He resigned his seat, on the orders of his physician, and retired to what was called private life.

But, as it proved, the remaining ten years of his life most widely established his reputation and influence throughout America. As early as 1820 he had established a reputation, such as few men in later days have enjoyed, as an orator. He was frequently invited, as other public men are invited in America, to deliver an "oration" on one or another public topic of historical or other interest. With him these "orations," instead of being the ephemeral entertainments of an hour, became careful studies of some important theme, so that the collected edition of them is now one of the standard books of reference in an American's library. Eager to avert, if possible, the impending conflict of arms, Everett prepared an "oration" on Washington, which he delivered in every part of America. In a printed note accompanying the published edition of it, he names nearly one hundred and twenty-five occasions, in almost every State in the Union, in every section but the extreme south-west, where it was repeated. This exception was caused only by illness in his family, after he had received invitations to go to that quarter also. He travelled really as an ambassador of peace among irritated States. The eagerness to hear him was so great that, from the first, his hosts arranged, almost always, that tickets should be sold to all auditors; and as he travelled wholly at his own charges, the audiences thus contributed more than one hundred thousand dollars for the purchase of the old home of Washington at Mount Vernon, and the securing it as a shrine for American patriotism.

Everett's name, in direct violation to his wishes, was presented, with Mr Bell's, as a candidate of North and South jointly for vice-president in the election of 1860, when Abraham Lincoln was elected. The civil war followed. Reconciliation was impossible, and he gave all his learning, zeal, and eloquence, to the support of the national government. For four years he was the trusted adviser of every department; he was called upon in every quarter to speak at public meetings. He delivered the last of his great orations at Gettysburg, after the battle, on the consecration of the national cemetery there. In February of 1865 the success of the national arms was certain. He had the pleasure of speaking at a public meeting in Boston to raise funds for the Southern poor in Savannah, just taken by General Sherman. At that meeting he caught cold, which was followed by sudden illness, and by his death January 15, 1865.

In Everett's life and career was a combination of the results of diligent training, unflinching industry, delicate literary tastes, and unequalled acquaintance with modern politics. This combination made him in America an entirely exceptional person. He was never loved by the political managers; he was always enthusiastically received by assemblies of the people. He would have said himself that the most eager wish of his life had been for the higher education of his countrymen. His orations have been collected in four volumes. A work on public law, on which he was engaged at his death, was never finished. (E. E. H.)

EVESHAM, a municipal and parliamentary borough and market town of Worcestershire, England, is situated in the vale of Evesham, 15 miles S.E. of Worcester, on the Midland and Great Western Railways, and on the river Avon, over which there is an ancient stone bridge of eight arches, connecting it with Bengeworth parish, which forms part of the borough. It is a well-built town, and its two main streets are wide and clean. The surrounding land is of great fertility, and is occupied chiefly as market gardens. The inhabitants of the town are mostly employed in the rearing of garden produce, but there are also manufactories for agricultural implements, and for gloves and hosiery. The principal buildings are the old town-hall, the churches of All-Saints, St Lawrence, and St Peter's, and the grammar school. Evesham is a place of considerable antiquity, a monastery having been founded there as early as the beginning of the 8th century. Of this building almost the only remnant is a magnificent tower, built not long before the Reformation. This tower, which is considered the best extant specimen in England of the Pointed ecclesiastical style of the 16th century, is 110 feet high and 28 feet square at the base. At Evesham was fought, on the 14th August 1265, the famous battle between Prince Edward, afterwards Edward I., and Simon de Montfort, earl of Leicester, in which the latter was totally defeated, and he and his son slain. Previous to 1867 Evesham returned two members to parliament, but it now returns only one. The population in 1871 was 4888.

