but where "they are not unhappy, the family always increases."

It is also clear that Manu had no thought of women being secluded. He contemplates their going freely abroad in the world, and if my memory does not fail me, he directs the form of respect by which a stranger should address them, and makes it matter of something more than mere gallantry, that they should have the best places yielded to them on the highways and elsewhere.

On the whole, then, making allowances for the great difference between the age of Manu and our own in the material conditions which surround domestic life, (I refer to general increase of wealth and of the means of procuring home comforts, or supplying family wants without the menial labour of the female members,) I see nothing in the views propounded by him, or in the manners and habits which he sanctions, to prevent Hindu women from now-a-days taking pretty much the same position in society as do their sisters in Europe. For, as I have already intimated, the subjugation of the latter to the *patria potestas* is by no means yet a thing of the past. And in regard to rights of property, the married woman of England is even now more fettered and restrained than is the Hindu wife. The truth is, no doubt, that a cause, not altogether Hindu in its origin, has operated to keep down the status of woman in India, and has retarded the proper development of her character and education relative to the advance of everything about her.

However, I am not concerned, just now, with aught which lies outside Manu's picture, and he forbids woman to be independent of the family whether that of her father, her husband, or her brother &c.,—to which (one or other) she must inevitably belong.

As to the sons, he manifestly expected that, while the parents were alive, they would remain under the parental roof, and he does not appear to have contemplated the possibility of their following any other occupation than that of their father. There is, I think, a single passage in which he speaks of a man's duties "if he be living without his parents in his own house," but he assumes generally that sons will "live under" their father. "After the death of the father and the mother," he says, "the

"brothers, being assembled, may divide among themselves the "paternal and maternal estate; but they have no power over "it while their parents live, *unless the father choose to distribute it.* "The eldest brother may take entire possession of the patrimony, "and the others may live under him *as they lived* under the "father, *unless they choose to be separated.*"

The head of the house was allowed a certain power of personal chastisement:—"A wife, a son, a servant, a pupil, and a "younger whole brother may be corrected when they commit "faults, with a rope, or the small shoot of a cane;" a power which (I need hardly remark) fell very far short of that extreme authority which the head of the family enjoys, when the family element has its most distinctive character.

I gather from these and analogous texts that the family, as Manu saw it, was at a point far on this side of the position of maximum development to which I have already alluded. Causes of disintegration were at work in it: but the law-giver attempted to put some drag upon their action, and by definition and specification did his best to limit the scope of their operation.

At the same time these causes must have been comparatively feeble and wanting in intrinsic force, for the principles of communism were then in considerable activity even outside the family. All purely waste places in jungles might be grazed or otherwise made use of by all persons alike, so far as they found opportunity. The rest of the country is treated by Manu as being parcelled out into village lands with defined boundaries. There are not wanting indications that the villages were at that time of comparatively modern origin, and that the woods and less accessible places about them were the retreat of a rude and primitive set of people. However, this opens matter of inquiry which I will not pursue, because, interesting though it be, it is entirely beside my present purpose. Within the village limits the land seems to have been divided into pasture, arable, and garden ground. The pasture occupied the outer space of the village area, and bore some rough proportion to the size of the town: it was enjoyed in common by all the inhabitants. In this outer space, also, were situated wells, pools, streams, and temples dedicated to the gods, all public in their character.

The cultivated ground lay towards, and in the centre of, the village allotment. This appears to have been the subject of exclusive private possession in the shape of arable fields, tanks, gardens, and houses. I am disposed, however, to think that even where private possession, and the right upon which it was based, was rather that of the *family* than of the *individual*. Manu nowhere seems to have contemplated the man himself as a complete unit: he always regarded him, whether for religious or municipal ends, as closely bound up with his forefathers on the one side, and with his children and descendants on the other. And so essential is this view of him to the whole scheme of the institutes, that the most elaborate system of adoption is introduced for the purpose of supplementing the shortcomings of nature. In truth, I take it, that whenever the practice of adoption prevails largely among a people it is indicative of a general desire to conserve and prolong the existence of the family, mainly with reference to the descent of the family possessions. And I imagine that it will seldom be found considerably developed, side by side with the practical exercise of any strictly personal right of enjoyment or power of disposition over property. On the other hand, I am bound to remark that the doctrines which are most essential to the due development and maintenance of personal proprietary rights, received unmistakeable recognition at the hands of Manu. "Title and not occu-"pation," he says, "is necessary to support a sale of property:" "a gift or sale made by any other than the true owner must, "by a settled rule, be considered, in judicial proceedings, as not "made." These words are, no doubt, spoken with reference to *moveable* property only, but the principle involved in them is capable of general application. And it is further very markworthy that Manu was also aware of the exception to this rule which the necessities of trade imposed, namely, that "he who "has received a chattel by purchase in open market, before a "number of men, justly acquires the absolute property by hav-"ing paid the price of it," though he limited the full benefit of this exception to the case where the vendee was able to produce his vendor. If he could not do so, the loss was divided between himself and the original owner.

The long list of offences against property which Manu gives,

distinguishing between cases of theft and quasi theft—(of the nature of breach of trust)—also manifests considerable discrimination in regard to different proprietary relations between individual men.

On the whole, I am disposed to conclude that Manu's institutes were composed in view of a state of society, where the house with other immoveable property was, as a rule, enjoyed by the different members of the family in common, and occupations or business of profit were usually carried on by their joint labours, but where moveable property was also very generally the subject of separate personal acquisition. And no doubt, also, individuals were at the same time assumed to be in a considerable degree amenable to the state power.

Now, whatever habits of life or usages are prescribed, or are implicitly sanctioned by the sacred law-giver of a people must necessarily, I imagine, possess exceptional vitality and power of resistance to the action of destructive agencies. Or perhaps I ought rather to say that the effect of the moral and religious influence of the book is to keep such agencies aloof. Has this been the case among you? I think it has been eminently so. For to no other cause than the authority of your sacred Scriptures can I attribute your persistence at this day in habits of joint family life very nearly resembling those which I conceive to be depicted by Manu. Probably nearly all the races of the civilized world have at some period or another of their history exhibited these or their like, but if so, they have long left behind them that stage of social progress to which these features are incident. You fall among the few who have preserved the joint family in spite of such disintegrating causes as may have been in operation about it: and you have moreover preserved it, if I mistake not, very much in the incomplete and partially disintegrated form under which Manu left it. I confess that I am not in a position to draw out the parallel in detail, but I venture to hope that I have reproduced the outlines of Manu's sketch sufficiently nearly, to enable you to judge what is its verisimilitude in regard to your modern ways and manners. As far as I can see, you have deviated from him for the worse concerning your treatment of women, but in other family arrangements and behaviour you maintain so

strangely close a resemblance to the model provided by him as can only be explained by reference to the conservative authority of the Scriptures themselves.

I have now reached the chief end to which I proposed to direct your attention, when I commenced this evening. I have pointed out what seems to me one great cause at least of the present vitality of the joint family system among you. I will now, with your permission, very shortly hint at the useful purpose which that system obviously serves in a special degree, as well as at its drawbacks and the obstruction which it places in the way of social progress.

In the first place, the practice of all members of a family living together under one roof, and receiving maintenance from a common stock, has the effect of preventing much of the misery of extreme poverty, which is too often witnessed in England. With you, the helpless from age, youth, sickness or indigence, obtain, as a rule, from their immediate relatives that refuge and protection which paupers among us can only look for at the hands of the workhouse official or from public charity. Which of these two is the more wholesome state of things I need not stay to point out. Your joint family system, and the spirit which it keeps alive, is perhaps the only alternative to a poor law which is calculated to have effective operation in this country. But while your system is admirable to look at on its affectionate and charitable side, it has a reverse: it takes away from the individual that stimulus to exertion which the sense of self-dependance alone can give. I have been often grieved, during the short time I have been among you, to see men of the middle ranks, in the prime of life, residing at the family house with their wives and children about them, in a state of perfect idleness. I cannot find that they even avail themselves of their leisure to pursue any literary, scientific, or artistic studies, and as far as I can learn, very few Bengalee gentlemen possess so much of a library as an ordinary English artizan of respectability considers to be necessary for the due furnishing of his *Báitákhana*. But not only do the young men themselves think it no shame to accept a livelihood from a store to which they do not in any way contribute, but the father, elder brother, or whoever may be the *karta* of the family, is quite content to see his

hive filled with drones instead of workers. Now, apart from all considerations of public good, which requires for its full development that every hand should have its task, I cannot help thinking that this indifference to the importance of a life of activity and industrial purpose has a very prejudicial effect upon the personal character. Clearly it is antagonistic to any exhibition of energy. It is fatal to the development of any true spirit of enterprise, and in some sense affects the common appreciation of honesty. Where there is so much scope for talk and little thought of action, where word and deed are separated by so great a distance, there is apt, I imagine, to be some blunting of the moral senses. At any rate, the sharply defined boundary between fact and speculation may easily become blurred and lost to sight, for there is no whetstone for the perception of the sacredness of truth comparable with that which is furnished by daily responsibility for things done. It must not be supposed, moreover, that the growth of family affection is necessarily stunted by the separation of the individual members. One of the most eloquent of modern French writers, M. Montalembert, has in a late essay described the English people as being markedly distinguished at once for the active play of the family affections, and for the independence, energy, and self reliance of each individual member of society. On the other hand again, no doubt, the grouping together of all the members of a family in one pursuit might be always, and often is, (for instance in agriculture) very valuable in its results. I do not refer to persistence in one occupation merely because preceding generations have always engaged in it; this of itself is purely mischievous; but I look to the advantage which community of interest among fellow labourers, and their expectation of sharing in the proceeds of their united efforts, never fails to bring about. In England we have, at last, learned by hard experience how helpless is the individual man when left to shift for himself in the isolation to which the complete disintegration of the family union has reduced him; and we have taken one step further in advance by forming societies of co-operation, in which the tie is that of interest instead of blood—the individual being still left under the influence of personal stimulus. Taught by this example, I have looked at your family system with the

expectation of seeing in it some analogous action; you must, as well as ourselves, have discovered the economical advantages of combination, and the joint family would appear to afford an eminently natural mode of carrying it into effect. And yet, unless I mistake greatly, with almost the single exception of agriculture, your family industry does not generally exhibit itself in the form of united activity in one concern. The members may live together and draw upon a commom fund, but they work, as a rule, when they do work, singly, only bringing their respective earnings back into the common stock. In this way, the benefit of unity of management and division of labour is lost, and very little of combination is left beyond the outward form. I should like to learn how far my impressions on this point are to be relied upon; for if they approximate to the truth, it will be of great interest to inquire the cause of this curious result.

