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APPEALS UPON QUESTIONS OF FACT.

"THE question was one of fact, and the jury has found for the plaintiff," is the usual answer to an application for a new trial upon the weight of evidence. But this answer is not, and should not be, conclusive. It throws heavily the *onus* of argument upon the defendant, but the plaintiff cannot consider himself impregnable under its shelter. All the cases show no more than this, that *if the verdict be against the weight of evidence it must be set aside.*

Various attempts have been made to formulate a rule for the decision of such cases. Mr. Justice Dubuc, in *Maddill v. Kelly, 1 Man. L. J. 280,* states the effect of the decisions as concisely and fairly as it is usually done. He says that a verdict should only be reversed when it "is perverse, or clearly and evidently against the weight of evidence." This simply means that if the verdict is against the weight of evidence, it ought to be set aside; for the words "clearly and evidently" merely imply that the judges are to be sure about the fact that it is so. They do not qualify the rule, that *if the verdict be against the weight of evidence it must be set aside.* They merely require that fact to be apparent and indubitable.

Judges under the pressure of work are too apt to decline an analysis of a large mass of evidence for the purpose of