

The judgment of the Court was delivered by RIDDELL, J., who said that whether the assignment was valid was not of moment in the inquiry as to the liability of the defendants for damages, as both assignor and assignee sued as plaintiffs; referring to *McCormack v. Toronto R. W. Co.*, 13 O. L. R. 656; *King v. Victoria Insurance Co.*, [1896] A. C. 250.

It appeared at the trial that the Wolverine train No. 8 of the defendants passed east about 8 p.m., and that shortly thereafter the place was seen on fire. . . . The Wolverine passed . . . at 8.18, a Pere Marquette train at 7.56, and another at 8.01. . . . The trial Judge, coupling the evidence of the engineer that the engine was always the same, with the evidence of a witness named Donahue, who said that he had often seen the engine of the Wolverine throw sparks, considers that it has been proved that the engine was in the habit of throwing sparks (at a particular spot). Then, saying that it had not been proved that either of the Pere Marquette engines had thrown sparks, he finds that it was a spark from the Wolverine which caused the damage. . . .

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 v. Wednesbury Corporation*, [1908] A. C. 323, 326; . . . And "where 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*, [1908] 1 Ch. 704, 705; . . . *Bishop v. Bishop*, 10 O. W. R. 177. But where the question is not what witness is to be believed, but, giving full credit to the witness who is believed, what is the inference, the rule is not quite the same. And, if it appears 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 believed by him, when fairly read and considered as a whole, leads the appellate Court to a clear conclusion that the findings of the trial Judge are erroneous, it becomes the plain duty of the Court to reverse these findings. . . .

In the present case the findings are based upon misapprehensions. There is no more evidence that the Wolverine engine was throwing sparks than those of the Pere Marquette at any point from which the sparks could have got to the plaintiff's pro-