I do not propose to approach the internal and purely domestic aspects of the joint family except so far as to make one remark, namely, that it seems to me the early age at which your women marry is the keystone of your present domestic structure. The girls are now taken to their husband's family while they are mere children, and can be readily moulded to the ways of strangers. Should the time ever come, when marriage shall be postponed till the women have received some real education, and acquired individuality of character, however slight, in the house of their father, it will I think be found afterwards impossible to maintain any very close union under the roof of the father-in-law. There remains only one matter in connection with the whole subject upon which I will trouble you further this evening, that is, the effect, if any, of your peculiar system upon the condition of immoveable property. I do not hesitate to say that it seems to me your family jointure of ownership produces a very injurious effect in this direction. Of course the value of my opinion, whatever it might otherwise be, is seriously diminished by the smallness of my experience. Still I think I can submit to you some justification of my view. Land, whether it be fitted for agriculture, or building, or other purposes, can only be made the best use of by the continuous application of considerable capital, and of course capital will only be devoted to such an object by persons who have the sole

and irresponsible control over it in the shape either of money or credit, and who, besides see that they will, in all reasonable probability, get a fair return for their outlay. But this proposition leads at once to the conclusion that land (speaking generally) will not be improved, except by an owner who is unembarrassed in regard to the perception of its profits, and who, by the command of capital, can increase those profits. The possessor of capital must come into direct contact with the land, before agriculture in Bengal will be advanced, the soil drained, irrigation promoted, homesteads, with their working appliances, formed, canals cut, roads made, or bridges built; and at present, drainage, irrigation, implements, roads and bridges can hardly be said to exist. Some river channels and khals, mostly, of natural origin, traverse here and there, the most magnificent delta in the world, which had it been occupied by Dutchmen instead of Bengalees, would have been, centuries ago netted with water ways. And, added to this, the actual cultivator is plunged in the lowest depths of an ignorance which scarcely any one as yet in this country thinks it worth his while to attempt to dispel. Need anything more be said to demonstrate the crying necessity which there is for bringing capital to the soil? No: and to my mind nothing could operate more forcibly as a deterrent to the approach of capital than does your wide-spread practice of joint family ownership. I will ask you to remember the various tenures of your zemindary system. I need not try to point them out to you, because you know them much better than I do. I have been told of a case in which there were as many as twelve distinct links in the chain connecting the occupying ryot with the zemindar. No doubt an instance such as this is extravagant. Still it is smoke which indicates that there must be some fire behind. But I think that I do not overstate the matter when I say, that in Bengal the zemindar, and two or three middle men, very commonly fill the position in which at home our landlord alone stands relative to the terretenant. This state of things by itself is not favourable to the employment of capital. But when you add to this that the holder of each tenure may be a joint family, two or three, or even more generations old, embracing adults and minors and widows of various rights, *inter se*, you have got a combination which, it appears to me, must inevi-

tably prevent the capitalist from even dreaming of investing his money in land and its improvements. The possible complexity of title to land in England is considered to operate perceptibly in checking the outlay of capital upon it; but I venture to say, advisedly, that the English system of *estates* in real property is simplicity itself compared with the complication to which your tenures and coparceny give rise.

I will not waste your time this evening by suggesting modes of escape from your proprietary entanglements. As soon as you shall realize that they are embarrassing and that they constitute great hindrances to the full development of your national prosperity, you will yourselves find some method of shaking them off. My object has been solely to lead you back to the early origin of a material part of your social system, and to ask you whether the sanctions of religion have not had an undue influence in maintaining it unchanged down to a time when its pristine form is unsuited to meet all the exigencies of the day. Nearly all other countries in the world have, under the urgency of changing circumstances, long ago put aside the trammels of the family. In England and other parts of Europe, the family tenure of real property under the management of a *karta* developed into primogeniture of inheritance. I do not intend for a moment to hint that a similar change would be good for you; and indeed such a change could not now be effected here, for the rights of individual members of the family have received elaborate judicial recognition, and the point of time is passed when the executive and administrative functions of the manager might have been confounded with absolute right of ownership in himself personally.

But I am convinced that true energy and enterprise (and how much you feel their want the eloquent words of a native gentleman lately heard within these walls expressed better than I can,) that energy, enterprise, and action will not be generally displayed among you until your young men of all classes accustom themselves early to leave the parental roof, and to cultivate self-dependence and responsibility. I believe, too, that your immoveable property will remain arrested in its due course of improvement until family coparceny is the exception among you, and single ownership the rule.

PRIMARY EDUCATION IN BENGAL.

A LECTURE DELIVERED AT THE BETHUNE SOCIETY,

On Thursday, the 10th December, 1868.

BY

THE REV. LAL BEHARI DAY.

MR. PRESIDENT, LADIES AND GENTLEMEN,

There is at this moment no subject, perhaps, which is engaging the attention and exercising the intellects of so many thinkers in England and other parts of the civilized world, as the subject of education. Some of the questions discussed at this time in England with great keenness are as follows :—How are the Universities, those ancient seats of learning, to be reformed? Is preponderance to be given to the classics, that is, to Greek and Latin literature, or to mathematics and physics? How are the great public schools to be improved?—those schools in which the youth of the English gentry and nobility are trained, and in which for generations the arts which were most successfully taught, at any rate most successfully learned, were the three arts of plying the oar, of playing at cricket, and of making of mischief, or in other words, the glorious *trivium* of rowing, romping and rowing. Within the last few years, scores of treatises have been written on the subject of education, and several Bills containing schemes of University Reform have been laid before Parliament. In 1861, a Commission, usually called Lord Clarendon's Commission, was appointed to report on the nine great public schools of England, *viz.*, Eton, Winchester, Westminster, Charter-house, St. Paul's, Merchant Taylor's, Harrow, Rugby and Shrewsbury; and they gave in their report in four folio volumes. This was followed by the appointment in 1864,

of the Schools Inquiry Commission, with Lord Taunton at its head; and those Commissioners have already published twenty thick volumes, and more will be forthcoming, as their labours have not yet closed. Not content with the educational survey of England, that Commission sent Assistant Commissioners to Scotland; to France, Italy, Switzerland and Prussia; to New England and Canada, to report on the state of education in those countries.

But *the* question of the day—the great question of the nineteenth century—a question discussed not only by philosophers and scholars, but by politicians and statesmen, by kings and emperors,—is, How are the mass of the people to be educated? This question has been all but solved in the United States of America, in Prussia, in Holland and in Switzerland; and it is engaging the earnest attention of statesmen in France, in England, in Italy and other countries of Europe. In England, the recent broadening of the basis of Parliamentary representation has invested the subject of popular education with peculiar importance. Now that political power has been given to the mass of the people, "How are we," asks Mr. Lowe, the present Chancellor of the Exchequer, "to teach our future masters their letters?" How are the people to be educated? Is education to be made a civil right? How far is legislative interference expedient?—these and such like questions, I have hardly any doubt, will be discussed in the Reformed Parliament, under the auspices of the Liberal Ministry which has just acceded to power,—a Ministry to which may be applied in seriousness a designation which George Canning applied in joke to a Ministry of his own time, as the Ministry of "All the Talents."

There are some people who wonder that no regard has hitherto been paid in Bengal to the education of the million; but it will not appear wonderful to those who remember that forty years ago the subject did not engage public attention even in England. Mr. Matthew Arnold calls England, with respect to education in general, and to popular education in particular, "a newly awakened sinner." And if England, with respect to popular education be "a newly awakened sinner," where is the wonder if Bengal, which is at least half a century behind England in most things, should, with respect to popular educa-

tion, be yet dead in "trespasses and sins?" But thanks to the Government of Sir John Lawrence, Bengal bids fair to shake off its death-like stupor, and to show some signs of life and activity in connection with the great subject of popular education. In an official communication to the Government of Bengal, dated the 28th April last,—a communication which is destined, if I mistake not, to be memorable in the annals of popular education in this country,—His Excellency the Governor-General deplores the low state of primary education in the land, expresses his inability "to bear any longer the reproach that almost nothing has been done for the education of the people of Bengal," declares the incompetency of the State Exchequer to sustain the burden of education, and concludes by vigorously calling upon the local Government to take speedy measures for chalking out a plan of national education by levying an educational cess on land. Agreeably to this call, His Honor, the Lieutenant-Governor of Bengal, before proceeding to action, very naturally asked the opinion of the British Indian Association, which represents the landed interest of the country, as to "the most practicable and equitable means of assessing such a tax, and the most economical and least vexatious mode of collecting it." The result of that reference is well known. At a large and influential meeting in the rooms of the British Indian Association, several resolutions were passed, the substance of which was, *first*, that compulsory taxation for education was unnecessary, inasmuch as the existing voluntary system together with Government grants-in-aid, was able alone to accomplish the object; and *secondly*, that the proposed educational cess on land was a "direct infringement of a solemn covenant of Government confirmed by the British Parliament." It was also resolved at that meeting to send up a Memorial to the Governor-General in Council praying for a reconsideration of the proposal to levy an educational tax on land. I understand that such a Memorial has not yet been sent up. I may also state that one of the last things which the Earl of Mayo, the Governor-General elect, did before leaving the shores of England, was to receive a Deputation, consisting of a number of gentlemen retired from the several Indian Services, who pressed on His Lordship's attention the necessity of organizing a

thorough and comprehensive scheme of popular education in India. And I hope and trust that, when His Lordship assumes the reins of Government, he will accede to the wishes of the Deputation.

Such being the present interest of the subject of popular education, I need hardly make any apology for presenting the matter to you this evening in all its practical bearings—the urgent necessity, on the part of Government, of devising a scheme of primary education in Bengal, the actual educational requirements of the country, the character of the system to be adopted, and the ways and means by which the funds necessary for the purpose may be obtained.

