

dence was to be relied upon. This view of the case is undoubtedly the correct one, and the one generally acted upon. It is, however, equally true that there may be something in the surroundings of a case, in the bearing of other facts upon the statements made by the witness, to which the trial judge impressed by the personal demeanour of the witness, perhaps unconsciously influenced by some personal or local feeling, which the best of judges, being human, are liable to, did not give the weight to which such consideration were entitled; but which would influence a court dealing with the case presented in the cold light of the general principles which control the actions of men, and especially of men in business.

The law affecting this question is clearly set forth in the admirable judgment of Mr. Justice Riadell in *Beal v. Michigan Central R.R. Co.*, 19 O.L.R. 504. We quote his language on page 506:—

“Upon an appeal from the findings of a judge who has tried a case without a jury, the court appealed to does not and cannot abdicate its right and its duty to consider the evidence. Of course, ‘when a finding of fact rests upon the result of oral evidence, it is in its weight hardly distinguishable from the verdict of a jury, except that a jury gives no reasons.’ *Lodge Holes Colliery Co. v. Mayor, etc., of Wednesbury*, [1908] A.C. 323, at p. 326, per Lord Loreburn, L.C. 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.’ *Coghlan v. Cumberland*, [1898] 1 Ch. 704, at p. 705, per Lindley, M.R., giving the judgment of the Court of Appeal: *Bishop v. Bishop* (1907) 10 O.W.R. 177.

“But where the question is not, ‘What witness is to be believed?’ but, ‘Give full credit to the witness who is believed, what is the inference?’ the rule is not quite the same. And if it appear from the reasons given by the trial judge that he has misapprehended the effect of the evidence or failed to consider a material part of the evidence, and the evidence which has been