

AN ANSWER

TO THE COMMON

OBJECTIONS TO CHINESE TESTIMONY;

AND

AN EARNEST APPEAL

TO THE LEGISLATURE OF CALIFORNIA,

FOR THEIR

PROTECTION BY OUR LA W.

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SAN FRANCISCO :

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A N S W E R

TO

OBJECTIONS TO CHINESE TESTIMONY,



A P P E A L

FOR THEIR

PROTECTION BY OUR LAWS.

To the HONORABLE SENATE
and ASSEMBLY of the
STATE OF CALIFORNIA :

The amazingly rapid progress of our young and noble State in all the elements of material prosperity has been followed, though not with equal steps, by an advance of morals. The amount of crime, especially the bolder and viler sorts, has been greatly lessened; peaceful Christian homes now begin to whiten our hill-sides and plains; schools to fill and flourish; and where, a few short years ago, there was not one, there are now more than six scores, of those whose office it is to preach that free word of God, which, like the sun, illuminates, purifies, invigorates, gladdens and adorns the nation where it shines. But, just as in one new region the soil is overshadowed with gloomy trees, which, when properly hewn, form the fences, dwellings, and utensils of the people; or, as in another, it is filled with masses of rock, which, when quarried and laid, rise into solid and noble edifices, pave the highways, assume a thousand ends of permanent usefulness and beauty, or, even when cast in the flashing torrent, raise its level, and create valuable powers that soon concentrate wealth, and population, and enterprise; so, too, we have had thrown upon our territory a shapeless material, cold, unwieldy and dark, but which judgment, skill and patience may surely make of inestimable value, whether to commerce, or agriculture, or manufactures.

The Chinese population, on the other hand, groan and cry out, though their articulations are little understood by us, with many and grievous burthens, hardships and troubles. Within the last two years, their condition has greatly improved; they are employed in many advantageous ways; the ignorant and filthy have ceased to spew, in the newspaper or the bar-room, upon their timid helplessness; and they are becoming more settled, prosperous, and contented. The greatest stumbling-block, a rock of offence in their way and in ours, is now the exclusion of their testimony from our courts of justice, in suits in which whites are parties. They are thus a tempting prey to all the depraved classes with which a new country, and especially a country rich in native precious metals, must abound. They are the spoil of villains of every race and hue. Our industrious classes are injured by their fluctuations and losses. Every branch of business suffers. Society is kept uneasy and shifting. All must feel the injuries of one member; as, if what appears to others an insignificant source of suffering continues to press and wound even a foot or toe, inflammation at length must ensue, and then constitutional disturbance, sickness, and the loss of a limb, or of life.

The settlement of the questions involved in the grant to the Chinese of the privilege of testifying, on oath, against whites, is attended with some difficulties. And yet I have thought that the chief lay in, first, the want of popu-

lar information in regard to some of the tenets and practices of the Chinese; second, the not clearly discerning, and applying to a new case, some of the radical principles of our own system of justice. It is stepping out of my place to engage in the consideration of some of these points, and I regret that those better qualified have not elucidated them. But the claims upon me, in behalf of the Christian community, of the distressed race among whom my labors are spent, and of all who seriously think upon the present miserable and disordered state of things, are urgent. It is enough to fill any one with horror and anxiety. A "plea," addressed to your Honorable body last winter, in relation to Chinese matters, was thought to have furnished some useful information and suggestions. You will, I hope, impute it, then, to no spirit of obtrusiveness, but to a deep sense of personal and special obligation, if I take up this remaining and important subject of Chinese testimony, and carefully examine the common objections to its reception. In attempting to explain them, may I not ask that, while you reject what is incorrect, what is evidently reasonable and true may receive the candid consideration which becomes the subject, and your elevated position as Legislators for the welfare of a great and advancing State, whose influence is felt over the Republic.

1. It is objected to the admission of Chinese testimony that they are pagans, and insensible to the religious obligations of an oath.

But this originates from an insufficient acquaintance with their religion. The most prominent feature of the great idolatrous system of Buddhism is that good and evil shall be recompensed exactly, and in kind, by the tribunals of the unseen state. I might quote, if time allowed, from the minute specifications of future punishment contained in Chinese books. Gluttons and debauchees, for instance, are represented as plunged in lakes of blood and filth; those that hoard grain, as changed into starving brutes; those that have deceived and deluded the young, as freezing in lakes of ice; those cruel to beasts, as devoured by them in turn; and those guilty of lying and falsehood, as having their tongues torn out by the roots, or pierced through with a red hot iron dagger. In some respects pagans are more apprehensive of the punishment of evil, both in this life and in that to come, than the mass of nominal "Christians." The reader of Dante's Infer-

no will find a wonderful parallel to the Oriental notions in his descriptions of Purgatory:

"Here sighs, with lamentations and loud moans,
Resounded through the air pierced by no star."

* * * * * Various tongues,
Horrible languages, outcries of wo,
Accents of anger, voices deep and hoarse,
With hands together smote that swell'd the sounds,
Made up a tumult, that forever whirls,
Round thro' that air with solid darkness stained,
Like to the sand that in the whirlwind flies."

Canto iii.

* * * * * "Another shade"
Pierced in the throat, his nostrils mutilate
E'en from beneath the eyebrows, and one ear
Lopped off, who, with the rest, thro' wonder stood
Gazing, before the rest advanced, and bared
His windpipe, that without was all o'ersmeared
With crimson stain."

* * * * * "One I marked, torn from the chin throughout
Down to the hinder passage; 'twixt the legs
Dangling his entrails hung, the midriff lay
Open to view, and wretched ventricle,
That turns the englutted aliments to dross."

* * * * * "Whom here thou seest, while they lived did sow
Scandal and schism, and therefore are they rent.
A fiend is here behind, who with his sword
Hacks us thus cruelly, slivering again
Each of this realm, where we have compass'd round
The dismal way; for first our gashes close
Ere we repass before him."

Canto xxviii.

Most solemn oaths are written on paper, signed by the parties, and burned before a deity, invoking the penalties of the future upon falsehood. Or else the head of a cock is cut off, or a saucer broken and perhaps salt scattered on the ground, to symbolize the same idea. These oaths are not resorted to by the Chinese legal authorities, who only appeal to civil penalties. But they are applicable to the legal processes of Western nations, and are employed in the English Courts in China and other colonies. I may add here the persuasion that the insertion of the name and titles of the True God, the Creator and Judge of all, will obviate the idolatrous features of an oath written and burnt; since most of the Chinese consider Him to be the same with their Shangti, who is equivalent to the Roman Jupiter, and the Greek Zeus, the "Father of gods and men." And besides they would be disposed to fear Him the more as the patron god of this nation and region.

And yet I do not intend to signify that the definiteness or certainty of a pagan's creed are comparable with that of the Christian, or that it has the same influence in binding him to truth and honesty. The one is the dim glimmering of natural religion, often distorting and making terrible the truth; the other is the clear day-light of a risen revelation, making sure and distinct the great realities both on this

and on that side of the "cold stream between." The excited passions, the present temptations, the perverted conscience of the pagan must make, in ordinary cases, his word and oath much less reliable than that of a "Christian." A few of the Chinese are Christians, and others are proud of their honor in keeping verbal obligations. But this may be said emphatically, that years must pass away, they must have much more knowledge of the principles of our laws and religion, and the example of whites must improve, before the oath of a Chinaman may be taken with as much confidence as that of an intelligent and honest American.

It has been thought the principle of the French code, which constitutes the oath a privilege confined to the more respectable and intelligent classes of society, might be applied more extensively in American courts. The following extract from a letter received lately from the State Superintendent of Schools, the Hon. Mr. Hubbs, while it urges the admission of all testimony that will throw light on a case, yet maintains the administration of the oath only as a *privilege*.