I should have deemed it unnecessary to show that Bengal at present stood in need of a system of popular education, had I not remembered that, at the meeting of the British Indian Association to which I have already referred, it was stated by some of the speakers that the country stood in no such need.

One gentleman expressed the opinion that it would be premature to educate the mass of the people when the higher classes were almost without education. "I must confess," he said, "I view with considerable disfavour any project which has for its aim the education of the mass, when the great majority of persons composing the higher classes have received very little, if any, education at all." Now, in the first place, I beg to remark that the ignorance of the upper classes is greatly exaggerated by the worthy speaker whose words I have just quoted. Though it is true that many members composing what are called the higher classes of the Hindu community in Bengal are not acquainted with the English language, and have not had the benefit of a liberal education, yet it cannot admit of a doubt that ninety-nine in a hundred of them can read and write their mother-tongue—and our business in this discourse is not with English, but vernacular, education. But even in English education the country has made remarkable progress. At the close of the last year there were in Bengal 888 Anglo-vernacular Schools, in which there were 53,441 boys receiving education in the English language, and these 53,441 boys belonged chiefly to the middle and higher classes. But, *in the second place*, suppose, for the sake of argument, that the major-

ity of the higher classes are without education, what then? Have not the higher classes means for educating themselves? Living on the fatness of the land, have they not ample resources at their command to organize for themselves a system of high collegiate education? And is the apathy or negligence of the higher classes in the matter of their own education to be put forth as an excuse for neglecting the education of the masses? To use a familiar illustration,—If the higher classes, either through indolence or through parsimony, neglect to provide themselves with the delicacies of the table and the thousand and one dainties which make the mouth of a modern epicure water, is that any reason why the lower classes should go fasting? No; let the higher classes do what they please with themselves, let them educate or not educate themselves, let them luxuriate on a University education or starve in ignorance, it must be the wish of every patriotic native of Bengal,—and it is the resolution of a paternal Government,—that the mass of the people *shall* be educated. The want of education among the higher classes—supposing that to be a fact—instead of being an argument against popular education, is, in my opinion, a strong argument in its favour. Would not the higher classes, when they saw education permeating the lower strata of society, become ashamed of their own apathy? Would they not be roused to action and become diligent in educating their children, if not for the love of knowledge itself, at least for keeping that distance undiminished which separates them from the lower classes?

But we are told by the same gentleman that the lower classes are not without some system of education, that there is no demand for a better one, and that it is to be doubted whether an improved system of primary education would be appreciated by the people, and whether it would ameliorate their condition. "The question also arises," said he, "whether there is among the lower classes of the community, any real demand for a better system of education than what obtains among them at present; for it is well known to all who take interest in their welfare, that they are not altogether without some system of instruction; and whether the education which is now sought to be forced upon them, would be appreciated, and would in any

way better their condition." Now, if there be a system already existing for the instruction of the masses, then the cry of Government for popular education must be an impertinent one. The speaker at the meeting of the British Indian Association evidently alluded to the village schools or *patshalas* taught by *Guru Mahasayas*. Who these *Guru Mahasayas* are, what their qualifications, and what the nature of the instruction which they inflict upon the boys committed to their charge, must be known to every native of Bengal. When a man has danced attendance in the Mofussil courts for a long time without obtaining a berth, when he has exhausted the vocabulary of adulation on the Sheristadar and the Amlahs, when he has failed to get a situation in any ordinary line of business, and when starvation stares him in the face, it is then and only then that he betakes himself to the village school-mastership, which may truly be regarded as the forlorn hope of hungry humanity. It is easy to conceive the nature of the instruction which such pedagogues would give. But some education, however imperfect, is surely better than no education; and it would be something if this education of the village school could reach the lower classes. But does it reach them? Certainly not. By whom are the village schools attended? They are attended chiefly by Brahmans, Kayastas and others, that is to say, by the higher and middle classes; but hardly by any of those whom it is usual to designate by the phrase "the mass of the people." As a rule,—there are exceptions of course, and exceptions only prove a rule—as a rule, the village schools are not attended by the peasantry and the other lower classes. There is therefore no provision made for the education of the mass of the people in Bengal.

It is also said that there is at present no demand among the masses for education, and that it is doubtful whether they would appreciate it. I must admit that there is some truth in these statements. But the question is, Is the great work of national enlightenment to be regulated by the economic principle of supply and demand? Are the enlighteners of society to sit with folded hands because the mass of the people make no demand for light? If the Governments of Prussia, of Switzerland, of Holland, of France, had waited till their ears were assailed with a demand for education from the mass of the population, they

might have waited for ever, and those countries would still have been covered with the primeval darkness of ignorance. But they did not wait for the demand. They acted the nobler part of carrying the torch of knowledge and civilization to every village and hamlet of their respective countries, and thus made education accessible to the meanest peasant. Besides, to expect the ignorant masses to express a desire for education would be to expect almost an impossibility; for no man who knows not the value of education can desire it. Before the lower classes can appreciate education, they must know what it is, and therefore must have some sort of education. By the way the Rev. J. Long, in his introduction to Adam's Reports on Vernacular Education, calls the Bengal ryot "a dumb animal;" and I submit that it is somewhat unreasonable to expect any demand about any thing from creatures "to whom Providence has denied the gift of articulate speech."

The distinguished countryman whose objections to the proposed system of popular education I am now noticing, is a well known advocate of an improved system of drainage throughout the country, and of other sanitary reforms; and he justly advocates those reforms, for to the want of them is owing that terrible epidemic which is committing ravages in the hamlets of Bengal. Now, I should like to know whether, amongst the myriads of the peasantry who are annually falling victims to that fearful scourge, there is a demand for sanitary improvement. Is it not a simple fact that there is not only no demand for sanitary improvement, but that the people are extremely averse to adopt measures suggested by the Sanitary Commissioner and his assistants? Under such circumstances would the Government be right if it did nothing, and if it justified its inaction by the following plea:—"It is lamentable that so many thousands of the people are dying of the epidemic. But what can we do? There is no demand for sanitary reform; and if sanitary improvements were made, it is doubtful whether they would be appreciated." Gentlemen, a worse epidemic or rather endemic than that of fever is raging in the country; I mean the epidemic of ignorance—an epidemic which is, I will not say, decimating, but nearly annihilating the people in every national point of view; and I demand, in the name of the peasantry, that a dispensary of

useful instruction be forthwith established within the easy reach of every village and hamlet in Bengal.

The speaker at the meeting of the British Indian Association expressed his doubt whether the proposed system of education would better the condition of the people. The speaker took it for granted that there was already a system of education for the mass of the people, and he doubted whether, on that supposition, a different system proposed by Government, would improve their condition. But I have already shown that for the mass of the people, properly so called, there is no provision at all for instruction. The question is not between an inferior and a superior system, but between no education on the one hand and some education on the other. And there can be no question that some education would better the condition of the people than no education. But perhaps the nature of the education to be given has been misconceived. It is not intended to teach the mass of the people the classics, either eastern or western; it is not intended that they should be enabled to spout Shakespeare or Bacon; it is not intended to teach them the English language; neither is it intended to make them gentlemen in the conventional sense of that term. I say, *in the conventional sense of that term;* for there are two sorts of gentlemen, man-made gentlemen and God-made gentlemen; and I hold that an intelligent and honest peasant, though not reckoned a gentleman in human society, is nevertheless, in the eye of reason and of God, a gentleman of the right royal stamp. Well has the poet said, himself a glorious genius though a peasant:—

"What tho' on hamely fare we dine,
Wear hoddin grey, and a' that,
Gie fools ther silks, and knaves their wine,
A man's a man for a' that!
For a' that and a' that,
Their tinsel show and a' that,
The honest man, tho' e'er sae puir,
Is king o' men for a' that!"

What is intended in the proposed primary schools is to give to the lower classes of the people some elementary education in their own mother-tongue, consisting chiefly of the three R's,—not the three R's of the great public schools of England, rowing,

romping and *rowing*—but the three R's constituting the instrumental branches of education, *viz.* reading, 'riting and 'rithmetic,—together with some practical and plain lessons on agriculture, prudence, economy and morality. Such an education cannot but better the condition of those who receive it; it will make them better sons, better fathers, better husbands, better labourers, better ryots, better subjects. Doubtless from these national primary vernacular schools a peasant's boy will sometimes, through the force of intellect, rise to the English schools and colleges, and win honours in the University; and the more cases there are of this sort, the better for the country, as such a circumstance cannot fail to impart, as in Scotland, a tone of manliness and independence to the labouring classes. It is a singular fact, unparalleled perhaps in the educational history of any other country in the world, that out of 882 students who last year attended the Latin, Greek and Mathematical classes in the Universities of Edinburgh, Glasgow, St. Andrew's and Aberdeen, 29 were sons of common labourers, farm-servants and miners; and 55 were sons of men who lived by skilled labour, such as blacksmiths, weavers, masons, carpenters and shoemakers. While in England there is one matriculated student to every 5,800 of the population, and in highly educated Germany a matriculated student to every 2,600; there is in Scotland a matriculated student to every 1,000 of the population. Hence a writer in a recent number of *Fraser's Magazine* is guilty of no exaggeration, but states a simple fact, when he says,—"Go into any Scottish family in the country, a shepherd's, or a gardener's, or a village shoemaker's, and the chances are that some member of the family has had a university education." And I hope and trust, gentlemen, that the honourable speaker at the meeting of the British Indian Association, whose views I am now considering, would not deem it a circumstance prejudicial to the interests of our common country, if the sons of some Bengali carpenters and shoe-makers,—boys of "pregnant parts,"—like those of their brethren of the craft in Scotland, were to graduate in the Calcutta University. It need not be apprehended that chairs and shoes will in consequence be dear, for there will be plenty of carpenters and shoe-makers till the end of time who will not have become either B. A.'s or M. A.'s;

while it cannot be doubted that, all other conditions remaining the same, a carpenter or a shoe-maker who has received some elementary education, will be a more skilful carpenter or shoe-maker than an ignorant one. It is but just to remark that the able speaker at the meeting of the British Indian Association, whose views I have been combating, is not only no opponent to education, but he is spending every year large sums of money for the purpose, and that in the long roll of the zemindars of Bengal there is not a prouder and a more honoured name for intelligence, for ability, for liberality, for public spirit, and for patriotism than the name of Baboo Joy Kissen Mookerjea.

