(3 Ch. Div. 24) it was held that: "Although the Court of Appeal, when called on to review the conclusion of a judge of first instance, after hearing witnesses *viva voce*, will give great weight to the consideration that the demeanor and manner of the witnesses are material elements in judging of the credibility of the witnesses, yet, it will, in a proper case, act upon its own view of conflicting evidence. "Of course," said James, L. J., in that same case, "if we are to accept as final the decision of the court of first instance in every case where there is a conflict of evidence, our labors would be very much lightened, but, then, that would be doing away with the right of appeal in all cases of nuisance, for there never is one brought into court in which there is not contradictory evidence." And Bramwell, L. J., said: "The legislature has contemplated and made provision for our reversing a judgment of a vice-chancellor when the burden of proof has been held by him not to have been sustained by the plaintiff, and where he has had the living witnesses and we have not. If we were to be deterred by such considerations as these which have been presented to us from reversing a decision from which we dissent, it would have been better to say, at once, that in such cases there shall be no appeal."

And in *Jones* v. *Hough* (5 Exch. Div. 122), Bramwell, L.J., said: "First, I desire to say a word as to our jurisdiction. If, upon the materials before the learned judge, he has, in giving judgment, come to an erroneous conclusion upon certain questions of fact, and we see that the conclusions are erroneous, we must come to a different conclusion and act upon the conclusion that we come to, and not accept his finding. I have not the slightest doubt such is our power and duty. A great difference exists between a finding by the judge and a finding by the jury. Where the jury find the facts, the court cannot be substituted for them, because the parties have agreed that the facts shall be decided by a jury; but where the judge finds the facts, there the Court of Appeal has the same jurisdiction that he has, and can find the facts whichever way they like. I have no doubt, therefore, that it is our jurisdiction, our power and our duty; and if, upon these materials, judgment ought to be given in any particular way different from that in which Lindley, J., has given it, we ought to give that judgment."

The cases of *Shortnew* v. *Stewart* (L. R. 3 P. C. 478), and *Symington* v. *Symington* (L. R. H. L. 2 Sc. App.), though they have but a limited application, yet may be referred to on the point.

Also, what our present Chief Justice said on the subject in *Phœnix* v. *Magee* (18 Can. S. C. R. 61), and the case of *Russell* v. *Lefrançois* (8 Can. S. C. R. 335), where this court reversed the concurrent findings of the two courts below upon a question of fact, and the Privy Council refused leave to appeal. True it is, then, the credibility of any of the witnesses was not directly questioned; but here, even upon that point, we are in the same position as the two courts below were, their conclusions having been exclusively reached, as ours have to be, upon the mere reading of written depositions.