"The Code Civil, liv. 3 ; titre 3 ; sections 3, 4, 5, seems to accord the power to the discretion of the Judge, restricting him in the exercise of according the honor or "deference" to cases where all other means of proof fail.—My own experience was simply this: living in a country chateau outside of Lyons, our residence was forced by brigands in the night, and I had a desperate contest with two men, one of whom was laid out apparently dying, the other was caught by troops attracted by the noise, in his effort to escape by the garden walls. Upon the trial my wife and myself were called upon to testify. A "proces verbal" had been made by the Commissary of Police and the Mayor of Lyons, immediately after the occurrence, and the parlor sealed up. *We were not sworn*; but simply asked some questions, mainly to identify the men, by the Procureur du Roi and by the Judge. The men were condemned, and sent to the galleys in chains. I asked my friend the surgeon, how it was that we were not sworn? He told me that this honor was accorded to very few, not more than one in many thousands of the residents—that when accorded it became matter of family pride and boasting—that witticisms were heard especially in Criminal cases; and what they said passed for what it might

be deemed worth in searching for the truth of the case, "en cherchant du bonne foi." I would never favor the administration of the oath to those who cannot revere its character. But I would compel statements of facts from man and beast when concurring testimony may thus be produced. Dogs have oftentimes been the means of important disclosures. Why then should we not compel man, whether Japhetic, Shemitic, Mongolian or Negro, to an examination tending to develop the truth of a case?"

This view is worthy of weighty consideration. But to me it seems that to constitute the oath a *privilege* has some serious objections. It incorporates with the forms of our English laws those of a country, all whose institutions and opinions are very different. It removes that, the violation of which creates the civil crime of "perjury," the penalties of which will in time be learned by the Chinese. It is dangerous to institute the legal recognition of "castes." And again, the employment of the oath is a practical education in our social and religious ideas, the influence of which must be most important upon the Chinese. The great objections to permitting the use of the oath, seem much more than overbalanced by those that arise from its refusal. The former must be left for time to remove. If we hope to improve this people, we must exercise, above all things, *patience*.

That it is a right, according to our English Common Law, for pagans and for Asiatics to be allowed the oath, is well known. *Starkie*, on Evidence, says, "All persons may be sworn who believe in the existence of God, a future state of rewards and punishments, and in the obligation of an oath." This is generally understood to include pagans, especially those of the Buddhist and Brahmanic creeds, who acknowledge a Supreme Moral Governor above all the gods, and one or more tribunals, before which an exact account must be given of every act in the body; and who appeal to him and to other deities by oath. In the case of *Omichund vs. Barker*, it is laid down as a principle, that any belief other than Christianity which acknowledged a supreme and future Judge justified the admission of an oath; and that it is to be administered in any mode that may be binding on the conscience. An atheist may not be sworn. But, says the report of the case, "at this day it seems to be settled, that infidelity of any kind doth not go to [against] the compe-

petency of a witness." Redfield says, "this must mean infidelity as contradistinguished from *Christianity*." The case of *Omicund vs. Barker* referred to the depositions of certain Hindoos, a people more swarthy in color than the Chinese, and inferior to them in intelligence, and in moral and religious character, who were sworn, according to their own ceremonies, "by stooping down and touching the shoes of their priests." Lord Mansfield, alluding to this and others similar, says that since then "the nature of an appeal to Heaven, which ought to be received as a full sanction to evidence, has been more fully understood." An American jurist (13 Ver. Rep. 367) says, "all that is now required is, that the oath should bind the conscience of the witness."—"It is obvious that a sincere Deist, a Mahometan, or a pagan of any name, if he believe in the existence of God, as above defined, may feel the sanction of an oath as binding on his conscience as the most devout Christian." Pagans of perhaps every important nation of Asia have been admitted to testimony in English and American courts. Lord Brougham and others, of the most enlightened judges, have sanctioned the admission of the testimony of Chinese, who have of late years been often brought into the courts by the now extensive commerce with their empire. In 1839, a Chinese witness, named Ayuk, was sworn in the Marine Court of the city of New York, by reading an extract from some sacred book of his religion, and then dashing vehemently to the ground a Chinaware cup, which was "of course broken in pieces." But illustrations need not be multiplied to prove that the admission of their testimony must be held to be a right in Common Law, until changed by statute.

It is a right which the State of California, following the examples of several others in the Union, solemnly recognizes, when she says: (Practice Act, 1856; § 192.) "No person offered as a witness shall be excluded on account of his opinions or matters of religious belief." And allowing the exceptions which he does, of those who have committed crimes which made them technically "infamous," or are "interested," the great motto of the Common Law, as given in the words of its illustrious Commentator, (3 Blackstone; p. 369.) should be blazoned on the walls of every hall of justice: ALL WITNESSES, OF WHATEVER RELIGION OR COUNTRY, THAT HAVE THE USE OF THEIR REASON, ARE TO BE RECEIVED AND EXAMINED."

2. It is objected that the principles and usages of Chinese society and government are so different from our own as to virtually disqualify that people from understanding or conforming to ours. But does this interfere in the least, granting it, in all its force, with the ability a native of that empire has to know when an injury is done, or with his capacity to truthfully state what that injury is? It does not come within the ban of the Common Law, which (Greenleaf says, 1:427) "rejects the testimony, 1st, of parties; 2d, of persons deficient in understanding, 3d, of persons insensible to the obligations of an oath; 4th, of persons whose pecuniary interest is directly involved in the matter at issue."

It is not true however that there is such a dissimilarity in the principles and usages of the two nations. The fundamental design of justice must be to render an equivalent penalty for a wrong. The rule of the *Old Testament was "life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe."—(Ex. 21:24,25.) The nature and object of judicial testimony then obviously demanded that at least an equal penalty should be inflicted upon the crime of bearing false witness; for this was an offence of double heinousness, since it added to the guilt of designing or inflicting an injury upon another, that of its accomplishment under the sacred name of justice and under the protection of society. The ancient law therefore provided, that "if a false witness rise up against any man, to testify against him that which is wrong—the judges shall make diligent inquisition; and, behold if the witness be a false witness, and hath testified falsely against his brother, then shall ye do unto him as he had thought to do unto his brother—and thine eye shall not pity; but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot." (Deut. 19:16-21.) Upon this plain principle of universal justice our laws against perjury are founded; though a departure from the applications of it must be rendered necessary by the advancement of society from a simple pastoral state; by the multiplication and complication of crimes and courts and canons; and by our different modes of punishment.—Nevertheless the kind and extent of the penalties for perjury must always be made an equivalent of the penalties which a false charge does,

*It is not considered here whether this may not originate in a law of nature. *le*

or seek's to, bring down upon the innocent. On the other hand, in China, the original, Asiatic, patriarchal shape in which the principle was first applied remains almost unmodified.*

In the Ta-tsing-leu-lee, or Penal Code of the Ta-tsing Dynasty, now on the throne of China, which has been pronounced by European jurists to be not excelled in completeness and efficiency by that of any European country, we have a careful definition of the punishment of false witness, and a table of eighteen degrees of it, commencing with ten strokes of the bamboo. The following extract from the Translation by Sir Geo. Thos. Staunton, (London, 1810, pp.364-5.) gives an idea of the whole section bearing upon the subject :

"Whoever lays before a magistrate a false and malicious information, in which some person is expressly charged with a crime punishable with any number of blows, not exceeding 50, shall suffer a punishment two degrees more severe than that which the accused would have merited had the accusation been true. — If the crime falsely alleged was punishable with more than 50 blows, or with temporary or perpetual banishment, the punishment of the accuser shall be three degrees more severe than that to which the accused is rendered liable ; but shall not, in these, or in any of the preceding cases, be so increased as to become capital.