But further, it is alleged that though it cannot be denied that popular education is necessary, yet it would be better promoted by the "present voluntary system, seconded by grants-in-aid, than by a system of compulsory taxation." This opinion was advocated at the meeting of the British Indian Association by one of the most intelligent and public-spirited of our countrymen, Baboo Degumber Mitter. In proof of his opinion the excellent speaker adduced the following facts;—"At the time of the starting of the voluntary system in Bengal, there were 25 Anglo-vernacular and 54 vernacular schools; and in the year 1866-67 these had increased to 403 Anglo-vernacular Schools, 1,932 vernacular schools, and 267 schools for girls, attended by 96,692 boys and girls. This showed," continued the speaker, "that in 11 years the Anglo-vernacular Schools had increased sixteen-fold, and the vernacular schools forty-fold. On the other hand, the compulsory system which had been in force for 21 years in the North West, with all the energy of an active Government, and the energy of every official enlisted to its side, the education of the masses had not advanced by more than 20 per cent." This may be supposed to decide the question; and yet with all deference to the speaker, for whose intelligence, energy and public spirit, no one in this assembly can have higher admiration than I, it may be allowed me to remark that the oversight, on the part of the speaker, of two or three apparently little circumstances has vitiated the argument. *In the first place*, it is unfair to institute a comparison between the Anglo-vernacular Schools of Bengal and the Halquabandi Schools of the North Western Provinces. In the latter des-

cription of schools the English language is not taught, whereas it is taught in the former. And no one who remembers, that the English language is the road to preferment in this country, can wonder for a moment that schools in which *it* is taught, should thrive under the voluntary principle. *In the second place*, the vernacular schools of Bengal are different from the Halquabandi Schools of the North West in this important respect that, whereas the former are attended as a rule by the higher and middle classes, the latter are attended chiefly by the peasantry. It is admitted that vernacular schools for the higher and middle classes have partially succeeded; but the question is,—Is the voluntary system likely to succeed among the mass of the people? Any one that knows any thing of the country can have but one answer.—It will miserably fail. But *in the third and last place*, it is not true that in Bengal, Anglo-vernacular Schools have multiplied sixteen-fold, and vernacular schools forty-fold during the last 11 years? Is it not a fact that most of those schools existed before the operation of the system of grants-in-aid, and that during the last 11 years they were not created, but only received grants. I hope I shall not be understood as speaking against the voluntary principle in education. The voluntary principle has done, and is now doing, wonders in England both in education and in religion; and I should be the last person in the world to speak against it. Indeed, I go so far as to say that, if popular education could be carried on on the voluntary principle, I should deprecate all Government interference; for I am one of those who think that it is not expedient that all education should be in the hands of Government. But where the voluntary principle has no chance, what is to be done? In such a case, I am sure every one will agree with me when I say that it is better that Government should educate than that the people should perish for lack of knowledge. And this is exactly the opinion of one of the deepest thinkers of the day, John Stuart Mill. He says:—"An education established and controlled by the State should only exist, if it exist at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence. Unless, indeed," mark these words, gentlemen, "unless, indeed, when society in general is

in so backward a state, that it could not or would not provide for itself any proper institutions of education, unless the Government undertook the task; then, indeed, the Government may, as the less of two great evils, take upon itself the business of schools and universities as it may that of joint stock companies, when private enterprise, in a shape fitted for undertaking great works of industry, does not exist in the country."

I have only one other objection to notice, and it is this. My excellent friend Baboo Kissory Chand Mitter, at the meeting of the British Indian Association spoke to the following effect; "The lower strata of the social fabric must be permeated through the higher strata. That the downward filtration had commenced, was abundantly evidenced by the immense number of schools and *patshalas* already established since the Despatch of the Court of Directors came into operation. Educate the upper and middle classes," continued the speaker, "and the lower classes will be instructed and elevated." A similar sentiment was expressed thirty years ago by the old Council of Education which shelved Mr. Adam's scheme of vernacular education, and more recently by Lord Canning in an address at the meeting of the Convocation of the Calcutta University. This theory of the "downward filtration of education," however flattering to the pride of the higher classes, has never been verified in history. In no country in the world has knowledge "filtered" naturally from the higher to the lower classes. In Europe, the higher classes had for centuries received the benefits of education; while it is only in the present generation that knowledge is descending to the lower classes, not, indeed, by a process of filtration, but by opening up separate reservoirs for them. In India, the higher classes, or rather the highest class, the Brahmans, were an educated class a thousand years before the Christian era, and yet during the last hundred generations, not a drop of knowledge descended to the thirty millions. And if now some of the lower classes, I mean the Sudras, have received the benefits of knowledge, no thanks to the Brahmanical filter, from which not a single drop oozed out for thirty centuries, but to the philanthropy and common sense of the Anglo-Saxon who dug out separate tanks of knowledge for the refreshment of the middle classes. In this country knowledge never

"filtered" from the higher classes. The fact is, the upper class filter, in India at any rate, is not a filter, but a jar hermetically sealed. And hence it was, to vary the figure, that while a Brahman Dives was faring sumptuously every day and luxuriating on logic, metaphysics and theology, the Sudra Lazarus was positively dying of starvation, in vain expecting a few crumbs to fall from his lord's table.

Having thus shown that a system of primary education is necessary in Bengal, and that Government must take up the matter, the next point of enquiry is the extent of the educational requirements of the country. The question is—What are the educational wants of Bengal? I speak of course only of what the French call primary education, that is, education for the mass of the people. But this question cannot be answered without replying to another question, *viz.* What is the actual state of primary education? This preliminary question can be answered in a single sentence. There were, last year, 2,020 vernacular schools, containing 61,744 pupils; that is to say, in round numbers, there were 2,000 schools among a population of forty millions, or in other words, there was one school to every 20,000 of the population. I do not take into consideration the indigenous village schools which Mr. Adam, thirty years ago estimated at the mythical number of one hundred thousand, simply because I believe the instruction given in those schools is, like their number, a pure myth. The *Guru Mahasayas*, or the teachers of those indigenous schools, should be, I do not say, pensioned, but sent away to do duties more suited to their capacities, like selling oil in the bazar, or tending cows in the field. Keeping these indigenous village schools out of the reckoning, the existing state of primary education is expressed by the ratio —one school to twenty-thousand people, and that one school containing only 30 pupils. We have therefore 30 boys learning among a population of 20,000 souls, that is to say, one boy among upwards of 600 people. And yet this one boy who receives instruction amongst a population of 600 souls, belongs to the higher or the middle class, and not to the lower orders; so that strictly speaking there is no education at all for the mass of the people. This state of things is truly deplorable. In some of the countries of Europe, as Prussia, France, Holland

and Switzerland, primary education has made greater progress than in England; in giving, therefore, to Bengal a system of primary schools, we must look for an example to those countries in preference to England. Now, in Prussia, there is one primary school to every 600 inhabitants, and in France to every 500 inhabitants. Making allowance for girls, for whose education unfortunately the country is yet hardly prepared, I should say, that to put this country on a footing of something like educational equality with the countries of Europe, we should have one primary school for every 1,000 of the population. And as Bengal is supposed to contain about 40,000,000 inhabitants, we require exactly 40,000 primary schools, the cost of which at the rate of 10 Rs. a month for every school, exclusive of inspection, amounts to 48 lakhs of Rupees. The cost of inspection, at the rate of 6 per cent. of the expenditure on instruction, would amount to nearly 3 lakhs more. But for supplying these forty-thousand primary schools with efficient teachers, we require a number of Normal Schools or Colleges. In Prussia, there is a Normal School or College for every 300,000 inhabitants, in France one Normal College for about the same number of inhabitants, and in Switzerland for about 150,000. In Bengal, we cannot have too many Normal Schools, if we have one for every 500,000 inhabitants. We require then 80 Normal Schools or Colleges. I find from the last published Report of Public Instruction in the Lower Provinces, that there were in 1866-67 twenty-seven Normal Training Schools, both of a higher and lower order; and that their annual cost was upwards of a lakh of Rupees. The cost then of 80 Normal Training Schools would amount to about 3 lakhs of Rupees. But the scheme of popular education would be incomplete without the establishment of a few schools of a higher character for "receiving such of the primary school pupils as, having passed through the classes, should wish to continue their education in preference to going immediately to work." Such is the case in America, in Prussia, in Saxony, and in Switzerland. I should say that the number of such Vernacular High Schools, somewhat similar to what are called *real schools* in Prussia, and more like perhaps to the industrial schools of Switzerland, should be at least the same with that of the Normal Schools or Colleges;

and their cost cannot be much less. We have, therefore, another 3 lakhs. The entire cost, then, of a thorough system of primary education would be as follows :—

For 40,000 Primary Schools, ...	...	48 lakhs.
For Inspection, ...	...	3 do.
For 80 Normal Schools, ...	...	3 do.
For 80 Primary High Schools, ...	...	3 do.
Total rupees, ...	...	57 lakhs.

If to this sum be added the money to be devoted to scholarships and bursaries to meritorious students to be held in the higher primary schools and the Normal Colleges, and the repairs of school-houses and other contingent expenses, which may be estimated at 3 lakhs more, you get the round sum of 60 lakhs of Rupees. This may appear a prodigious sum, and you may think that my scheme of primary education in Bengal should have a place in Plato's Republic or the Utopia of Sir Thomas More. But the scheme is not so extravagant as you may suppose it to be. I find from the Bengal Administration Report that the Bengal Police costs about 60 lakhs of Rupees annually; and if we spend 60 lakhs every year for catching rogues and thieves, I submit it is not too much to spend that sum in teaching Her Majesty's subjects to be honest and useful citizens. Only the other day, if the public prints are to be believed, a project was laid before Government which required the expenditure of vast sums of money for the erection of new jails on what is called the "cellular system," in order to make confinement a real privation and punishment to the prisoner. I hope that project will not be carried out, as it will inflict on us the calamity of a heavy expenditure. I offer no opinion on the merits of any system of jails, cellular, triangular, polygonal or other; but in the name of common sense I ask, why waste the money of the public in adding to the severity of the punishment of burglars and dacoits, when the same money might be more profitably spent upon the education of the people, which would prevent them from becoming burglars and dacoits? for I believe that schools, and not jails whether cellular or other, are the best preventives of crime.

