

been, and still is, that they are willing to allow the land in question to be used as a public highway. . . .

It becomes largely a question of credibility as between Mrs. Stevenson and her daughter on the one hand, and Mr. Flannigan on the other.

While Mrs. Stevenson's demeanour on cross-examination was not always entirely satisfactory—yielding apparently to a spirit of obstinacy, she sometimes declined to answer counsel for the defendants explicitly, and once or twice said she did not remember matters upon which she answered quite promptly when questioned by Mr. Keefer,—on the whole I was favourably impressed with her testimony, and found nothing which would justify a conclusion against her veracity. Her daughter appeared to be a modest young girl, very nervous, but desirous of telling the truth to the best of her ability.

While it might be difficult to specify anything marked in Mr. Flannigan's manner of giving evidence, or his demeanour in the witness box, that would raise serious doubt as to his credibility, he is, as has been pointed out, in direct conflict with both Mrs. Stevenson and her daughter on almost every material point. Their testimony, as against his, is, in one important particular, materially corroborated by the defendant Cameron. Flannigan's evidence also directly contradicts that of Harkness. Against the reliability of this witness nothing whatever has been suggested, and he is entirely independent.

It is also noteworthy that at least on one occasion, where Flannigan is in conflict with both Mrs. Stevenson and her daughter, a witness, Black, who was present and might have given important testimony, was not called. Black was in the court room during the trial. He was excluded at the request of plaintiff's counsel while the evidence for defendants was given. He was interested with the defendants in their hotel scheme, being the person who was to manage it for them. It is a significant circumstance that his testimony is not before the Court.

There should also be noted the fact that there is a material difference between Mr. Flannigan's evidence on discovery and his evidence at the trial, and his explanation of his change in story is rather calculated to lead me to place less reliance on his testimony.

It is likewise a significant circumstance that, although upon their own admission there was some special condition