When the accused person, having been condemned upon such false accusation as aforesaid, shall have proceeded to the place to which he had been sentenced to be either temporarily or perpetually banished ; although he should have been afterwards speedily recalled on a discovery of his innocence, an estimate shall be made and verified before the magistrate, of the expenses he may have incurred by his journey, that the false accuser may be compelled to reimburse him to the full amount ; and the false accuser shall likewise be obliged to redeem, or re-purchase for him, any lands or tenements which he may have sold or mortgaged to defray such expenses. — Moreover, if such unmerited banishment should occasion

*Plutarch has the remark that "Every oath is a kind of torture, or the only force that can be applied to the souls of free subjects." He says that therefore the "priests are forbidden by law to use imprecations," as "being ominous and unlucky"; "the priest ought to be exempt from all violence, as well in mind as in body." (Quæst. Roman. 44. Pufendorf, Law of Nature and Nations, b. iv. ch. ii. Oxford. 1710.)

†Of which there is a copy in the Mercantile Library in San Francisco.

the death of any of the relations of the innocent person, who may have followed him to his destination, the false accuser shall suffer death, by being strangled ; and besides the reimbursement aforesaid, half his remaining property shall be forfeited to the use of the innocent person. — When any person is falsely accused of a capital offence, and upon such accusation has been condemned and executed, the false accuser shall be either strangled or beheaded, according to the manner in which the innocent person had been executed, and half his property shall be forfeited as in the preceding instance."

The popular impression prevails that Chinese courts are excessively severe, and resort much to torture in order to elicit evidence, or as a punishment. This arises partly from the vivid narrations of occasional cases that have fallen under the observations of travellers. The common people, however, complain that it is abused, and sometimes horribly, by the corrupt officers of the present Tartar Dynasty. Its just use may be learned from the Penal Code. Beating with the bamboo is there commanded as a punishment. But of what are more properly called "instruments of torture" there seems to be no sanction except in the clause, (Sec. 1.p. 2, and Appendix, p. 488,) which says they "may be used upon an investigation of a charge of robbery or homicide." Those described are for "compressing the ankle bones," and for "compressing the fingers," with perhaps the "cangue, or movable pillory," a wooden frame which is imposed as a punishment also, and worn upon the neck, causing pain chiefly by its weight, and interference with the supply of bodily wants. The construction and use of these are carefully limited. It must be remembered that it is only the vilest classes, and the worst offences, that are commonly liable to torture. And the great caution exercised on the part of the government to guard against its abuse, may be seen in the following provisions of the Code. (Sec. 404, and Appendix to Sec. 1, p. 488-90.)

"It shall not, in any tribunal of government, be permitted to put the question by torture to those who belong to any of the eight privileged classes, in consideration of the respect due to their character ; to those who have attained their seventieth year, in consideration of their advanced age ; to those who have not exceeded their fifteenth year, out of indulgence to their tender youth ; and lastly, to those who labor under any permanent disease or infirmity, out

of commiseration for their situation and sufferings. In all such cases, the offences of the parties accused shall be determined on the evidence of facts and witnesses alone; and all officers of government who disregard the restrictions of this law, shall be punished either according to the law against a designed, or the law against a careless, aggravation of the punishment of an offender, according as the said misconduct on the part of the magistrate is attributable to design, or to inattention. Moreover, in all cases in which the circumstances of of connexion between the parties produce a legal incapacity, or in the case of individuals arrived at eighty, or under ten years of age, or entirely and permanently infirm, it shall not be permitted even to require or receive their testimony; every breach of this law in any tribunal of government, shall be punished accordingly with fifty blows, and the clerk of the court esteemed, as in all other cases of misconduct in a joint and official capacity, the principal offender."

"In those cases wherein the use of torture is allowed, the offender, whenever he contumaciously refuses to confess the truth, shall forthwith be put to the question by torture; and it shall be lawful to repeat the operation a second time, if the criminal still refuses to make a confession. On the other hand, any magistrate who wantonly or arbitrarily applies the question by torture, shall be tried for such offence, in the tribunal of his immediate superior; and the latter shall make due enquiry into the circumstances on pain of being himself accused before the Supreme Court of judicature at Peking, if guilty of wilful concealment or connivance."

"The instruments for extorting confession shall be given into the charge of the magistrates of districts; but shall in the first instance, be examined and approved by the governors of the cities to whose jurisdiction they belong; secondly, by the chief judge of the province; and lastly, by the viceroy or sub-viceroy. Any magistrate using illegal or unexamined instruments of torture, will be liable to be accused thereof before the Supreme Court."

It has been sometimes charged that the Chinese were exclusive and severe in their conduct towards foreigners. They have their tale on the other hand of violence, injustice, and assumption of power, in justification. The press of England even, for one instance of ma-

ny, almost unanimously condemns the special acts which have recently resulted in the destruction of several forts and an important suburb of Canton. How much more must the Chinese, who regard it as nothing but an act of piracy. The rabble have long shown great hostility to foreigners. There has been no portion of the world where the residence of merchants and missionaries has been more perilous and uncomfortable. Perhaps the terrible crime of the opium traffic may explain part of the reason. But I shall not attempt to represent the Chinese side of the affairs, and the cause; but only say that, with much that has been faulty, yet the Chinese government has in some things exhibited to foreigners great generosity. The treaty made by Mr. Cushing grants us valuable rights and privileges, with few concessions in return. Further, the Penal Code, Sec. 34, declares that, "In general, all foreigners who come to submit themselves to the government of the Empire, shall, when guilty of offences, be tried and sentenced according to the established laws." (Translations p. 36.) Sir Geo. Staunton adds, in a note, "This section of the Code has been expressly quoted by the Provincial Government of Canton, and applied to the case of foreigners residing there and at Macao for the purposes of trade. The laws of China have never however, been attempted to be enforced against foreigners, *except with considerable allowances in their favor*; although, on the other hand, they are restricted and circumscribed in such a manner that a transgression on their part of any specific article of the laws can scarcely occur—at least not without, at the same time implicating and involving in their guilt some of the natives, who thus in most cases, become the principal victims of offended justice." In 1743, when foreigners were few, despised, and wholly in his power, the well known emperor Kienlung generously ordered that, in all instances of offences committed under what the laws declare to be palliating circumstances, and which are therefore *not capitally punishable*, the offender shall be sent away to be punished by his countrymen in his own country." (Ib.; Appendix, No. XI.; p. 523.) The circumstances of Chinese and foreigners are now reversed. Will we exhibit a corresponding liberality towards those now in our power?