I am aware that the sum of only 20 lakhs has been asked for by Government, but that sum is, as I have already shown, insufficient to meet the expense of a thorough, comprehensive and universal system of primary education. It is better to have the whole thing at once, than to be every now and then making partial and incomplete attempts.

The question, then, is—Whence is this sum of 60 lakhs to be got? Now, I feel some difficulty in replying to this question at a meeting of the Bethune Society. For this Society eschews all political subjects, and I have been requested by your excellent President, to avoid raising a political discussion. And yet if I were to waive this subject altogether in a Lecture on Primary Education, I should be exhibiting to you the play of Hamlet without Hamlet's part. But as I cannot be political, I am driven to the necessity of being general, though I trust, not vague. The qestion is, I repeat—How is the sum of 60 lakhs of rupees to be obtained? The Government of India says in substance—"We cannot give it. We are already spending upon education a great deal: more, perhaps, than we can be expected to spend. Besides, we haven't the money to give. It would be unjust to burden other parts of the empire with heavy taxation for the benefit of Bengal. It is clear, therefore," continues the Government of India, "that the people should tax themselves for the purpose, but as the masses are too poor to bear heavier taxation than what has fallen already on their shoulders, the burden should be borne by landlords, zemindars, talukdars, *et hoc genus omne*." The zemindars, on the other hand, say—"We cannot be lawfully asked to tax ourselves. We hold our lands on a rate of assessment fixed for ever. An educational cess on land would therefore be a direct infringement of a solemn covenant of Government confirmed by an Act of the British Parliament." Now, I am not about to discuss—indeed, I am shut out from the discussion by the rules of the Bethune Society—whether there is any surplus in the annual revenue of Bengal, and whether the surplus, if any, should, in the present state of the empire, be devoted entirely to Bengal. Neither am I about to enter into a disquisition on the nature and character of the Permanent Settlement, and to discuss whether that settlement is so immutable as to be inconsistent

with the imposition of any fresh tax whatever. I have my own opinions on these points, but this is not the place to express them. But whether there is a surplus or not in the revenue, few people will deny that it is the duty of Government to promote the education of the mass of the people; and on the other hand, whatever may be the tenure on which the zemindars hold their lands, it can scarcely admit of a question that it is their duty, enriching themselves, as they are doing, by the sweat of the cultivator's brow, to promote the education of the cultivator.

With regard to Government, it would be preposterous—it would be ungrateful—to say that it has done nothing for the education of the country; but it would be equally preposterous to say that it has discharged its "whole duty" in this matter. Mr. Atkinson, the able Director of Public Instruction in the Lower Provinces, has shown, in an official communication to the Government of Bengal, published a few months ago, by an irrefragable array of facts and figures that the Government of India is doing less in the matter of national education than most civilized governments of Europe. I confess, gentlemen, that when I read, some time since, in the official communication of the Government of India to the Government of Bengal to which I referred at the outset, the following words, *viz.*—"While the Governor-General in Council is not content to bear any longer the reproach that almost nothing has been done for the education of the people of Bengal, it is altogether out of the question that the Government can provide the funds without which the removal of that reproach is impossible"—I say when I read these words,—and I pray Your Excellency, who have so graciously condescended to honour this meeting with your presence, to pardon the freedom of my speech,*—I say when I read the words just quoted, I was instinctively reminded of a well-known passage in the General Epistle of St. James—"If a brother or sister be naked, and destitute of daily food, and one of you say unto them,—Depart in peace, be ye warmed and filled; notwithstanding ye give them not those things which are needful to the body; what doth it profit?" What does it profit, gentlemen

* His Excellency the Viceroy and Governor-General, Sir. John Lawrence, G. C. B., K. S. I., was present at the meeting.

though the bowels of the Government of India are moved to compassion at the sight of the debasing ignorance under which the forty millions of the people of Bengal are groaning, if at the same time that Government keep the coffers of the State quite locked up? And here I cannot help taking notice of a passage in Mr. Secretary Howell's "Note on the state of education in India during 1866-67." The passage runs thus :—

"There is in one point of view something striking in these "Universities and in the collegiate systems of which they are "the centre. In their scheme of examination, and in the long "calendar of graduates and undergraduates' University distinc- "tions, they suggest the analogy of Oxford and Cambridge, but "one should bear in mind that, whereas in England such an edu- "cation can only be obtained by the comparatively wealthy, it is "freely offered in this country mainly by the munificence of the "State and not by private endowment, in institutions which are "either purely State charities, or are very largely aided by the "State; and that the cost to the student is never more than "24 shillings a month in Bengal—the highest charge at the "Presidency College,—while in the higher schools of Bombay, "Madras, the North-Western Provinces, the Punjab and Oude, "the charge varies from three shillings to three pence a month; "and that all this is done to put a subject race on a level with "the dominant race; and that during a mutiny in which the "resources of the dominant power were sorely tried, these Uni- "versities continued to hold their examinations and the educa- "tional machinery worked on as before; and that afterwards, "when financial deficits came, and stringent reductions were "made, and the burden of new and personal taxation was im- "posed, not only was there no proposal to decrease the State's "bounty to education, but every year made a large addition to "it. All this seems to show a steady adherence to the cause of "education that should not pass unnoticed."*

It would not have been surprising, gentlemen, if these words had appeared in a newspaper article written by a member of a certain class of what is called the "dominant race," but it is

* Mr. Howell's *Note on the State of Education in India, during* 1866-67, pp. 58, 59.

truly astonishing that they should find place in a document "published by authority." The Colleges and Schools of India are, it seems, "State charities" with a view "to put a subject race on a level with the dominant race." "State charities" forsooth! as if we, the people of India, were a set of paupers, and paid no taxes. I should like to ask Mr. Howell—Who paid the revenue from which the State is giving the "charity?" Is it the people of England or the people of India? A strange sort of charity truly, to receive in return an infinitesimal fraction of the millions of pounds sterling which we pay every year in hard cash! As for the rubbish of "a subject race" and "a dominant race," I deny that there is any such distinction; for we all, whether Englishmen or Indians, are alike subjects of Her Gracious Majesty Queen Victoria. This distinction,—this odius distinction,—is not recognized by the law of the land which you,* my Lord dispense in Her Majesty's High Court of Judicature in this city. It is not recognized by Her Majesty herself in the gracious proclamation which she was pleased to make at the time she took the direct management of this magnificent empire; and it is ignored by every right-minded Englishman. For myself, Sir, I feel from the sense of loyalty gushing within me that I am as good, as faithful, as leal-hearted a subject of Her Majesty, our Sovereign Lady Queen Victoria, as Mr. Secretary Howell himself, or any Briton from Land's End to John O'Groat's House; and I therefore repudiate the distinction as insulting, not to my race only, but to my Sovereign.

An able writer in a recent number of the *Quarterly Review* speculating on the effects of Indian railways on the native mind writes thus;—"The feeling of acquiescence in a Government "which though alien, is not in any sense oppressive, and in "many ways beneficent, grows stronger with the lapse of time "which abates the desire for change. This feeling is abundant-"ly strengthened in India by the marvels of scientific skill "we have introduced, than which not one is more calculated to "strike the native understanding with wonder and awe than the "rail. As it sweeps day by day, from province to province, it "presents to prince and peasant an ever-recurring token of the

* The Hon'ble Mr. Justice Phear is the President of the Bethune Society.

"extent of our dominion, the ubiquity of our power, and the "magnitude of our resources." Were I, Sir, the Sovereign of England, and had I reduced India to my sway, I should not like to risk the stability of my conquest on the sentiments of wonder and awe produced in the minds of the people by the introduction into the country of scientific marvels like the rail. Wonder and awe beget fear, and fear is not a safe foundation for a throne. "An ever-recurring token of the extent of my dominion, of the ubiquity of my power and of the magnitude of my resources," would only generate despair in the hearts of my conquered subjects, and despair often gives unearthly courage even to the feeble and the cowardly. I would therefore adopt the nobler plan of securing the gratitude of the people whom I have conquered by conferring on them signal benefits, and thus lay the foundation of my throne deep in the affections of my people. Whatever shallow politicians may think, a net-work of railways will never keep India attached to England. A net-work of a different sort will be more effectual—a net-work of schools from one end of the peninsula to the other. Such a reticulation of educational seminaries in which the youth of the country would be instructed and trained for the discharge of the duties of life, would for ever bind India's heart to England.

In the matter of primary education therefore, I would say to Government:—"We are very thankful to you for what you have done; but we humbly submit that you have not done what you might have done. The present is the time for making amends for past short-comings. It is true that the Treasury is not overflowing, but popular education is the "one thing needful" at present in this country; and if you find money for fifty other things, you ought to find money for this. Depend upon it, that the best way of keeping the people of India attached to England, is to win their affections. And what can better win their affections than to provide means for their social, intellectual and moral elevation? We don't ask you to pay the whole cost of primary education, but in fairness you should pay some part of it."

As for the Zemindars, whether we regard the Permanent Settlement as a blessing or a "blight," whether it is consistent or not with an educational cess, there is not the slightest doubt that in consequence of that Settlement they are to-day in singu-

larly felicitous circumstances. They pay less for the lands which they hold than landlords in other settled parts of the empire. They have become richer and more prosperous than any other class of people in India; and they have cemented the fabric of their prosperity, I will not say by the blood, but by the sweat of the ryots. It is therefore just and reasonable that they should bear a considerable part of the cost of educating those to whom they owe their present prosperity. The Permanent Settlement may make them liable or may not make them liable to pay—I decide not the question—but surely there is a higher law than the law of the Revenue Code. There is the law of Moral Justice,—and this higher law demands that every Zemindar in the country should bear a large part of the expense of educating the ryots. Would it not be a crying shame if the Zemindars refused to promote the amelioration of the condition of those to whom they are indebted for their wealth? I would also appeal to them on the ground of patriotism. They are called upon to contribute towards the education, not of foreigners, but of their own countrymen. The Zemindars profess to be patriots, and I have no doubt some of them are sincere patriots. And what can be a higher proof of patriotism than to promote the education of one's own countrymen? I would remind the Zemindars of the well-known words of the late Lord Brougham. Dwelling on the improvements brought about in England by education, the noble Lord said,—"There have been periods when the country has heard with dismay that the soldier was abroad. That is not the case now. Let the soldier be ever so much abroad in the present age, he can do nothing. There is another person abroad—a less important person, and in the eye of some, an insignificant person,—whose labours have tended to produce this state of things. *The School-Master is abroad;* and I trust more to the School-Master, armed with his primer, for upholding the liberties of the country, than I fear the soldier with his bayonet."

