v. *Ross*, 24 Gr., at p. 50. He states the rule thus: "In a case wherein there is a conflict of testimony, where the evidence on each side is evenly balanced, the value of seeing the witnesses and observing their demeanour cannot be over-estimated, and in such a case, when the Judge has come, on the balance of testimony, to a clear and decisive conclusion, it would require, as it has been said, a case of extreme and overwhelming preponderance to induce a Court of Appeal to interfere with the decision of the Judge." We propose to consider how far, in the light of authority, this language correctly represents the practice as followed in appellate tribunals, at the present day, where a Judge has passed upon the evidence in the Court below.

The language of the learned Judge is evidently drawn from the decisions of the Privy Council, and particularly those reported in Admiralty appeals. Reference may be made for confirmation of this, to the case of the *India*, 14 Moo. P.C. 210, and the case of the *Alice*, L.R. 2 P.C. 295, which followed the former case and wherein the exact expressions made use of by Mr. Justice Burton may be found. Very much the same rule was laid down, but not so inflexibly in *Day* v. *Brown*, 18 Gr. 681, in appeals from the Master. Payment was there sworn to by three witnesses, who gave time, place and circumstances, in corroboration of each other. It was sought to reverse the Master's conclusion by circumstances which threw suspicion upon the fact of the alleged payment. The Court held that the circumstances were not of such a nature as to outweigh the direct evidence of payment, but it was also laid down that the conduct and circumstances proved might be such as to overturn the mere oral testimony that such and such a thing had occurred. The exception indicated in *Day* v. *Brown* was acted upon in *Chard* v. *Meyers*, 19 Gr. 358, where Strong, V.C., held that though the direct testimony was conflicting and balanced, yet the circumstances of the case were against the Master's conclusion. The same Judge also held in *Morrison* v. *Robinson*, 19 Gr. 480, that the rule in *Day* v. *Brown* applied only where the evidence being directly contradictory, there were no circumstances pointing to the probability of one statement rather than to that of the others, thus very much limiting the general expressions in the earlier judgment. In *Orr* v. *Orr*, 21 Gr. 451, Blake, V.C., (sitting in the Court of Appeal) expressed his views against extending the rule beyond this: that when it was merely the question of the credibility of one witness as against another, or of several witnesses as against others, there the finding of the Judge of the first instance should be followed.

In a case before the Lord Justices, on an appeal in a case of nuisance from the Master of the Rolls, before whom the witnesses had been cross-examined, Mellish, L.J., observed, "I think great weight must, in cases of this kind, be given to the decision of the Court below; and unless we can see plainly to our minds that there is a wrong inference drawn on a point of fact, we ought not to interfere with the decision:" *Salvin* v. *The North Brancepeth Coal Company*, 22 W.R. 907. In the Court of Appeal, in England, as lately constituted, the Judges had recently to consider the decisions of the Privy Council in an appeal which was also from the Admiralty Division. The judgment of the Court was delivered by Baggallay, J. A., who said that the parties to the cause were entitled, as well on questions of fact as on questions of law, to demand the decision of the Court of Appeal, and that the Court could not excuse itself from the task of weighing conflicting evidence, and drawing its own inferences and conclusions, though it should always bear in mind that it has neither heard nor