3. The objection is made that the admission of the Chinaman to the privilege of bearing witness in cases where whites are parties is a vir-

tual grant of all our rights of citizenship ; to vote at the polls, control elections, and hold office. But this is not true. First, because the privilege is one distinct and limited. Second, because really the functions of citizenship must be defined with regard to each of the leading classes that constitute any given population. For instance : minors and women are entitled "citizens," yet they cannot vote or hold office. The constitution of New York for merly withheld these functions from clergymen. Every state requires an oath that a voter shall have been for a certain period of time a " citizen," before his vote is received. There is a restricted sense in which the original constitution of North Carolina extended, according to Judge Gaston, even " the elective franchise to every freeman, who had arrived at the age of twenty-one, and paid a public tax ; and it is matter of universal notoriety, that under it free persons, without regard to color, claimed and exercised the franchise, until it was taken from free men of color a few years since by our amended constitution." (4 Devereux 20.) In the same State the Supreme Court has decided that free blacks are " citizens" within the meaning of a general law protecting slave property belonging to citizens of that state. (4 Dev. 430.) An early law of Virginia constituted all " white persons " citizens ; but it was amended in 1792 so as to read " all free persons born within the limits of this Commonwealth." That there may be a distinction made between the rights of such a citizenship as admits to the full prerogatives of those who are free, white, and natives of the republic, and that which only extends to others certain privileges essential to the preservation of life and property, is manifest from the writings of Chancellor Kent, who in one place defines the description " white," used in the Act of Congress, referring to those who may be naturalized, by saying " that it is a matter of doubt whether, under this provision, any of the tawny races of Asia can be admitted to the privileges of citizenship," (2 Comm. 72 ;) but who in another (2:257) defines the word " citizen " itself, by declaring it to mean " under our constitutions and laws, free inhabitants, born within the United States, or naturalized under the Law of Congress. If a slave born in the United States be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States and born free, he becomes thenceforward a citizen, but under such disabilities as the laws of the

States respectively may deem it expedient to prescribe to free persons of color."

We have an illustration of the application of this principle in the State of Louisiana, where we see free or enfranchised people of color permitted to testify in cases where whites are parties ; their color going, as enlightened jurisprudence must ever tend to make it, not to affect their competency as witnesses, but only the degree of the *credibility* of their statements. The Civil Code, (Art. 2260,) says : " The competent witness of any covenant or fact, whatever it may be, in civil matters, is that who is above the age of fourteen years complete, of a sound mind, free or enfranchised, and not one of those whom the law deems infamous." And again it is added (in Art. 2261) : " The circumstance of the witness being — a free colored person is not a sufficient cause to consider a witness as incompetent, but may, according to circumstances, diminish the extent of his credibility."

Again, it may be shown that " no constitutional objection is now urged against admitting Indians to citizenship" in some forms, both in the Northern and Southern States. This may be illustrated by the last report of the Commissioner of Indian Affairs, who states in regard to the Wyandots residing in Kansas, that the prospect is that ere long " their tribal state will be dissolved, and they will become citizens of the United States."

In the application of these principles to the case of Chinese testimony, I insist, however,

First : that it is a violation of all right to include Asiatics in the category of either Indians or negroes. They are as far removed ethnologically from either variety of the human race as we are. The relationship of the extensive Mongolian stock, as every one knows who is acquainted with their countless Westward migrations since the earliest ages, is full as close with most of the people of Europe, as with our Indian or the negro. If the Chinese are Indians, then *we* are Indians ; if the Chinese are negroes, then *we* are negroes. But, without reference to the origin of the races, this confusion of what is distinct, this dangerous mode of construing law by expediency and policy, meets with the severe reprobation of every sound lawyer. " Statutes, for any cause, disabling any persons of full age and sound mind to make contracts, are to be construed strictly : for, though founded in policy, and a just regard to the public welfare, they are a derogation of private rights." And "stat-

utes made in derogation of the Common Law, are to be construed strictly." (3 Curtis; U. S. Digest, p. 486.)

Second: In the lowest view, the Chinese may claim under the laws of the United States certain attributes of citizenship.

Third: This State may define the extent of these attributes within her own domain; and that of being witness in cases in which whites are interested does not at all involve that of voting, or holding office.*

4. It may seem to you, Gentlemen, beneath a serious consideration, yet we can scarcely omit one other objection that has been brought against the extension of any civil rights to the "Mongolians" in our midst, and to which some

*The following, if I am not mistaken, is a copy of a bill lately introduced into the Assembly which seems to express properly the objects desired—

"An Act concerning the Testimony of Children, and other than White Persons:

The People of the State of California, represented in Senate and Assembly, do enact as follows:

1. All children under seven years of age; all children under ten years of age, being the children of other than white parents; all persons of unsound mind at the time of their production for examination, and all uncivilized native Indians, shall not be admitted to testify in any civil action.

2. Children under ten and over seven years of years of age, being the children of white parents; persons having one half or more of Indian blood, who have been reared from infancy by or among white persons; negroes or persons having one-third or more of African blood; and Chinese and persons having one half or more of Mongolian or Asiatic blood, shall be admissible as witnesses in any action, when it shall appear to the satisfaction of the Court that they comprehend the responsibility of an oath, and the crime of perjury, and that they are of capable mind and memory to receive and retain just impressions of the facts respecting which they are to be examined, and to relate them truly: but their testimony shall not be received as conclusive evidence of the facts sworn to by them, except so far as the same may be confirmed by circumstantial evidence, or corroborated by the testimony of other witnesses. Evidence of general good or bad character of the witnesses aforesaid, may be admitted to affect their credibility.

3. Section fourteen of an Act entitled an Act "concerning crimes and punishments," passed April 16th, 1850; and section three hundred and ninety-four of an Act entitled "An Act to regulate proceedings in Civil cases in the Courts of Justice of this State," passed April 29th, 1851, are hereby repealed."

have given credit. We are told that the advance of science has established an *ethnological difficulty*; that the Chinese are of a diverse, and inferior, species of mankind; a colored "caste," ordained by the Creator to serve.

How an intelligent Chinaman would laugh to hear such a reason suggested, when he compared his national history with ours! How much the more, when he should know that these "barbarians" are immeasurably more civilized now than they were a few dynasties of his ago, when the polished Romans used Britons for slaves, but preferred negroes and other more eastern nations, on account, as Cicero said, of their stupid and intractable character! It becomes us, before we take such airs, to consider a little, to look at the causes, and to thank that God whose heaven-sent illumination constitutes the difference, if such there be.

Whether correct or not, some of the most intelligent Europeans have confessed the superiority, even now, of the Celestials. Monsieur Laplace, the French navigator, says: "I repeat that the Chinese are very much our superiors in true civilization—in that which frees the majority of men from the brutality and ignorance which, among many European nations, place the lowest class of society on a level with the most savage beasts." On which passage, Sir J. F. Davis, late governor of Hongkong, adds: "M. Laplace is quite right: the lower classes of the Chinese people are better educated, or at least better trained, than in most countries." (The Chinese, Vol. II: p. 29.)

Alas, this is no "advance" of science, but a retrograde. A diversity of origin was among many ancient races a figment of their national pride, an illustration of their heathenish ignorance, a fruit of want of commerce, of savage warfare, of the want of the arts by which knowledge is communicated and handed down. Many nations have claimed to be *autochthones*, or aboriginal upon the soil. So far is diversity in the human species from being the last great conclusion of science, that the opposite is the case. It is only modern acquaintance with the whole family of man, from Kam-schatka to Patagonia, that has satisfied the world of the truth taught by the Bible thousands of years ago, and that verily God "hath made of one blood all nations of men." Geology does not contradict the Bible; this false ethnology does. Call it "new"? It is as old as the primeval ages of barbarism that send

but a few rays of tradition down. Call it "science"? It exists in hideous shapes wherever superstition is moonless and starless, throughout the heathen world. And these very vagaries of the dark are assumed as an argument in favor of the modern folly.