It thus appears that in the promotion of the primary education of the people, both the Government and the Zemindars should bear a part. But such a great work cannot be accomplished without the co-operation of the people generally. We have, therefore, three parties to contribute to this scheme, the Government, the people in general, and the Zemindars in parti-

cular; and we have a fourth party besides, the boys under instruction, who must pay a small schooling fee. The schooling fees of the forty thousand schools may be estimated, as I shall show in another place, at about 10 lakhs of Rupees per annum. I would levy a cess of two per cent. on land; that would yield upwards of 7 lakhs. I would also increase the price of salt by two annas in the Rupee—an increase that would not be felt as any hardship at all by the people. The annual receipts from Salt amount to Rs. 26,330,000. Deducting a third for the Salt sent to the North-Western Provinces, there remains the sum of Rs. 17,553,334;—two-sixteenths of which give nearly 22 lakhs. And if Government were to give from imperial revenue the remaining 21 lakhs, the scheme of national education in Bengal would be complete. My financial scheme for universal education in the country, then, is as follows:—

Salt Tax,.....	22	lakhs.
Zemindars,.....	7	do.
Government, ...	21	do.
Fees, ...	10	do.
Total,.....	60	lakhs.*

It is now time to say a few words on the nature of the instruction to be given in the primary schools and the character of the system to be adopted.

Of course the chief subjects to be taught are, as I have already said, reading, writing and arithmetic—these instrumental arts being most useful in the business of life. The books of reading should largely contain lessons on common things and the objects of the three kingdoms of nature,—the animal, the vegetable and the mineral; lessons on agriculture; and lessons on morality, prudence and economy. To these might be advantageously added elementary book-keeping, Zemindari accounts, simple composition, especially letter-writing, some geography, some history and gymnastics;—this last, that is, gymnastics, I would introduce into every primary school, with a view to strengthen, if possible, the proverbially feeble constitution of the Bengali.

* The above paragraph has been re-written since the delivery of the Lecture.

In the primary schools of Switzerland the course of instruction is very much higher than the one I have just sketched,—and I speak of the Swiss primary schools, because they are probably the best in the world; indeed the Commissioner that was sent by the French Minister of Public Instruction to report on those schools, felt when he was in the Canton of Zurich as if he were in a sort of educational Paradise. "The programme of work for the Swiss primary schools," says Mr. Arnold, "is fixed by the Educational Council of the Canton, and embraces religious instruction, the mother-tongue, arithmetic and geometry, the elements of Natural Philosophy, history and geography, singing, hand-writing, drawing, gymnastics." In the national schools of Bengal, I need scarcely say, no religious instruction should be given, and that for the best of reasons, the religion of the governing class being different from that of the governed. Any deviation from strict neutrality on the part of Government would be sure to end in disaffection and the overthrow of the good work of national education. When the national mind is delivered from the thraldom of ignorance, ample scope will be afforded to parties disposed to take advantage of the opportunity for appliances of a religious and spiritual character. But the Government, circumstanced as it is in this country, must satisfy itself with giving a purely secular education. As for geometry and the elements of Natural Philosophy which are taught in the Swiss primary schools, I would introduce them only into those higher schools—the *real* schools or the *industrial* schools, of which I have already spoken. I would introduce into them not only geometry and the elements of physics, but also some trigonometry, some practical chemistry, some meteorology, some mineralogy. I need not say that in the primary and real schools, the English language should not be allowed to enter;—the great principle of those schools being the preference of the useful to the ornamental. I do not propose to make the primary schools of Bengal *free*, as they are in many of the United States of America, where the children receive a gratuitous education. Every boy, except the poorest, should pay a small fee. In Canton Zurich, in Switzerland, the schooling fee of a pupil of the primary schools is fixed by Government at one anna and two pice a month. In Bengal it may be fixed at one anna a month.

Supposing that the average number of pupils in each primary school is 32, the fees will amount to 2 Rs. a month in each school, or 80,000 Rs. a month for all the schools, that is to say, 960,000, or in round numbers 10 lakhs, per annum.

And now, gentlemen, I come to a most important point to which it would be impossible to do justice at the fag end of a discourse, and yet on which I must say a few words, otherwise this Lecture would be incomplete. I refer to the subject of compulsory education. The Chairman of the meeting in the rooms of the British Indian Association, to which I have so often referred this night, Baboo Rama Nath Tagore, is reported to have said as follows :—"The question was, whether the ryots were at present prepared to value education? His (the Chairman's) experience was that they would sooner send their children into the fields to work than to the schools." Now, though I don't agree with my distinguished countryman in thinking that the time for educating the ryots has not yet come—for if the time has not now come, I fear it will never come till the end of the chapter—yet there is a great deal of truth in the statement that the ryots would sooner send their children to work in the field than to learn at school. To remove the possibility of such contingency, I would make education compulsory by an Act of the Legislature, as it is compulsory, at the present day, in most countries in Europe. I am aware that compulsory education is somewhat uncongenial to the mind of an Englishman. John Bull is the freest man upon earth. Government is with him a necessary evil, and he is jealous of its slightest interference. He feels that he is his own master; and his house he regards as his castle. John Bull, though he may be as poor as a church mouse, may yet, "in his cottage," in the language of Lord Chatham, "bid defiance to all the forces of the crown. The cottage may be frail—its roof may shake—the wind may blow through it—the storm may enter—the rain may enter—but the king of England cannot enter! all his force dares not cross the threshold of the ruined tenement." No wonder, with a nation animated with such sentiments, compulsory education is not popular. Yet you will hardly believe me when I tell you, that in this home of voluntaryism there is at this moment a loud call for compulsory education. The men practically engaged in the

work of education regard it as a necessity. I could produce the testimonies of many of Her Majesty's Inspectors of Schools to this effect. I shall content myself with producing the testimony of only one. The Rev. W. W. Howard, Inspector for Devon and Dorset, says—"Where lace-making and gloving are rife, many girls never go to school at all, and live their lives, and pass away to a hereafter in a state of ignorance which is a disgrace to humanity. I have no hope for much improvement in this state of things, until we have legislative measures which will make education compulsory." And this in a country, where the voluntary principle has achieved glorious results, and whose citizens are free as the wind of heaven! If such be the case in the green tree, what shall we say of the dry? The Bengali is a trifle different from John Bull. In his national history —if his nation has a history at all—the name of liberty is an unknown sound. For the last six hundred years, he has been under foreign domination; and in ages gone by when he had kings of his own race, he was consigned to the tender mercies of a grinding despotism, and of a sacerdotalism which regarded him as a slave. So far from looking upon Government as a necessary evil, like John Bull, he looks upon it as his *Ma-Bap*,—his father and mother. Amongst such a Government-ridden people, the voluntary principle must be an unmeaning phrase. It is for these reasons that I hold that there is no hope for Bengal, unless there be a compulsory system of education. The Government should issue a law commanding every parent in the country to send his male children to school, ordaining fines to be inflicted on every recusant party.

In republican Switzerland the law compels every parent to keep his children in school from 6 to 16 years of age. But as in tropical Bengal, man, like fruits, becomes sooner ripe than in temperate and cold latitudes, an Act of the Legislature should compel every parent to keep his male children in school, I should say, from 6 to 12 years of age. The poorest, who cannot pay, should receive a gratuitous education.

Did your time permit, it would be a pleasant task to expatiate on the effects of a thorough system of national education like the one I have just sketched. But I leave you, gentlemen to draw in your own minds the picture of a population of forty

millions of souls rescued from brutish ignorance—a population acquainted with their rights and privileges as human beings, and with their duties as loyal subjects of Her Majesty Queen Victoria,—a population protected from all sorts of oppression, whether from zemindars or planters or the myrmidons of the Police,—a population of intelligent and industrious husbandmen, of skilled artizans, of honest tradesmen,—a population raised from their present social degradation to a higher platform of civilization,—and a population prepared for the highest moral and religious improvement. When I look at the future of Bengal, under such a system of primary education, combined with the action of other higher influences already at work in the country, I am reminded of the sublime language of Milton—"Methinks I see in my mind a noble and puissant nation rousing herself, like a strong man after sleep, and shaking her invincible locks: methinks I see her, as an eagle, mewing her mighty youth, and kindling her undazzled eyes at the full mid-day beam,—purging and unscaling her long-abused sight at the fountain itself of heavenly radiance." I hope and trust that neither the stinted liberality of the Government, nor the selfish apathy of the zemindars will stand in the way of a consummation so devoutly to be wished for. But should there be any misgiving in the minds of some of our rulers as to the expediency of such a complete measure of national education, I have only, in conclusion, to request them to ponder the noble words of one of the most enlightened statesmen that ever wielded the destinies of India—I mean Sir Charles Metcalfe. While recommending an improved system of revenue settlement, that true friend of India wrote as follows:—

"Similar objections have been urged against our attempting "to promote the education of our native subjects, but how "unworthy it would be of a liberal Government to give weight "to such objections! The world is governed by an irresistible "power which giveth and taketh away dominion, and vain "would be the impotent prudence of man against the operations "of its almighty influence. All that rulers can do is to merit "dominion by promoting the happiness of those under them. "If we perform our duty in this respect, the gratitude of India, "and the admiration of the world, will accompany our name

"through all ages, whatever may be the revolutions of futurity;
"but if we withhold blessings from our subjects, from a selfish
"apprehension of possible danger at a remote period, we shall
"not deserve to keep our dominion, we shall merit that reverse
"which time has possibly in store for us, and shall fall with the
"mingled hatred and contempt, hisses and execrations of
"mankind.