EVIDENCE. It is necessary to distinguish two common meanings of the word evidence which are not unfrequently confused. Evidence sometimes means the ascertained facts from which we infer the existence of some other fact or principle. It also means the testimony of persons as to the existence of facts, from which testimony we infer that these or other facts do or do not exist. It is the latter sense alone which is appropriate in speaking of judicial evidence.[1] The rules of the law of evidence are based chiefly on considerations relating to human testimony. Their fundamental purpose is to guard and test the truthfulness of statements as to matters of fact made in a court of justice. The further question, what conclusion is to be drawn from the facts, supposing them to be true, is the subject of few if any specific rules. The general theory of relevancy excludes testimony relating to facts from which no conclusion whatever could be drawn with reference to the facts in issue. On the other hand, in the case of what is called "conclusive proof," the law directs that on certain evidence the judge must regard some fact as proved and reject any evidence offered against it. Between these two extremes the law leaves the relation between facts in evidence and facts in issue to the unaided logic or common sense of the tribunal.

The theory of relevancy above alluded to lies at the root of the law of evidence, and requires some preliminary explanation. The phrase is not one of common use in English text books, and nothing like a statement of the general principle is to be found in them. Roscoe, for instance (*Digest of the Law of Evidence at Nisi Prius*), simply states that, "as the object of pleading is to reduce the matters in difference between the parties to distinct and simple issues, so the rules of evidence require that no proof, oral or documentary, shall be received that is not referrible to those issues. All evidence of matters which the courts judicially notice, or of matters immaterial, superfluous, or irrelevant, is therefore excluded." And again, "In general, evidence of collateral facts, not pertinent to the issue, is not admissible." We are left to collect from the abundant wealth of decided cases what things are relevant and material, and what things are irrelevant and superfluous. A statement of the general result of the cases will be found in Sir James F. Stephen's recently published *Digest of the Law of Evidence*. In the introduction to an edition of the Indian Evidence Act, by the same author, the theory of relevancy thus deduced from the decided cases is fully explained, and its connexion with the general laws of experimental inquiry pointed out.

[1] Sir James Stephen's definition is—"Evidence means—(1) all statements which the judge permits or requires to be made by witnesses in court in relation to matters of fact under inquiry; such statements are called oral evidence; and (2) all documents produced for the inspection of the Court or judge; such documents are called documentary evidence."—*Digest of the Law of Evidence.*

The distinction sometimes drawn between direct and circumstantial evidence is of popular rather than legal interest. The fact in issue may be proved either by the testimony of persons who swear to it as a matter of personal knowledge, or by the testimony of persons who swear to other facts from which the existence of the fact in issue is inferred. In the former case the evidence is said to be direct, in the latter circumstantial. The probative force of these two sorts of evidence has been differently estimated. On the one hand, it has been said (and this we should think is the more popular view) that conclusion arrived at merely from inference is not so trustworthy as the positive assertion of a sane and honest witness who testifies to what he has actually seen or heard. The explanation would seem to be that men have less confidence in their own powers of reasoning than in the assertions of others. It is hardly necessary to point out that in both cases a process of inference is necessary—that we infer the existence of the fact from the fact that the witness swears to it, and that this inference like others is exposed to the chances of error. On the other hand, the numberless instances on which positive direct testimony as to matters of fact has been subsequently shown to be entirely false or erroneous, has led to the opposite opinion that circumstantial is more trustworthy than direct evidence. Apart from the possibility of deliberate falsehood in the witness, there is the chance of his having been utterly and unaccountably mistaken. Everybody can recall striking instances of this—especially in cases of personal identity.[1] Accordingly, it has been said, in the phrase of Paley, that "circumstances cannot lie," or, as it was put by Mr Justice Buller in Donnellan's case, "a presumption which necessarily arises from circumstances is very often more convincing and more satisfactory than any other kind of evidence, because it is not within the reach and compass of human ability to invent a train of circumstances which shall be so connected together as to amount to a proof of guilt without affording opportunities for contradicting a great part, if not all those circumstances." The facts in circumstantial evidence are, however, like the facts in direct evidence, to be taken subject to the possibility of mistake or falsehood on the person narrating them, and the process of inference has its own peculiar dangers. The *anno domini* water-mark on writing paper has often been the instrument of convicting persons of forgery; but "it is beyond a doubt," says Mr Wills, "and instances of the kind have recently occurred, that issues of paper have taken place bearing the water-mark of the year succeeding their distribution." Circumstantial evidence corresponds to "facts relevant to the issue," as defined in this article.