The reader probably remembers reading in the newspapers a few years ago how the people of the city of Boston were gratified and surprised by the announcement that a great Oriental scholar was in their midst, and that he would unbind for them the dingy cerements of the mummy of an *Egyptian Princess*, and interpret the cabalistic symbols thereupon. The *literati* of Harvard and the *savans* of the Medical School, ladies, antiquaries, undertakers, and dry-goods dealers, all were personally or professionally concerned, and gathered to see and learn. Day by day, bandage after bandage was stripped off, and the history of the renowned female skillfully unfolded. Wonder at the embodiment of so much wisdom as that of the learned interpreter was mingled with gratitude that it should have visited our far Western sphere. All the wisdom of Boston sat childlike at his feet. Alas for the inquisitiveness of science! alas for the "great Egyptologist, Mr. G—— R. G——!" alas that modesty should not have restrained the removal of the last fig-leaf from the defunct Pride of the Pharaohs. The hieroglyphics and symbols and deep disquisitions the audience did not understand. But all were at length stripped away. To the indignation of Warren, to the astonishment of Bigelow, to the confusion of Agassiz, while ladies blushed, and beaus giggled, and sages laughed outright, it became evident that the "Princess" was a *man!* and the Egyptologist a—— *humbug!* His wings were very brilliant, his eyes and limbs very many, his "hum" melodious, his particular species rare, but still, exactly like that beetle that buries its eggs in the ordure of cattle, and rolls them along the public highway, it was undeniably manifest he was only a contemptible "humbug!"

After this misfortune the singed Egyptologist long bemoaned himself in his hole, or buzzed about in remote places as the Barnum of a Panorama. But of late, desiring to perpetuate his species, he has appeared again, bringing with him, for the amusement of mankind, two or three scaribeian associates.* They

* It is just to make here the remark that two respectable names are brought extensively into this work by its authors, that of Dr. S. J. Morton, who, however, died nearly three

have rolled out a book! called the "Types of Mankind." (Phila., 1854, pp 738.) Taking a few grains of science, broken and separated from their proper connection, with a quantity of such straws and chips of history as the wind blew them, they have deposited their eggs, plastered the whole with the rotten faeces of French and German infidelity, and busily tumbled the dirty mass under the eyes and nostrils of wayfarers.† The buzzing kept up in the meanwhile has served to persuade some of the importance of the production, and some of that of the producers; as if the species were a bee that had honey, or a bumble-bee that could sting. Those that had sense, however, laughed at the tumbings and hummings, and went on.

To give a specimen, applicable to our present design, of the "Types of Mankind." It was of great importance to secure for the theory it put forth, evidence of the diversity of the ancient and numerous Chinese type from all others. Of modern evidence they had none. "I possess but eight Mongolian crania, and of these seven are Chinese, too small a number from which to deduce a satisfactory result."

years before the publication of the volume, and that of Prof. L. Agassiz. The former would certainly have not sanctioned the objects and spirit of the work: and the latter professes his belief that the theory of the diversity of the human species can be reconciled with the Bible.

† The filthiness of the book is seen from such passages as the following:

"The sufferings of these poor men were infinitesimally small compared to those the *forty-seven* [translators of the English Bible] would have experienced, had they partaken of that delicate repast, (2 Kings vi. 25) for about two-thirds of a pint of which the starving Samaritans paid such monstrous prices."

"Decency forbids that we should explain the sculptural obscenities that Gideon's eyes beheld (Judges vi. 25-26). Orientalists whose studies (!) may have led them into antique *pornography*, will comprehend us," &c.

"So promiscuous was his (Solomon's) philogamy, that some commentators have imputed scandal to the 'Queen of Sheba,' the sombre belle of Southern Arabia."

The vanity and folly of the writers may be illustrated by such extracts as these:—"Viewed as a narrative, [the Mosaic account,] inspired by the Most High, its conceits are pitiful, and its revelations false. How, then, are its crude and juvenile hypotheses about human creation to be viewed." Believers in Revelation are termed "interested and self-conceited supernaturalists."—"Ignorance, abject ignorance, is the only plea through which future sustainers of Genesiacal numerals, can escape from the charge of knavery."

(Types, p. 321.) There were no petrifications, or pictured walls, or scrolls, or applicable any remains that could be put to the thumb-screw. And so what is the bold resort? It is one worthy of the whole work. Every one has seen the grotesque woodcuts that ornament Chinese books, the rudest specimens on earth of the pictorial art. Their chief object is to illustrate ancient costumes, utensils and architecture. Several of these a French author, Pauthier, (in one volume of the series of *L'Univers Pittoresque*, entitled "Chine, d'apres les documents Chinois;" see plates at its close) had occasion to use, if an honest man, certainly with no more than a similar design. As scientific data they are palpably and utterly worthless. Of fifty Chinese woodcuts of a living Chinaman, not one would look like him, or look like either of the others. And the man who makes a representation of an individual of another country, or of another age, only copies the faces all round him; according to a principle granted in this volume, "where a Chinaman portrays a man, that man is a Mongol; where the Egyptian draws a human being, that being is an Egyptian." (Types, p. 640.) But the case was a desperate one. A picture out of *Punch* would have been better than nothing at all. And so, with a tyranny over the poor dumb pictures of yesterday, that would have made them confess even Lord Monbodo's theory, that we were all only monkeys, the extraordinary statement is drawn forth that they are "proofs that, with the exception of the pig-tail introduced by the Tartars, the Chinese have not altered in the four thousand years for which we possess their records." (Types of Mankind, p. 449.) They are lovingly denominated "authentic portraits." (Ib. p. 448.) They suggest the remark that "Such facts confirm the only rational theory, viz: that all races were created in each Zoological province, and therefore all primitive types must be of equal antiquity." To which we say, "Precisely! — it is *such* facts that warrant *such* a conclusion!" And so it is with most of the "rational theories" and "facts" in the book. They land the reader where an Egyptian princess found Moses, and where an Egyptian princess left the principal compiler of them — *in the mud.*

It displays a want of respect for our own national and equally veracious authorities, that these profound Egyptologists should abandon them, to go plunging through all the darkness and dust of the pyramids, making their optics

sore and bleared in decyphering dim and chipped frescoes, guessing out dynasties to fill the gaps of the records, and confounding the ignorant with references to books and facts that it is hard to obtain and search into for themselves. Why despise for instance the observations of the honest Sir John Maundeville, who furnishes us wonderful accounts of what he saw and heard in the Oriental regions—the very same whence our terrible "Mongolians" come? He says: "In one of these Isles are people of great stature like giants, hideous to look upon; and they have but one eye, which is in the middle of the forehead; and they eat nothing but raw flesh and fish. (Mongolians evidently!) In another Isle are people who have faces all flat, and without nose and without mouth, (possibly the original type.) In another Isle are people that have the lip above the mouth so great, that when they sleep in the sun, they cover all the face with that lip. (Mongolians have yet large lips.) And in another Isle there are draws which have no mouth; but instead of their mouth they have a little round hole; and when they eat or drink, they take it through a pipe or pen or such a thing, and suck it in. (The origin of chopsticks and tobacco pipes!) And in another Isle there are people that have ears so long that they hang down to their knees. (If these Mongolians did not shave their pates it would be less noticed!) In another Isle there are people that have horses feet. (Hence the fondness for thick-soled shoes!) * * * * Many other divers people of divers natures there are in other lands about, of which it were too long to tell." (The Book of Sir John Maundeville, chap. xix.) Here is a new "Dendera" of materials for the next edition of the "Types of Mankind." But one thing is wanting, and that is "authentic portraits" of all these "species" from the pencil of George Cruikshank.

