

deemed more probable than a wilful misrepresentation. When the judgment, after every exertion, is reduced to the necessity of deciding, that on the one side or the other, there has been an intentional falsehood, and no satisfactory reasons occur for fixing the superiority of credit; the last resource is to obliterate wholly the conflicting testimony, and to determine upon the want of a preponderance in proof, according to the rule which must have prevailed in the total absence of it. The result of an investigation of evidence will, after the most enlightened and painful research, be, in many cases, unfortunately at variance with the actual truth, but in proportion to the dangers of error inherent in the very frame and nature of the subject, should be the care and anxiety exercised in the avoidance of such error as may proceed from an excess of confidence on the one hand or of caution on the other; and although that care and anxiety will often fail in their particular application, the perfection of human precaution will be attained, if they are so conducted that according to the principles of reason and experience, they may be expected in general to succeed.

"To the above observations, in which I have endeavoured to sketch some of the principles that may not be undeserving attention, in forming a judgment upon the accuracy and veracity of evidence, and which are deduced from the nature of the subject itself, it remains to subjoin a few others, originally founded upon the same principles, but more immediately connected with positive rules of practical authority. In the examination of witnesses, a distinction is made with respect to the party by whom they are called, it being, in general, inadmissible for a party to put what are termed leading questions to the witnesses adduced by himself, although such questions are perfectly allowable upon a cross-examination. It is sometimes laid down that leading questions are those which are to be answered by a mere affirmative or negative, and in which, consequently, the answer is fully