The English law of evidence is perhaps the most perfect example we possess of what Bentham calls judge-made law. It is substantially the creation of successive generations of judges in the courts of common law. It grew up as a thing of custom and practice, and it is not so very long since different customs prevailed on different circuits. Thus, Lord Ellenborough, in one instance quoted by Sir J. Stephen, spoke of the practice of the Northern and Western Circuits as being different from that of the Oxford Circuit. It was made by judges for juries, and this fact no doubt serves to explain many of its peculiarities. Without adopting Bentham's opinion that these were deliberately intended to subserve the "sinister interests" of the lawyers, we may admit that they were founded largely on distrust of the capacity of the tribunal to which the issues of fact belong. Hence doubtless those numberless presumptions by which a conclusion is imposed on the jury until positive evidence is offered to set it aside. Hence also that monstrous system of exclusions by which any person whose position was such as to make it in the least degree likely or possible that he would tell a falsehood, was withdrawn from the hearing of the jury. Only the most contemptuous disbelief in the sagacity of jurymen can account for the exclusion of the only witness cognizant of the transaction in question, simply because he has a slight pecuniary interest in the result. It may be conjectured that if trial by jury had not been the practice of the common law—if the judges had acquired the power of deciding issues of fact as well of law—many of the most obnoxious rules of evidence would never have existed.

The legislature has interfered mainly for the purpose of putting an end to these exclusions. Certainly the most important of the statutes dealing with the law of evidence are those which make classes of persons, formerly excluded, competent to testify. The source of this continuous reform is to be found in the treatise of Bentham, which, for the first time, examined the traditionary law by the light of practical utility. Starting with the fundamental principle that the great object in judicial evidence is the discovery of truth, he hunted down with merciless rigour the artificial rules which closed out the surest sources of evidence. The success of his attack has been complete. In 1843 the exclusion of persons by reason of interest or crime was abolished (6 and 7 Vict. c. 85), but the incapacity of the parties to an action was allowed to remain. This in turn was abolished with certain exceptions by the 14 and 15 Vict. c. 99. By 32 and 33 Vict. c. 68, parties were allowed to give evidence in actions for breach of promise (subject to the requirement of corroboration), and husbands and wives in proceedings for adultery. The last Act of this sort was passed in 1877, and is a curious instance of the guarded way in which the legislature has approached this subject. It simply provides that, on the trial of any indictment or other proceeding for the non-repair of any public highway, bridge, or for a nuisance, or of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses, and compellable to give evidence. Husband and wife are now excluded only in purely criminal cases, and in course of time no doubt that exclusion also will be brought to an end. Religious disabilities (enforced by the necessity of an oath) have also been gradually got rid of by successive enactments, the most important being the 24 and 25 Vict. c. 66, and 32 and 33 Vict. c. 68. With these exceptions, the legislature has left the leading principles of the law untouched.

In attempting to give an outline of the law of evidence in this country we shall follow in the main the division adopted by Sir J. Stephen in his very useful *Digest.* English text books on the law of evidence owe their enormous bulk to the introduction of rules which properly belong to the substantive law, or to the rules of practice in the tribunals. Confining ourselves to the general principles of evidence, we shall notice shortly the following heads:—1st, What facts may be proved in a court of law; 2d, By what kind of evidence they must be proved; and, 3d, By whom, and in what manner, the evidence must be produced.

[1] A very remarkable example is given by Mr Wills in his essay on *The Rationale of Circumstantial Evidence.* Sir Thomas Davenant, an eminent barrister, a gentleman of acute mind and strong understanding, swore positively to the persons of two men whom he charged with robbing him in the open daylight. But it was proved, on the most conclusive evidence, that the men on trial were at the time of the robbery at so remote a distance from where Sir Thomas was robbed that the thing was impossible. The consequence was that the men were acquitted: and some time afterwards the robbers were taken, and the articles stolen from Sir Thomas and his lady found upon them.