But the mendacious compilation of which we have been speaking would not have been mentioned here save for the mischievous ends to which it and some less important works of the kind have been applied. The flies and bugs, whose humming would not have been noticed elsewhere, become vexatious in a hospital, where they sting the ulcered and fevered invalids. The antics of an ape become alarming when he applies a torch to your house. And so the theory of "a diversity in the human species," and of "superior and inferior races," becomes dangerous when it is solemnly referred to in a decision of the Supreme Court

of our State, in such terms as to indicate it to be a genuine conclusion of Ethnology! and a result "attained by the scientific inquiries and discoveries of the master minds of the last half-century;" (4 Hepburn, Cal. Rep., p. 400;) and that, too, even when the legitimate deduction from that conclusion would plainly have reversed the decision given. It renders one unspeakably anxious and distressed when applied, as this theory has been by some men amongst us, towards depriving a large and important class of our population of the first rights of humanity; to degrading and debasing them; to making them poor, unhappy and inimical, amidst all the boasted blessings of Civilization and Christianity; and to the establishment, amidst progressive democratic institutions, of the perilous distinctions and theories of aristocracies and despotisms, the abominable arrogances of "divine rights," and of superiorities of nature and blood. And, religiously, it is no less to be reprehended; for its arrogant statements and pretensions, as if, in this case, science and revelation were in conflict, must unsettle ignorant and weak minds; must confirm unbelief; and must tend to cut the nerves of philanthropic efforts for the improvement, enlightenment and conversion of all the "species" of man, not begotten of the blood of the First Adam, and not atoned for by the blood of the Second. It is a theory which the most intelligent of living men, Alexander von Humboldt, well and truly characterized by the adjective "*desolante*;" instead of regenerating it would, indeed, desolate and devastate the world.

If, Gentlemen, it be evident that the admission of Chinese testimony in cases where whites are interested is sanctioned by the Common Law, by our Federal laws, by the usage of various States, by an intelligent comprehension of the religion and the principles of justice prevalent in China, and by the principles of science and Christianity, the *conclusion* is easily reached, that before this Legislature adjourn, some act should be passed for its legalization. It is difficult to express in words the anxiety which multitudes of our citizens feel on this subject, or their distress that when it was brought up in the Senate at the beginning of the present session circumstances should have led to its indefinite postponement. The form of the Act is of little consequence, so that the end be obtained. Unless some relief be ex-

tended, new courage will be taken by a host of the most abandoned men to continue and increase their horrible acts of murder and crime. No doubt many expressions of opinion from the press and constituents have reached you. I need quote but one, from the *Mountain Democrat*: "A Chinaman was shot near the mouth of Big Canon, on the Sacramento road, on Monday last. The officers got a clue to the murderer, and started in pursuit, but have not yet arrested him. These are all the particulars we could glean. Chinamen are robbed and murdered *with impunity* because they are defenceless and have no remedy. Reports reach us daily of the hard treatment they are subjected to by cowardly and rascally white fellows. They justly complain that they pay for protection, yet never receive it. Since the indefinite postponement of the bill allowing them to testify in cases, they have been cruelly outraged."

It is not the object of the present appeal to do more than simply remove the *objections* to the admission of Chinese testimony; for I feel assured, that if no doubts remain on the points adverted to, your knowledge of the urgency of the case, your sentiment of humanity, and the natural disposition to fairness and equity which prevails under our government and among our people, will incline you to grant it. If necessary, volumes might be filled with arguments and appeals from all classes, creeds, and conditions of men. Facts might be accumulated that would stir every feeling of horror, indignation, fear, or disgust—that would curdle the blood of the reader to hear. But I feel assured, for your honor, and that of our State, it would not be required. I therefore close by remarking that your earnest consideration of this subject is demanded for several reasons:—

1. It is *essential to the quiet, the prosperity, and the morals of the State*. Now one-sixth or seventh of the entire population is laid open to the practice of every species of fraud, trespass, violence, personal abuse, robbery, murder, wrong and injury. California possesses magnificent materials of greatness. Where can be equalled her mines, her soil, her climate, her timber, her commercial advantages! Well may we love this glorious State, and wish here to live and die. But it cannot be concealed that the land which God has so enriched with His gifts, man has fearfully polluted with his crimes. Painful as it is, we cannot deny that the name of "California" has become, in the New and Old World, a synonym for iniquity.

Until a great change is evident to the world, the acts of the Vigilance Committees that seek to purify, will only be looked upon as new bursts of deepening purlence. Families will come, but to soon depart. Uneasiness and change will be written on towns, and people, and institutions, and business. Lying near the root of all this social poison and disease is the evil which I have been urging on your attention. As long as crimes cannot be proven and punished before our Courts, upon Chinese testimony, so long must this great, wide-scattered, helpless class offer inducements for the commission of crime. They furnish a *school* for the increase, education and support of criminals. But the nest of a vulture will not long contain the fledglings, or a den of wolves the hungry cubs. If we hatch out reptiles, our own lands will be filled.

Now let me trace out for you a case, and there are no doubt hundreds are like it. Mickey Free was a mischievous boy born in Canada. A bad boy; but probably not more than many another, neglected, abused, or successful in his tricks. He married "a good and true woman" in Chicago, to whom he was apparently warmly attached—was guilty of much evil, but till his arrival in California had only passed the Freshman Class of crime, and was perhaps not irreclaimable. He met with the disappointments incident, in all pursuits, to California life. In 1853 he is at Mud Springs. But let him tell his own story :

"When I arrived there, found the water at a low stage, and learning that business was brisk in Sacramento city, went there, but could get nothing to do. This I thought was close papers, but it could not be helped. But it was the kind of luck that caused my crimes, for up to this time had done no wrong nor injured a person since coming to California. * * * Then had to borrow some funds, and again returned to Mud Springs, and went to mining, at which I had always done well, if I could have been contented. I now obtained a good claim, and hired a Chinaman to help me. Paid him two dollars and a half per day, and now for the first time the idea entered my mind that robbing Celestials would be a good and safe speculation." * * * Finding several attempts in this way unsuccessful, he resolved to do the work more effectually. He advances with the schooling another degree : "I now contemplated another speculation, that of killing these Chinese. I knew they had some two or three hundred dollars in their tent, and did not suppose it a very hard task to kill a few of them, and that would cause the rest to scatter. * * * The pick and shovel failed to bring what I desired. I cast them from me as poor, inefficient things to help a man in need, and grasped

the bowie-knife and pistol as more trustworthy friends. I knew that these, if skillfully used, would, in spite of man or devil, bring that which I desired. I knew also, for I had viewed it in every light, that these same engines, if awkwardly or at improper times used, would bring ruin upon myself; but I resolved to make the trial and risk the consequence of an error or failure." With such reflections as these he was prepared to begin the work of slaughter. The Chinese are the chief sufferers. Here is a case to illustrate his dealings with them : "About nine or ten o'clock we heard John Chinaman coming. I do not know how many, but we put out all lights, and prepared for them. When they entered their tent and found their grub gone, they made an awful fuss. George raised his gun and snapped several times, but it would not go off. One Chinaman started over towards the store. I told George to stand aside, raised my gun and let fly, lodging the contents in his bowels. He sprang into the air and fell, screaming terribly. They then made a rush for the store, and we retreated, sheltering ourselves behind a tree, the Chinamen firing all the time : but as it was guess work in the dark for both parties, not much harm was done. Presently the fellow came out of the tent with a candle in his hand. We both fired and he fell; the rest took to flight. They went over to Frenchtown and told their story, and some fifteen or twenty men started to find us; but we passed through the town while many were still up, leaving those who had gone in pursuit of us to go on their way rejoicing. How many Chinese we killed I do not know. I fired twice and George three times, but we did not get anything from them." But with these accomplishments in his infernal training, he could not be supposed to confine himself to the lower forms of the school. The "first idea, that robbing Chinamen would be a good and safe speculation," brings forth its full development. The Satanic flintiness of heart, and gloating in bloodshed, death, and every kind of wickedness, which the confession of this man finally evidences, cannot have been excelled by the oldest Seniors that fiends have ever educated for the honors and the sufferings of their own place. Nothing but a painful necessity would induce me to exhibit one of the final pictures of this wretch's life, as drawn by his own hand. See in it what is the result of early experiments upon "good and safe" subjects, and what encouragements and facilities for crime at length lead men to. He states : "We were then living in a cabin, and there was a Dutchman living there; at least he did his cooking there, and from his yarn we thought he must have three or four hundred dollars, and determined to have it, and if he lost his life, he might blame his own gassing for it. He was prospecting around for a claim; I knew he wanted a rocker, and took one into a convenient place, and then told him where I had one I would sell to him. The bait took; he went with me to the place, looking rather suspicious all the time; when I got him to the place I knocked him down, he arose, I knocked him down a second time; by this time I had

