

must try to resolve those conflicts so as to have all the witnesses speak the truth, but if you cannot do so then you will, of course, reject the evidence of those you do not believe, and you will give credence to the evidence of those you do believe. In determining who to believe you ought to take into consideration the interest that witnesses may have in the matter and the opportunity for observation that each of them had, and the general circumstances surrounding the giving of their testimony. The burden of proof is on the plaintiff to establish her case by a clear preponderance of the evidence, and the burden is on the defendant to establish its plea of contributory negligence."

We remark, in passing, that in many State courts—in Illinois, for instance—it would be unsafe for a judge to use the word "clear" in laying down the preponderance rule. In striking contrast with the foregoing instruction is the elaborate and irresistible argument of Mr. Justice Grier upholding the genuineness of a contested will in his charge to the jury in *Turner v. Hand*, 3 Wall. Jr. (U.S.) 88, 24 Fed. Cas. No. 14,257. A single passage in his masterful speech indicates the tone of the whole:

"These witnesses have either sworn what is true, or they have conspired together to commit the grossest perjury. Any other hypothesis is sheer fancy and imagination, conjured up by the ingenuity of counsel to avoid the direct accusation of a crime which the charge of fraud relied upon in their defense indirectly asserts. In order to establish this charge the testimony of defendant must be sufficient to convince your minds by satisfactory evidence. That these four ladies of unimpeachable characters were morally capable of conspiring together to commit perjury in order to sustain a forgery; and that, too, of an instrument which is of no benefit to them, but to enrich a person who was a total stranger to them—this may almost be said to be a moral miracle. But supposing them morally capable of such a conspiracy, you must be convinced also that these ladies were capable of concocting and arranging a false story so perfectly that the most scrutinizing cross-examination of counsel cannot convict them of their guilt; and of being able to narrate