1. Sir J. Stephen states the general rule as follows :—"Evidence may be given in any action of the existence or non-existence of any fact in issue, and of any fact relevant to any fact in issue, and of no others. Relevant facts here means simply facts (other than those in issue) which may be proved, and would include cases of relevancy strictly so-called,—*i.e.*, facts relevant in the sense that from their existence you may infer the existence of the facts in issue. There are minor classes of facts, not being facts in issue, and not being relevant facts in this sense, which nevertheless may be proved. For example, "facts which, though not in issue, are so connected with facts in issue as to form part of the same transaction," and "facts which are necessary to be known to explain or introduce a fact in issue," may be proved; but to say that they are relevant tends to obscure the theory of relevancy.[1]

What facts, then, are to be regarded as relevant to facts in issue? English law, as we have seen, makes no attempt to answer this question otherwise than by the enumeration of decided cases. The general definition of relevancy in Stephen's *Digest* is the following :—Facts, whether in issue or not, are relevant to each other when one is, or probably may be, or probably may have been—the cause of the other, the effect of the other, an effect of the same cause, a cause of the same effect,—or when the one shows that the other must or cannot have occurred, or probably does or did exist, or that any fact does or did exist or not, which in the common course of events would either have caused or have been caused by the other.[2]

There is little doubt that this is a correct statement of the general principle embodied in the decided cases of the law of England. Facts may be proved from which legitimate inferences may be drawn as to the existence of the facts disputed at the trial, and this inference depends on the existence of a causal connexion between the two sets of facts. The theory of relevancy thus becomes, as Sir James Stephen (Indian Evidence Act) has pointed out, a particular case of the general theory of induction; and the question whether facts are relevant to each other or not may become co-extensive with the entire field of human knowledge. Bentham has pointed out, in his chapter on "Real evidence, or evidence from things" (*Rationale of Judicial Evidence*, book v. c. 3), that

"There is scarce an imaginable distinction or observation an indication of which could, with reference to the subject of the present work, be charged with being altogether irrelevant; for in one way or other, and even in each instance in various ways, there is not an imaginable fact the existence of which is not capable of being taken for the subject of inquiry in a court of judicature. If, therefore, the whole encyclopædia were to be crowded into the body of this work, and into this part of it in particular, there is not a page of it that would, strictly speaking, be irrelevant with regard to the subject of this work."

It is perhaps hardly necessary to give instances in illustration of the general definition of things relevant. The conduct of a person charged with an offence is one of the most common and the most obvious cases. Thus, "any fact which supplies a motive for such an act, or which constitutes preparation for it, any subsequent conduct of such person which appears to have been influenced by any such act, and any act done in consequence of any such act by or by the authority of that person," may obviously lead to inferences as to the act itself. One of Sir James Stephen's illustrations may be cited :—

"The question is whether A wrote an anonymous letter threatening B, and requiring B to meet the writer at a certain time and place to satisfy his demands. The fact that A met B at that time and place is relevant, as conduct subsequent to and affected by a fact in issue (an effect of that cause). The fact that A had a reason unconnected with his letter is relevant as rebutting the inference suggested by his presence (the effect of another cause.)"

The limit of relevancy is sometimes expressed by the saying that collateral facts are not admissible in evidence unless pertinent to the issue, but, as usual, we are left to collect the meaning of collateral from the decided cases. The typical case is perhaps that of Holcombe *v.* Hewson (2 Campbell, 391), where, on a question whether the beer supplied by plaintiff to defendant was good, the plaintiff was not allowed to prove that the beer he supplied to his other customers was good. In Phillips *On Evidence* it is stated that an admission by a prisoner that he had committed a similar offence at another time ought not to be received in evidence. To an enumeration of such cases Roscoe (*Evidence at Nisi Prius*, p. 89) adds generally that all proof of facts which merely tends to create an unjust prejudice, or unduly to influence the jury, or occupy the time of the court in irrelevant inquiries, is inadmissible; but if the proof be directly or indirectly pertinent to the issue, it will be admitted ;—which seems to come to this, that mere similarity in circumstances or coincidence in time will not make one fact relevant to another unless some causal connexion between them is made apparent. Thus, in the beer case above mentioned, the evidence might have been made relevant by showing that the beer supplied to all the customers was the same. Sir James Stephen's *Digest* contains several headings of exceptions to the rule excluding collateral evidence, but they will be found, we think, to be all cases of the general rule of relevancy. Some bond of connexion, as cause and effect, will be found to have been established between them. Thus, when the intention of an act is in question (as in the case of a man accused of setting fire to his house in order to get insurance money), other instances of similar acts (as that the prisoner had previously had two houses burnt, each being insured, and the insurance having been paid) may be adduced.