got out my knife and stabbed him through and through; the knife went in near the spine and came out through the abdomen; but this did not seem to weaken him, and I thought I must find a better place. So I commenced on his belly; here I had better success and cut him horribly. And when I thought I had finished him, I commenced looking for a prospect hole to put him in, and what should the fool do but begin to halloo again. I then went and cut his jugular, and that stopped his noise. But he was a hard fellow to handle; about twenty years of age. After stopping his yells, I searched him, but instead of three or four hundred, as I hoped and expected, I found but six or seven dollars. About this time George came along, and we took him and put him in a small ditch, and covered him up with stones. We could not afford much of a burial for so small a sum as he had. Had he not told big yarns he might still be living, but he would talk, and has paid the penalty."

Are you prepared, Gentlemen of the Legislature, to let this state of things go on? Shall the abandonment of many thousands of industrious and unresisting people to the infliction of all that fiendish passions may suggest *school* the promiscuous population of this State in wickedness? Shall public and private citizens be depraved by these influences? Shall California, the noblest home the sisterhood of States has to offer, become at length a University of Villany?

2. *The interests of our mercantile and laboring classes demand that the evidence of Chinese, or other colored races, should be received.* Important cases at law may be jeopardized from the want of it; cargoes of ships may be lost, trusts abused by dishonest officers or seamen, vessels detained in port, crimes committed at sea, and, with hundreds of eye-witnesses, none avail. In the case of the ship Tartar, last year, dishonest policemen and lawyers trumped up false charges against the captain and officers, detained the ship when she was ready for sea, the only witnesses being Lascars, and gave thus serious trouble. Bonds were given; and the suit is yet probably in the lawyer's hands. Merchants and miners, in districts where they are scattered, and crimes may often be committed of which no white would be cognizant, must frequently suffer from the rejection of Chinese testimony. An illustration in point is derived from a private communication, from one engaged in mining operations. He says: "Last fall an iron safe, containing the sum of \$7,500, was stolen from the store of Mr. G., Tuolumne County. A reward of \$1,500 was offered for the apprehen-

sion of the robbers, and restoration of the safe and treasure. The adjacent country was well searched for several days, but the parties could discern no trace of robbers or money. However, had Chinese evidence been taken, they would have found both. A Chinaman informed the writer that, about the break of day, on the morning it was stolen, he saw three men, with an iron safe, covered with a blanket, packing it on the back of a horse, and that they crossed the Stanislaus River above Reynold's Ferry. He said he knew one of the men, who was a resident of C—. The reason why he did not go and give information to Mr. G. was that the facts could not be proven on account of their testimony being invalid, and he feared that, if left at large, his life would be taken by the robbers or their associates. Several miners who had their money deposited for safe-keeping, were among the heaviest losers."

And, again, many communities have suffered from the oppression of the Chinese, by Tax-Collectors and others, and from their abuse by malicious persons—thus driving them from one locality to another, or making them discouraged, vicious and indolent. About a year ago, when they were more severely taxed and treated, often worse than now, a gentleman wrote as follows:

"The Chinese are the most important part of my customers. I cannot tell you just how many articles a Chinaman wants in the course of a year, but I think their trade will average eight or ten dollars to the man per week, when they are doing tolerably well. When they are not making much, they are very prudent, as they seldom are able to get trusted, but when they are doing well they indulge in a great many luxuries that white men seldom buy. It is a very wrong impression some have that they never spend anything, as they always buy more goods of all kinds than any other class of people. My trade with them for four years past would average \$3,000 per month, which was about three-fourths of my trade, but since they have been so oppressed by taxes, and have been abused in every possible way, there is not more than one-tenth the number about here that there formerly was, consequently my trade with them has diminished accordingly. It would be next to an impossibility to calculate the amount of injury done this county by imposing such heavy taxes on the Chinese. If it has affected other people as much as it has me, I don't know what you folks in San Fran

cisco will do. You will find it makes a great difference with you, as well as traders in the mines. The farmers complain bitterly of the difficulty of selling their produce now, to what it used to be. A farmer living below here told me a few days since that he found it hard work to sell a load of vegetables in three or four days, when only a few months back he could sell as much as he could haul up, without any trouble, in a few hours. This is the complaint from all who are engaged in any kind of business, and we hope soon to see some movement that will induce these people to remain in the country, and also encourage others to come in; we want as many as are of a mind to come, to fill up the vacancy occasioned by the heavy taxes put upon them, and to take the place of the many white miners who are leaving this kind of business for something more profitable."

3. Regard for the *honesty and good behavior of officers of the State* requires stricter laws in regard to their treatment of the Chinese, and a more faithful administration of the laws. Scarce a man that reads this has not seen or heard of acts of barbarity and fraud on the part of "Foreign miners' tax collectors," that ought to have been severely punished; such as whipping, cutting, taking the blankets and tools of even those that have been sick, dating back their licenses one or two weeks in the month, snatching their dust when weighing out the amount due, charging \$6 instead of \$4 monthly, requiring one to pay for others, perhaps a stranger for a company of half-a-dozen, re-issuing old licenses, and the like. Are not the fruits of this kind of *schooling* for official rascality seen in the conduct in other trusts of many public officers. But it is painful to enter into illustrations; and your own observation will supply them. It is to be hoped the Legislature will remove the obstacles to the punishment of such men, and that the laudatory conclusion of a treatise on California laws may be made applicable to them as well as to other rogues. Hart says, (Treat. on Cal. Practice, p. 226,) "The rapidity with which an offender is brought to trial, tried and punished, operates to prevent the commission of crime more than any other feature of the Code, and is a distinguishing characteristic, from that of the criminal code of any other State."

4. I am informed that the *opinion of legal*

gentlemen generally favors the passage of a law allowing testimony of Chinese and others in all cases. A letter to me from an intelligent lawyer of this city says: "The tendency of modern legislation, throughout those countries where the Common Law exists, has been to remove the disabilities of witnesses, and to allow the jury to judge, in every case, of the weight to be given to the testimony of the witnesses. This restriction is now generally confined to parties to the suit, and persons standing in confidential relations to each other—as husband and wife, doctor and patient, lawyer and client. In these cases the *exclusion* is a *privilege*. But the general rule is to admit *all* testimony. * * I think that the general feeling among the bar is in favor of admitting all the witnesses that can be produced, and leaving their credibility to the jury."

5. If we do not protect the Chinese we have no right to tax them. It is a principle of universal application: "*no protection, no dominion.*" We ought either to withdraw the deceit of justice, and leave them wholly to the shield of Lynch law, and such voluntary organizations as would secure their defence, or else we should, as effectually as possible for our forms and appliances of law, afford the same protection that others who contribute to the support of government enjoy. A passage from one of Britain's noblest statesmen seems just suited to our case:

Algercon Sidney says, "It is agreed by mankind that subjection and protection are relative; and that he who cannot protect those that are under him, in vain pretends to a dominion over them. The only ends for which governments are constituted, and obedience rendered them, are the obtaining of justice and protection; and they who cannot provide for both, give the people a right of taking such ways as best please themselves, in order to their safety. The matter is yet more clear in relation to those who never were in any society, as at the beginning, or renovation of the world after the Flood; or who, upon the dissolution of the societies to which they did once belong, or by some other accident, have been obliged to seek new habitations. Such were those who went from Babylon upon the confusion of tongues; those who escaped from Troy when it was burnt by the Grecians; almost all the nations of Europe, with many of Asia and Africa, upon the dissolution of the Roman Em-

pire. To which may be added a multitude of Northern nations, who when they had increased to such numbers that their countries could no longer nourish them, or because they wanted skill to improve their lands, were sent out to provide for themselves; and having done so, did erect many kingdoms and states, either by themselves, or in union and coalition with the ancient inhabitants." [Discourses concerning Government, chap. III, sec. 33, p. 407. London, 1751.]

