

APPEALS UPON EVIDENCE—THIRD REPORT OF CONSOLIDATION COMMISSIONERS.

seen the witnesses, and should make due allowance in this respect. And then the previous rule was modified to this extent: that the Court of Appeal will be disinclined to interfere when the Judge hearing the witnesses has come to his decision upon the credibility of witnesses as evinced by their demeanor, but otherwise in cases where it depends upon the drawing of inferences from the facts in evidence: *The Glannibanta*, L.R. 1 P.D. 283.

The same question again came up in the Court of Appeal in *Bigsby v. Dickenson*, 25 W.R. 89 (Nov. 1876), where the Judges affirmed the views expressed in *The Glannibanta*. James, L.J., observed, "of course, if we are to accept, as final, the decisions of the Court of first instance in every case where there is a conflict of evidence, our labours would be very much lightened. But then that would be to do 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 in the same vein Bramwell, J.A., followed thus: "the Legislature has contemplated and made provision for our reversing a judgment of a Vice-Chancellor where 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 those 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."

From a consideration of these cases we conceive, therefore, that Mr. Justice Burton has laid down the rule rather too broadly and emphatically in *Davidson v. Ross*. While a Court of Appeal may be unwilling to disturb a judgment which has been arrived at in consequence of the Judge believing one witness rather than another, yet there will be no hesitation

in reversing a judgment (1) where the evidence is insufficient; or (2) where, credibility being equal (as is ordinarily the case when the witnesses are not parties) the Judge below has deduced wrong conclusions or drawn wrong inferences from the facts in evidence; or, (3) where the circumstances of the case, or the conduct and acts of the parties are repugnant to the credibility of the direct evidence.

THIRD REPORT OF THE COMMISSIONERS FOR CONSOLIDATING THE STATUTES.

To His Honour the Lieutenant-Governor of Ontario:

The Commissioners appointed for the consolidation and revision of the Statutes affecting the Province of Ontario have the honour to report as follows:

Since our last Report to your Honour the composition of the Commission of which we have had the honour to be appointed members, has undergone some change. The absence of the Chief Justice of Appeal is, in the first place, to be regretted. Mr. Justice Strong, has, since his elevation to the Bench of the Supreme Court, and consequent removal to Ottawa, been unable to take much part in the work; but early in the present year, Mr. Justice Moss consented to act; from about the same time His Honour Judge Gowan, a member of the Consolidation Commission of 1859, and, more recently, Mr. Vice-Chancellor Blake, have been rendering active assistance in the work of revision.

As soon as possible after the last Session of the Legislature, the Public General Acts of the Session were incorporated in the draft already prepared of the Public General Acts relating to matters within the authority of the Legislature of Ontario. The printing of the manuscript was then commenced, and has been continuously proceeded with during the last eight months, under the superintendence of Messrs. Langton, Biggar, and Kingsford, who, from time to time, submitted the draft while in galley form, to one or more of the other members of the Com-