But it must not be supposed that the law admits as evidence all facts which are, in a strictly logical sense, relevant. The most considerable and important exception is that of *hearsay evidence*. In ordinary life we should regard a statement made to us at second hand not only as relevant to the fact it asserts, but as sufficient and satisfactory proof, if both of our informants are persons of creditable character and intelligence. In point of fact, the immense bulk of our knowledge and belief on all sorts of subjects is founded on hearsay evidence, many times more remote than in the case we have supposed. The general rule of law excludes all such evidence. "The fact that a statement was made by a person not called as a witness is not regarded as relevant to the truth of the matter asserted thereby." The reason is sufficiently obvious. A deponent in court tells his story under securities for its truthfulness. He may be cross-examined. He may be punished for telling lies. But for these securities it would hardly be safe, considering the consequences attaching to every issue in a court of justice, to act upon any testimony whatever. These securities do not exist in the case of extra-judicial statements by persons not called before the court, and accordingly, as a general rule, no evidence can be offered regarding them. The extent, and perhaps the apparent severity of the rule, may be illustrated by the case in which it was held that, in a question of the validity of a will, the declaration of one attesting witness, since deceased, that he forged it, cannot be offered in evidence.

This rule, however, has its exceptions, which are classified in Stephen's *Digest* under the heads of "admissions or confessions; statements by deceased declarant; evidence given on a former occasion; statements made under special circumstances; judgments of a court of justice." An admission is defined to be a statement suggesting any inference as to facts unfavourable to the conclusion contended for by the person by whom or on whose behalf it is made, and may be given in general in evidence against him. In civil actions, statements of this sort, made without prejudice or on express condition that they are not to be used in evidence, may not be admitted. An important class of admissions is that of confessions in criminal cases. A voluntary confession may be used in evidence against a prisoner, but a confession caused by "any inducement, threat, or promise, proceeding from a person in authority," is not admissible. But a confession made under promise of secrecy, or in consequence of deception, may be used in evidence. Dying declarations, made in immediate prospect of death, are admissable in trials for the murder or manslaughter of the deceased. Declarations made in the ordinary course of business or duty by deceased persons are admitted as relevant to the matter to which they relate. And a declaration by a deceased person is admissible "if he had peculiar means of knowing the matter stated, if he had no interest to misrepresent, and if it was opposed to his proprietary interest."[1] Declarations relating to public rights or customs by competent persons may be used in evidence after their death. In pedigree cases, statements by deceased blood-relations, made before litigation, are to be admitted. The statutes 11 and 12 Vict. c. 42 and 30 and 31 Vict. c. 35 allow depositions of deceased witnesses to be used in certain criminal cases. In civil cases the evidence of a deceased witness may be used at a subsequent trial raising the same issues. Among the miscellaneous cases of admissible hearsay evidence may be mentioned facts of a public nature recited in statutes and proclamations. entries in public records, and statements in maps, and plans, and accredited historical works. Judgments are conclusive proof of "the state of things which they effect," and as between parties of the facts actually in issue.