6. In this question *our national character* is involved. The people of California are, to all the vast coasts of the Pacific Ocean, the representatives of Western Civilization—of the results of Christianity. No human being, no angel in heaven, can estimate the power and the end of the influences that are streaming over scores of nations, over hundreds of millions of the human race, from this magnetic pole. Great nations may be retarded in their progress toward knowledge, and the light of eternal life, through our misconduct. Men from every people under heaven are walking our streets, threading our mountain trails, sipping our streams, watching and, by the eternal axioms of right and wrong in every breast, judging of our principles by their fruits.

And by this our prosperity and our greatness must be, to a large extent, decided. Our attention is called by the highest legal authorities to the fact that England owes her preponderating influence in the world chiefly to the justice which has governed her courts. What keeps the immense Indian Empire loyal? Not a handful of English civilians, and a handful of English military officers. It is the majesty of British Law—the security of life and property—which India never knew under native despots. This sways the myriads as the moon the countless unsteady waves of an ocean. Then Civilization has a solid foundation for her walls and spires; then Christianity is felt to be a rock on which society, philosophy, and all human fears and hopes may build secure.

In the Treaty of 1760 between Great Britain and Morocco it is provided that "if any law-suit, dispute, or difference, arise between the subjects of his Britannic Majesty, they shall be accommodated by the consul of the nation, and if any quarrels shall happen among the Musselmen in England, or in any of the English Dominions, by which one of them may

receive detriment, the same shall be heard before a Christian and a Musselman, and shall be decided according to the laws of Great Britain." In that of 1791, it is said such trials "shall be heard before an equal number of Musselmen and Christians and determined agreeably to the laws of England."—[2 Chitty, Appendix, p. 268.] As far as the writer knows, this great principle of Common Law, and of common justice, is applied without reference to distinctions of races and people in her colonies. And the wealth, power, and dignity of a nation, whose original territory is but a small island in the middle of the sea is the grandest commentary earth can give of the fruits of National Equity. An American jurist supplies us with the following reflections:

"Justice, if we designate by this sacred word that virtue which is the constant will, desire and readiness faithfully to give every one his due, and do not merely understand by *due* that to which every one has a right by the positive and enacted laws of the State, but that which is his due as man, as individual, as a moral being, and as our neighbor, is that virtue which is embodied in the great practical law, that we should do even so to others as we would that they should do to us. Justice was early acknowledged to be the supreme virtue, and often called by the ancients the only virtue, including all others;—that virtue which, above all others, establishes confidence, peace, and righteousness, among men, individually and collectively, as states or nations, and comprehends fairness, equity, and even clemency. * * Nothing gives so much dignity to a nation, and consequently so much facilitates all her national intercourse, attains so great national advantages, and extends benefit to all her citizens abroad, for whatever purpose they may travel, in pursuit of wealth, knowledge or pleasure, as habitual and traditional Justice in international affairs."—[Lieber, *Political Ethics*, vol. iii, sec. 9.]

7. And, Gentlemen of the Legislature, if I may appeal to you by all the considerations of law, honor, right, peace, and advantage, much more may I by those of *religion*; the religion of Him who "came to save that which was lost."

Any reader of the Scriptures must have been impressed with God's care for "the stranger" among the Israelites. Several of the festivals and ordinances were expressly permitted to the stranger. The gates of the cities of

refuge were opened to admit him. A court of the temple was set apart to his use. The people were commanded not to "vex or oppress a stranger"; the judge to "judge rightously between every man and his brother, and the stranger that is with him"; the legislators to make no distinction, "one manner of law shall be to him, that is home-born and the stranger," and it was no doubt some of the principles we have considered that led the inspired Lawgiver to add, in words of fearful admonition: "for the Lord your God is God of gods, and Lord of lords, a great God, a mighty and a terrible, which regardeth not persons, nor taketh reward; He doth execute the judgment of the fatherless and the widow, and loveth the stranger, in giving him food and raiment: love ye therefore the stranger." In the name of that same God of the stranger, I come to urge upon you the same unchanging claims and principles. "He that hath ears to hear, let him hear." If you hear not, there is an Almighty Judge that will.

That God who gave a tongue to the child in order to tell its troubles to a parent—or to the sick, the bereaved, the hungry and naked the hurt and wounded, that they might cry for help—or to the wronged, and robbed, and down-cast of the nations, that they might demand the rights of humanity—did also give to the parent, to the guardian, to the rich, to the strong, to the ruler, ears so formed as "to hear." The agile member, whose muscular arrangements are capable of giving such swift utterance to the wants and distresses of the one class, is not more wonderfully perfect and capable of its end, than the drum which receives the vibrations of the sound, and the sensitive auditory nerves and tubes which convey them to the seat of the will, in the other. If God has ordained our race to circumstances of weakness, infirmity and misery, He has also ordained to us the means of their mitigation and relief. The place of power is the place of privilege, and it of privilege, so of responsibility. Those to whom He gives the possession of trust and power, and wealth, and influence, to be the heads of families, communities and states, He makes answerable for their conduct to the child, the servant, the subject, the citizen, or even the offender. The necessities of those beneath must, as long as He rules over all, be met by the capacity and power of those above. And

finally, if the ears be shut, whose place hear, when the cries of want and distress which they should hearken are lifted up, the sounds will pass the closed avenue to but they will continue to rise and swell they roll in thunder before the seat of the hearing Judge above. If the hand that extend protection and assistance and support withheld, then the arm of the Almighty Ruler and Ruler will grant them; but those duty it was, and who neglected it, will smite with His vengeance. Thus has He stituted mankind, and His government them. And it is by this natural and reasoning that an inspired poet appeals to against the doers of injustice and wrong:

"Lift up thyself, thou Judge of the earth
Render a reward to the proud.—
They slay the widow and the stranger,
And murder the fatherless.
Yet they say, The Lord shall not see,
Neither shall the God of Jacob regard it
Understand, ye brutish among the people
And ye fools, when will ye be wise?
He that planted the ear, shall He not hear?
He that formed the eye shall He not see?"

[Ps. 97:2-10]

And He shall condemn as well as see and hear. Wherever "the voice of thy brother's blood crieth unto him from the ground," He will curse the earth, and the offerings, and the rain. Even the ground shall cease to yield its strength, and its inhabitants shall bear the mark of the Divine curse.

"In these cases

We still have judgment here—that we but teach
Bloody instructions, which being taught, return
To plague the inventor. This even-handed justice
Commends the ingredients of our poisoned chalice
To our own lips."

The appeal for the protection of "the strangers in our midst" is now left for your consideration, that you may devise some action for our deliverance from the guilt and penalties of the injuries unceasingly done upon them.

To God and to man you are responsible to God who visits the sins of rulers and nations with national judgments, who holds each man to answer in this world and in the next for every personal and public trust; and to men, who have committed to you the solemn charge of making good, and wise, and just laws, of establishing the peace, maintaining the honor, and laying liberal and sure foundations for the future prosperity and reputation of what should be a mighty and majestic Commonwealth.

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