In *Atkins* v. *McKelcan* (App. Cas. 1895-25, 310) the Privy Council, and in the *Queen* v. *Chesley* (16 Can. S. C. R. 306), this court also reversed on a question of fact.

We are here, according to the express terms of the statute, to give the judgment which, in our opinion, the Court of Appeal should have given. And that court should have exercised their power to reverse the decision of the Superior Court. The law would be absurd, indeed, if, on the one hand, it gave an appeal on questions of fact, whilst, on the other hand, such an appeal could never be allowed. It is on the assumption that there may be error in the judgment, although two courts have concurred therein, that the right of appeal is given in such a case, even on questions of fact.

"The judges of the appellate court are as capable in such a case, says Lord Kingsdown, in *Bland* v. *Ross* (14 Moo. P. C. C. 236), "and indeed are presumed to be more capable) of forming an opinion for themselves as to the proof of facts and as to the inferences to be drawn from them."

In *Chand* v. *Meyers* (19 Gr. 358), Strong, V. C., now Chief Justice of this Court, said upon this point:—

"I concede that when there is a balance of evidence causing the determination of a question of fact to be dependent altogether on the credit to be given to particular witnesses, it is almost impossible for the court on such an appeal as this, to overrule the decision of the master in whose presence the witnesses have been examined. But if there is, as I find here, a balance of direct testimony, and the circumstances point strongly to one conclusion, and against the other, I know no reason why the court may not review the evidence, and reverse the master's finding."

And the learned judge reversed the master's finding, discrediting a witness, upon whose evidence the master had determined the case.

And in *Morrison* v. *Robinson* (19 Gr. 480), the same learned judge held that the rule that where the decision of a question of fact depends altogether upon the credit to be given to the direct testimony of conflicting witnesses, the Court, as a rule, will adopt the finding of the master, who has had the advantage of hearing the witnesses, applies only where the evidence being directly contradictory, there are no circumstances pointing to the probability of one statement rather than of the other. We do not fail to take into consideration, I need hardly say, that the fact of the two provincial courts having come to the same conclusion enhances the gravity of our duty, and imposes upon us the strict obligation not to allow the appeal without being thoroughly convinced, more than might perhaps be required under other circumstances, that there is error in the judgment. But at the same time, we would unquestionably be forgetful of our duties, if we did not form an independent opinion of the evidence, and give the benefit of it to the appellants, if they are entitled to it. Over insurance must be put a stop to, as much as it is in the power of the courts to do it. Therein lies one of the greatest sources of fraud in connection with the insurance business. If the assured is not in part a co-assurer with the company, that is to say, if the parties to the