Another instance of departure from the logical theory of relevancy is the evidence of opinion. The general rule, as enunciated by Stephen (*Digest*, part i. c. 5), is "that the fact that any person is of opinion that a fact in issue or relevant to the issue does or does not exist is not regarded as relevant to the existence of such fact." A distinction, which Sir J. Stephen does not notice, must be drawn between two senses in which the word opinion may be used. In common parlance, the belief of a scientific witness on some technical point, and the belief of an ordinary witness as to some fact perceived by himself, would with equal propriety be described as opinion. And it would not be difficult to show that psychologically they are the same thing. The opinion in each case is the result of a process of reasoning. In each case one reasons from a number of facts to a conclusion. The belief of a witness in a question of personal identity is based on a number of facts as to which he has no doubt, *e.g.*, the size, the build, the gait, the clothes of the person in question. The law, however, draws a broad distinction between this kind of inference and the open and deliberate inference as to matters not directly perceived by the senses. It distinguishes between facts and inferences, holding in disregard of psychology that the former are directly perceived; but it does not insist upon absolute certainty in the perception. A witness may "believe" or "think" or "be of opinion" that he saw A. on a given day, or he may say positively that he did see him. The strength of his persuasion will be considered by the tribunal, but his evidence will not be rejected because his persuasion is weak. Or, as Mr Taylor puts it, "the law does not require him to speak with such expression of certainty as to exclude all doubt." By opinion then is meant not merely a lower degree of persuasion, a more feeble belief, but a belief held as the result of inference and not of direct perception. There is nothing in the feebleness with which a witness's belief in the existence of a fact is expressed or held to make it irrelevant. But as a general rule, opinion in the other sense is not admissible in evidence at all. It is the business of the tribunal of the jury to form such opinions for themselves. Indeed, the exclusion of opinion in evidence is put on this very ground in some of the decided cases. Thus, in an insurance case, a new trial was granted because the opinion of a witness had been admitted as to whether the communication of particular facts would have varied the terms of the policy—the court holding that this was a question for the jury alone. But the general rule has its exceptions, which may almost all be included "in the opinion of experts." In matters of science and skill requiring special study and education, the opinion of persons so qualified (experts) may be given in evidence. The law of a foreign country, and the examination of hand-writing, are among such matters. But an expert cannot give an opinion as to the existence of the facts on which his opinion is based, although of course he may testify to them if he has perceived them himself. In thus excluding opinion on all but technical subjects, the law is stricter than the logic of ordinary life. The opinion of others tells for something in the formation of our own opinions, and no doubt ought to tell for something. This, however, is not the place for an examination of the influence of authority in matters of reasoning. It is sufficient to point out that in law it is reduced to a minimum.

2. *How facts that may be given in evidence are to be proved.*—First of all we must set aside a considerable class of facts which need not be proved, because they are already supposed to be known to the court. The judge takes "judicial notice" of them. These are for the most part facts relating to the constitution, including, of course, the entire body of law administered in all the courts of the country, from whatever source it may be derived. The courts will also take judicial notice of the accession and sign manual of the queen and her successors, of the existence and title of every state and sovereign recognized by her Majesty, of the names, titles, functions, signatures, &c., of the judges of the supreme court, of the great seal, privy seal, seals of the courts of justice, an of certain

[1] In a later edition of the *Digest*, the phrase "deemed to be relevant" is substituted for "relevant."

[2] This definition is borrowed from a pamphlet on the *Theory of relevancy for purposes of judicial evidence*, by George Clifford Whitworth, Bombay, 1875. Mr Whitworth examines the case of Müller, tried at the Old Bailey in 1864, and shows how the items of evidence admitted fall under one or other of the above heads of relevancy.

[1] In the leading case of Higham *v.* Ridgway, an entry in the book of a deceased man-midwife, stating the birth of a child on a certain day and the *payment* of his fee for attendance, was admitted in evidence to prove the birth on that day. The acknowledgment of payment was held to be "against the declarant's interest," and rendered the whole statement admissible. The distinctions made by judges in cases of declarations by persons deceased run very fine. A declaration made by a person in the course of his business or duty will not let in anything but the statement it was his duty to make. Thus a declaration by a deceased sheriff's officer as to the time and place of an arrest effected by him was admitted so far only as the *time* was concerned, because it was not his official duty to make a note of the *place*. If, however, the statement had contained such a note as "received for the same five shillings" (which would be a statement against interest), the evidence as to place would have been admitted. Again, in the Sussex Peerage case, it was held that a declaration made by a clergyman that he had performed a marriage under circumstances which would make him liable to pecuniary penalties was held not to be a "statement against interest" within the meaning of the rule. On the other hand, a statement made by a tenant that he paid rent for his house was held to be admissible as against interest, because it rebutted the presumption founded on the fact of possession that it belonged to him in fee simple. The tendency of judicial decisions since the principal case (Higham *v.* Ridgway) has been to limit the operation of the rule. In a recent case, however (Leyden *v.* Lord St Leonards), the judges expressed an opinion that the best rule would be to admit all declarations made by deceased persons, where they had peculiar means of knowing the fact testified, and had no interest to misrepresent it.