

in seeing and hearing them. It is often very difficult to estimate correctly the relative credibility of witnesses from written depositions; and when the question arises which witness is to be believed rather than another, and that question turns on manner and demeanour, the Court of Appeal always is and must be guided by the impression made on the Judge who saw the witnesses."

The evidence in this case is hopelessly contradictory; and the conclusions to be arrived at must depend upon the credibility of the witnesses; and I can find no reason for disagreeing with the findings of the trial Judge. It is, if one were to judge by the words of the witnesses as they appear in cold black and white, and by these alone, more than likely that another tribunal would give more effect to certain parts of the evidence of the defendant—for example, the declaration made by the plaintiff in presence of Mr. Creswicke—but the effect of this declaration and the plaintiff's knowledge of its contents must depend upon the intelligence and honesty of the plaintiff, which the trial Judge alone could rightly gauge. And there is no rule which binds a trial Judge to wholly believe or wholly disbelieve a witness. The witness may be absolutely discredited and disbelieved in one part of his evidence, and wholly believed in another—that is for the trial Judge to decide. In *Kew v. City of London*, 9 O. W. R. 224, I considered the great advantage the trial Judge has in that respect.

Had the learned trial Judge found the facts diametrically opposite from those as found, I do not think the Court could interfere, and equally I cannot see how the Court can interfere with the judgment actually made.

The appeal should be dismissed. The litigation is most discreditable to both parties—there should be no costs of the appeal.

---

BRITTON, J.

JUNE 7TH, 1907.

TRIAL.

WOOD v. BROWN.

*Costs—Third Party Proceedings—Dismissal of Action against Defendant at Trial—Discretion—No Costs.*

Question of costs of third party proceedings where action dismissed against defendant at the trial.