The lawyer, our old-man-of-the sea

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THE LAWYER
"The picture of Law triumphant and Justice prostrate is not, I am aware, without admirers. To me it is a sorry spectacle. The spirit of Justice does not reside in formalities or words; nor is the triumph of its administration to be found in successfully picking a way between the pitfalls of technicality."—Lord Penzance.

"It is difficult, when you have grown up with a system, to see that there is anything fundamentally wrong with it."

Judge Parry.
Some of these papers appeared in an extended form in the Westminster Review; one, in its present form, in the Daily News. To the proprietors and editors of review and journal acknowledgments are due.
FOREWORD

BY

SIR ROBERT F. FULTON, M.A., LL.D.

OF THE INNER TEMPLE, BARRISTER-AT-LAW, AND FORMERLY JUDGE
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The author of the following pages criticizes in forcible and incisive terms the legal systems of England, India, and America. These systems are closely connected together—the Indian being directly founded on the English, and its defects being merely those of the English system, though in an exaggerated and distorted form; while the administration of criminal justice in some parts of America, which follows at least the forms of English law, affords a melancholy illustration of what may happen in this country if legal reforms are not speedily introduced.

The author has invited me to indite a 'Foreword' to his volume, as he considers that my long judicial experience in India may afford some support to what he has written in these pages; and it is in the hope that this may be so that I have acceded to his request, though I foresee that it may appear to some of the members of the legal profession in England that my more than forty
years' judicial career in our greatest and best-governed dependency scarcely affords a sufficient excuse for my doing so (see Appendix S, p. 447).

The author considers that the main defects of the legal system of England are (1) its technicalities, inherited from an antiquated and obsolete procedure, which have been crystallized into a rigid form by a precedent-bound Bench, are constantly being added to by an ingenious Bar, and make for the most part for injustice and the escape of the wrong-doer; (2) its costliness, which deters even the wealthy from the laudable course of applying to Courts of Law for the settlement of their disputes, and in the case of the poor too often amounts to a denial of justice and redress; (3) the protracted nature of the proceedings in even the simplest action at Law—a waste of life as well as of money; (4) the Trade Unionism of the members of the different branches of the legal profession which tends to render them averse from inquiries into the shortcomings of the Law, and disinclined to favour attempts at its reform; (5) the Jury system, which converts the advocate from being, as he should be, a fair-minded friend of the accused, prepared to do the best that can honestly be done for him, into a blind partisan, and sometimes a stage-player and a trickster, whose object is to gain the cause of his client at all costs and by all means—and in the case of the guilty and fraudulent to defeat justice; (6) the uncertainty of the Law arising from the want of codification, and its conflicting developments according to the varying idiosyncrasies of individual
Judges; (7) the selection of our Judges from the ranks of the successful but elderly Bar, who cannot but be wanting in the habit of impartial and unbiased judgment, and whose salaries and pensions are far more than need be paid, and much in excess of the real value of their services; and (8) the political bias often exercised in the appointment of our Judges, which they naturally feel themselves and from which they often, unconsciously it may be, are subject to, during the whole of their after career on the Bench.

Other minor defects, according to the author, are to be found in the want of official copies of judgments, the treatment of spendthrifts and illegitimate children, and our marriage laws.

Ample evidence in support of all the author’s views is to be found in the Appendices of this book, which consist of accounts of flagrant instances of miscarriages of justice and acts of injustice due to our English legal system, which lawyers may make merry at, but which must madden the victims, and make all honest-minded men and lovers of justice feel shame.

Most of these defects and many others exist in the legal system we have introduced into India. The technicalities of the Law, if not at present as great in India as in England, and which the subtle-minded Indian lawyer luxuriates in, tend to increase. Legal proceedings are protracted to a much greater extent in India than in England. Trials and actions take months, when in England, where the Judges are mostly strong and often peremptory, they would take only days. Even
when of the most trifling importance and instituted in the most subordinate Courts, they are never decided until after repeated and unnecessary postponements. This is due partly to the abnormal number of dilatory processes, such as appeals from interlocutory orders, and applications for revision provided for in the Indian Codes of procedure, or applications under the High Courts Charters, when no appeal or application for revision is allowed by the Law; and partly to the weakness of the Indian Bench, which seems unable to control the Bar, to check the raising of unnecessary issues, the endless and useless cross-examination, or the interminable speeches made before it. A considerable portion of the members of the Indian Bench are selected from the ranks of the junior Bar of England, not always for merit, but sometimes from motives of interest, or as a reward for political services. Even when the Judges are appointed locally from the ranks of the successful Indian Bar, considerations of race and religion are allowed to affect the appointment.

The cost of legal proceedings in India is great, and continues unceasingly to increase. The fees paid to successful practitioners, both English and Indian, are phenomenal.

Juries in India are not so supreme as in England. Except in the Presidency towns, there are means of setting aside their verdicts, and of correcting their vagaries. But the arts of the advocate are, as in England, too often directed to misleading the Juries, to blinding Justice, and to leading astray its halting steps.