THE RULES OF EVIDENCE IN INDIAN COURTS OF LAW.

A LECTURE DELIVERED BEFORE THE BETHUNE SOCIETY.

On March 8th, 1866.

BY THE

HON'BLE MR. JUSTICE PHEAR.

AT the fifth monthly meeting of the Bethune Society for the present Session, held at the Theatre of the Medical College on the 8th of March, 1866; Major G. B. Malleson, President, in the chair. The ordinary preliminary business having been disposed of—

The Hon. Mr. Justice Phear addressed the meeting as follows:—Mr. President, Gentlemen, and Ladies, Of those who may either from curiosity or any better motive have been drawn into our English Courts of Justice and have there paid attention to the course of a trial of a matter of fact, perhaps few have come away without having experienced a feeling of some astonishment at the anxiety which they have seen there exhibited on the part both of the Bench and the Bar, to avoid a breach of certain mysterious rules of evidence. In the lower tribunals, where the judges and the practitioners are less familiar with the true principles of juridical procedure, the eagerness to contest about technicalities is still more conspicuous. In either case the spectator will hardly escape a feeling of wonder at those ordinances, whatever they may be, the observance of which is considered by all Courts to be of an importance paramount to the interests of the suitor. And possibly, gentlemen, if he is not blessed with the organ of respect and veneration, developed in a very high degree, he may consider that the

pleasant satire of Mr. Dickens is not altogether a caricature. The Lecturer here read as follows :—" Now Mr. Weller," says Serjeant Buzfuz. " Now, Sir," replied Sam. " I believe you are in the service of Mr. Pickwick, the defendant in this case. Speak up, if you please, Mr. Weller." " I mean to speak up, Sir," replied Sam, " I am in the service of that 'ere gentleman, and a very good service it is."

" Little to do and plenty to get, I suppose," said Serjeant Buzfuz, with jocularity.

" Oh, quite enough to get, Sir, as the soldier said when they ordered him three hundred and fifty lashes," replied Sam. " You must not tell us what the soldier or any other man said, Sir," interposed the judge " it's not evidence."

The Lecturer proceeded :—

And yet, gentlemen, it is, I take it, true that the English public is less satisfied with the conclusions of fact that are arrived at by those amateur tribunals, which still subsist among us, than with the conclusions of those courts which are presided over, and whose proceedings are conducted by professional men. Any attempt in England, at the present time, could it be made, to put in jeopardy the life or liberty of a British citizen by a judicial trial, before any other tribunal then one presided over by professional men, and conducted according to the rules of Westminster Hall, would, I apprehend, be met with considerable demonstration of public repugnance. If this be so, I think I am right in concluding that our rules of procedure, among which not the least notable are those which relate to the reception of evidence, do attain the object for which they were framed ; that they lead our courts to just and satisfactory conclusions ; or possibly, to speak with more logical correctness, that they prevent them from coming to conclusions, which would be in any considerable degree unsatisfactory. In truth, as I conceive, it is impossible to arrive at a conclusion as to antecedent matter of fact, through evidence advanced at haphazard, or the conviction arrived at is of very little value, unless, whether consciously or unconsciously, some principle of selection and of separating by weighing, relatively to the rest, that portion of evidence upon which the judgment may reasonably be based, has been followed. To show how much time may be

occupied to little purpose by an unskilled tribunal, how many questions may be asked, and very little evidence of value be extracted from the witnesses, I need only point out to your attention the report which has lately appeared in the public newspapers of the proceedings under a commission issued to enquire into certain alleged irregularities on a neighbouring railway. Should a master of a house desire to satisfy himself as to the merits of a quarrel between his servants, say, amongst his coachmen and his syces, if he takes all the stories that are simply offered to him on either side, without discrimination, without some scrutiny or selection, I think that every one here will agree with me, that the conclusion as to facts to which he arrives is just as likely to be false as to be true; indeed, I imagine that every sensible man in such a proceeding, if he institute it, does indeed follow or is guided by just the same principles as those which dictate our rules of evidence in an English Court of Justice. For I believe, as has been frequently said by competent and impartial critics, that English common law is but another word for common sense. If that view be correct (it may possibly occur to some of you to ask), if this view be correct, how is it that Great Britain alone, with her Anglo-saxon offspring of all countries in the world, recognizes a systematic code of evidence law in the sense in which we understand it? Now, I admit, as far as my knowledge extends, I am not aware that there is any nation of Continental Europe which has yet elaborated a system of evidence rules into a shape which can be called a code of law, and I must also confess that I have met, since I have been in this country, a considerable number of gentlemen, whose opinions are of the highest possible value, who have emphatically rejoiced that up to the present time, the tribunals of British India are untrammelled by any, of what they are pleased to call the "technical fetters," which are binding upon the courts of the old country. Now on this point, gentlemen, I cannot help thinking that there exists a considerable amount of misapprehension. I believe that the English rules of evidence are neither so capriciously enforced, nor so fruitless of worthy results, as is very commonly imagined; and on the other hand the Courts of other countries are not in any very considerable degree uncontrolled by obliga-

tions of a like character. The reason why, as I suppose, the English rules of evidence have assumed a systematic consistency, which is not generally found elsewhere, is this, that for a considerable period, juries chosen for the moment out of a class peculiarly unskilled in the judicial art, have been the sole and final judges of all issues of fact in our courts. It has therefore been necessary in every case for the presiding professional judge to instruct the jury, in so much of the principles of judicial criticism as shall enable them to perform satisfactorily their duties on the pending occasion, and even to go further, namely, to shut out from their attention so much of the evidence as those principles declare to be unsafe for them to act upon. In France, on the other hand, the jury is an institution of comparatively late date, and is even yet, as I believe, although I speak in comparative ignorance upon the point, confined to criminal cases, where the public trial is but the last step in lengthened judicial proceedings, and the aid of a jury is invoked rather for the purpose of sanctioning the conclusion to which the authorities have come, upon such evidence as those authorities shall think fit to adduce, than for the purpose of acting as an independent judicial tribunal in itself. But, gentlemen, whether or not this view is correct with regard to the cause of England's exceptional position in respect of the subject of my lecture, let us consider for a moment what a trial of a matter of fact necessarily is. In it the court, whether it consist of a judge and jury, or a judge alone, is required to ascertain for itself what were the circumstances of fact which surrounded, or which constituted the relations between, the plaintiff and defendant at some antecedent period, and that ascertainment must be made through evidence,—through testimony, oral, written, or material. Now, as far as I have been able to satisfy myself, the modes of obtaining and dealing with evidence have been chiefly three; may be classified under three particular heads:—

First, that which I imagine prevailed in the earlier stages of society. The court did not deal with evidence directly; it was content to take it second-hand. There were two stories before it—that of the plaintiff and that of the defendant. It looked about to see which of these two it could adopt; it took that

one, and acted upon it, which appeared to be vouched by the most respectable and the most trustworthy witnesses. It did not concern itself to look into the details of each fact itself. Of this character, I apprehend, were our early English inquests or inquisitions. The verdict of the coroner's jury, the bill presented by the grand jury, were but the unanimous reports of so many men selected for the purpose, on account of the probability that by their living in the neighbourhood, by their access to what we lawyers call "knowledge by reputation," they were the best men to report upon the facts and circumstances which they ultimately presented. And I am much mistaken, gentlemen, if that mode of public trial did not exist in this country until a comparatively late day, and I think, the short experience which I have had in the courts of this country is enough to show me, that there is a trace of its influence still to be seen in the behaviour of the witnesses in our High Court trials daily.

Secondly, the trial especially by inquisition, or rather, as it has been termed, the inquisitional mode of trial. It is that mode of trial which is adopted by France at the present day in all criminal cases. The court itself pursues every detail of the subject of investigation by its officers, subordinate or otherwise. It begins with the beginning; it satisfies itself of each fact in succession, and gradually builds up the fabric of the case, till it is completed and fit to be presented to the Court for its final approbation.

Finally, there is our English mode. In that the matter of fact is considered and determined by a court previously unacquainted with any of the circumstances of the case. It is heard and determined by that court at one continuous sitting upon the evidence adduced and brought into court, solely by the diligence of the parties themselves. And our criminal trials range themselves under this head, because they are conducted in all essential respects the same as if the prosecutor, the person who makes the complaint, were the plaintiff, and the prisoner in the dock were the defendant. Now let us look at this last mode of trial a little more closely. Remember, that all the materials before the court are brought there by the parties themselves. We see at once, that one comprehensive rule must

be imperatively insisted upon, namely, that these parties must bring the best evidence in their power. In trial by jury, by the nature of the case, it is impossible that the sitting should be adjourned for the purpose of production of specific evidence. Hence it becomes necessary for the court to say that it will not look on any evidence adduced by a party upon whom the burden of producing it lies, if it is not the best evidence that that party has in his power to produce. And I will explain what the meaning is, that is intended to be conveyed by the word "best," by pursuing this rule into two of its most important consequences. As these matters are not unfamiliar to the public, I shall not hesitate to have recourse to the terms employed to express them in the language of lawyers. In the first place, hearsay evidence will be excluded. For instance, a witness will not be allowed to testify to a matter of fact not within his direct knowledge, or perception, but simply on the authority of another person, from whom he has heard it. Obviously, this second person is the person who ought to be in the witness box. It is upon his credibility that the fact is to be believed, if it is to be believed at all, and the court ought to have him there to be assisted by such tests of his credibility as can be elicited from his own mouth. And secondly, it is he, and he alone, who can furnish additional facts,—facts incidental to, connected with, following upon the main fact, but untold by him to the first person, if such there be, which are of importance in their nature as possibly in effect to be modificatory of that first fact, or which in any other respect may be important to the interests of either of the parties to the case, and for that reason ought to be told. In these two respects, gentlemen, I think it is very clear that the second witness who originally told the story is the best evidence, and the evidence which the party ought to produce, if he can produce it. All writings fall under this head, for if they are taken alone, they are but statements, made upon paper, doubtless, but not for that reason worth more than the statement made by mouth, made upon paper by some one not before the Court. And as to both the points I have just alluded to, namely, the credibility of the person making that statement, and the supplementing of the evidence from the mouth of that same person with regard to the transaction,

there must necessarily be the same deficiency in the case of writing as in the other case, the case of oral testimony. It is possible, gentlemen—I see a large number of gentlemen of this country among my audience—that I may excite surprise when I say that I entirely believe all written documents, all writings except those which are of an obligatory character between the parties, to be far inferior in a court of justice—which has to decide upon facts—to oral testimony, and I make no exception with regard to those documents which are often styled by the name of depositions, and received into court as if they were entitled to as high degree of credit as actual records of the Court. In the second place, wherever a document is good evidence between the parties, the original should always be produced. It must always bear on its face many tests of authenticity and origin, which a copy can never possess, and besides, the errors, whether intentional or otherwise, on the part of the transcriber to which the copy is liable, always render it inferior to the original as a version of what was intended to be written.

The excluding of the inferior testimony in the absence of the better, rests upon considerations which are varied in their character, and I cannot venture, on such an occasion as this, to attempt a discussion of them *in extenso*. I will just draw attention to this. Remembering that the court has only such materials before it as the parties bring—hence, that if it goes on it must do so upon inferior testimony, in the absence of that which is better—is it not fairer that the risk of injustice should be thrown upon the shoulders of that person through whose default this has arisen, than upon the shoulders of the opposite party? And again, inasmuch as the parties must furnish, as I have already stated, the court with materials of judging, the rule of exclusion operates as a penalty, obliging the parties to bring that which is best in their power,—to put forth their full strength in the trial of the issue between them and their opponents. But possibly it may occur to you that there is one reason yet stronger for it, namely, that inasmuch as verdicts of juries are given without reasons, necessarily (for I suppose that twelve men could not by any possibility be found to concur in the same reasons for their verdict); and inasmuch

further as the verdict cannot be reviewed, probably the public would not be easily satisfied to accept final decrees upon such terms, unless it felt that every precaution had been taken to secure that the verdict should be placed upon nothing but the soundest and the firmest possible basis.

The same circumstances attendant upon this mode of trial lead also to special rules in regard to carrying out examinations and cross examinations. The witness is examined once for all. It is essential that he should speak only that which he knows directly of his own knowledge; that he should say all of that which he so knows, which may be beneficial to either side; and again that he should furnish all that it is in his power to furnish which may be of advantage to the court, to enable it to test his credibility, to test his trustworthiness, in the statements which he makes. This being so, obviously the most convenient mode of eliciting testimony from a witness is by questioning from the respective parties. And so it becomes necessary to forbid leading questions from that side which brings the witness into court. Not only in the case where there is reason to suspect the truthfulness of the witness, or his bias or partiality for his side, but even where he is a person of the highest integrity—for it is every day's experience, and I am sure that all members of my own profession will bear me out when I say that it is every day's experience that the witness in the witness box will adopt an answer that is suggested to him when he has no reason to suppose that that suggestion is wrong. I had myself not long ago an instance in the Criminal Court of the Town Hall to that effect, in the case of a witness perfectly impartial as regarded the parties—a medical witness, who was called to speak to circumstances of some importance in the case. He was called to the scene of an accident by a certain alleged individual, it became an object to the prosecution to identify the person who so brought him with another person named in the case. The witness stated that he had not the least remembrance of the person's name; and he had never seen him before, but he had no doubt whatever that he should know him if he once saw him again. Most improperly and inadvertently I asked the witness interlocutorily, "Is that the man?"—pointing to a man who was

standing on one side of the court, and who had been hitherto assumed by the prosecution to be the man. The witness instantly said "yes," supposing, no doubt (and that rightly), that the court had not the smallest intention of misleading him, and hence concluding that it was in all probability the man who came to call him. It turned out, however, that this answer was a mistake,—that it was another man,—but this unfortunate answer had a most fatal effect upon his evidence, and contributed, I had no doubt, to the result of the trial coming to be other than that which the prosecution had anticipated. On the other hand, every witness looks with so much suspicion at any attempt on the other side to put words into his mouth, that there is never the least occasion to be anxious about the form in which the question is put by the cross-examiner; and for the interests of the public, the saving of time, and in order to permit the evidence for the other side being brought out in the quickest and most compact form, it is perfectly allowable for the cross-examiner to bring out his evidence by leading questions or by any question which he likes. There are other points connected with cross-examination, and also important assumptions, which are based upon an adoption of particular lines of conduct with regard to the witness by the cross-examiner, which, had I time, I might attempt to follow out and to dwell upon. But I will only now say that in my judgment the conclusions of fact which are arrived at by English tribunals are mainly, though not entirely, dependent on the modes and completeness with which evidence is elicited from the mouth of the living witness in the witness-box. And I think that our system, which prescribes the rules which I have been dwelling upon with regard to the admission of testimony—the mode of asking questions, the mode in which evidence is brought out, above all the prominence given to cross-examination, does, in ninety-nine cases out of a hundred, succeed in bringing out the evidence as concisely as can be desired, and at the same time as fully and as completely as either party may want for the interests of their case, and in a form that is admirably adapted to be dealt with by the court. And further, I think that wherever our mode of trial is pursued that no conclusions of fact can be relied upon which

are not obtained by the adoption of rules more or less like those which I have mentioned, and that such rules will invariably, or almost invariably bring out the results which I have indicated. Now, gentlemen, my great object in coming before you this evening is to ask the native gentlemen who are here present a question which has been suggested to me by the train of thought which I have been attempting to trace out. If the tribunals of this country conduct their trials according to the English mode (of the three modes I have been pointing out), must they not act in subordination to those principles which I have mentioned as being considered of cardinal importance in the English Courts? And when I ask if the tribunals of this country follow that mode, I am prepared to answer the question, as far as my experience enables me to judge, in the affirmative, that they do conduct their trials in that way. I am aware that many persons think that the procedure of the tribunals of this country is essentially different from that of the courts of England; that legislation of late years has effected a radical distinction between the courts here and the courts in England, as to the mode of enquiry and investigation of cases. But I think that the difference is more imaginary than real. It is impossible, quite impossible, that the courts in this country can ever adopt the second or inquisitional mode to which I have referred: the judge of the court cannot himself enquire into each fact of a case—fish out every bit of evidence which bears upon it—do, indeed, attorney's work in the case,—and form at the same time a judicial judgment while he is doing it. It is true that our present procedure in some degree accords with our courts being the professional advisers of the parties upon both sides; but I do not think it has gone so far as I have just indicated, or that it is possible for the courts to carry such practice out. And then the nature of their staff is such that if the head of the court cannot do it, he cannot judicially act upon what has been done by his subordinates. It is impossible that anything like the procedure which I have indicated as obtaining in the criminal trials of France should be effected by the machinery of our courts here in India. The judgment of the court must, I conceive, always be founded upon evidence which is actually

brought out before itself by the instrumentality of the parties, and never in any degree influenced by conclusions of other branches of his own staff; in other words, he is exactly in the position of courts in England, with the power, no doubt, of having the subject before him for investigation, of postponing it for the production of specific evidence, or the following up an object once made apparent. But I think everybody here will say, that is in this country a much more dangerous expedient even than it is in England. And yet, gentlemen, when I look back upon the very short experience I have had here, but which has been a daily one for the last year and a half, I can come to no other conclusion than that the Courts here, unconsciously perhaps, ignore nearly every one of the rules of procedure and of investigation to which I have alluded; that hearsay evidence is as a rule accepted unquestioned; that writings are almost to a mania, I may say, taken to be of greater value than oral testimony; that copies are looked at as willingly as the originals; that no rules with regard to the mode of eliciting evidence ever appear to be followed; and that cross-examination, in its essence—I do not mean by cross-examination, simply questions put by somebody on the other side,—that cross-examination, in its essence, is entirely unknown. I will venture to trespass upon your time for a moment to mention one or two instances which have occurred to me, premising that they are but instances, and as far as I know, only random samples of that which comes to the knowledge of our Appellate courts every day. A question is before the court of boundary—boundary of two neighbouring talooks. The judge, a gentleman of great experience here, begins his judgment by saying there are six or seven witnesses on each side, but they are relations or dependents of the parties, and therefore their testimony is worthless. Upon that he proceeds to set it entirely aside, and without further comment proceeds to decide upon three of those infallible writings. The first is a *copy* of a report made by an Ameen sent down to the spot for a local investigation, upon a different occasion by the Collector for the purpose of satisfying himself with regard to certain particulars, intended to be inserted in a notice of sale; the second writing was a *copy* of a roobakary, so called, made

by some unknown sherishtadar, of extracts from meuzawaree papers in the collectorate; and the third was a *copy* of one of the depositions made before the Ameen whom I first mentioned upon the occasion of his making the enquiry when he went down into the country; all three documents *copies*. Now, gentlemen, assuming with the learned judge that the oral testimony of the six or seven witnesses who came into court on each side was so utterly worthless that it did not deserve the smallest attention, it is extremely difficult to see how the same kind of testimony, in every respect, becomes better in its quality by being first taken by an Ameen sent down with no particular responsibility as regards these parties or any other party,—digested by him, and then copied. Gentlemen, another case will be familiar to many of you. A question occurs in the courts as to possession of land, or rather as to the enjoyment of proprietary interest by zemindars; and that is considered to be satisfactorily proved in contested cases by throwing, I may almost venture to say, at the head of the court (only that the court accepts it very graciously), kubooliuts from the custody of the person interested in what those kubooliuts say, without the production of the ryots who gave these kubooliuts, or the smallest attempt to account for their not being there; and in ninety-nine cases out of a hundred, I may almost venture to say, it is not the original kubooliuts even that are pretended to be put in, but copies. I will come now, gentlemen, to even a more serious case. It not long ago occurred to me, with other judges in the High Court, to have under consideration a case where persons were charged with murder, and had been sentenced to the extreme penalty of the law. The factum which was supposed to constitute murder was scarcely denied; but if the story of the prisoners, three of them, was to be believed, it was such as to reduce the offence altogether to a much lower place in the category of crime. Probably the facts were such as would relieve two of the prisoners of any offence whatever. It was in the power of several of the witnesses—more than one at least—for the prosecution, judging from the position in which they stood with regard to the facts, to affirm or deny several of the more important points set forward by the prisoners. And yet as far