falling into the excavation. In consequence he says that he, with his horse and buggy, fell into the excavation and he was injured.

The defendants in their statement of defence, say that in the performance of their statutory duty to keep the highway in repair, it was necessary to replace a wooden culvert and in consequence to make the excavation in question, and that in order that travel on the highway might not be stopped the defendants constructed another sufficient and safe driveway for travel at the side of the excavation. They also say that they erected a proper guard or barrier across the travelled portion on either side of the excavation. They further plead that the injuries complained of by the plaintiff were the result of his own negligence and he could have avoided them by the exercise of reasonable and ordinary care.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

St. C. Leitch, for defendants, appellants.

Shaw, for plaintiff, respondent.

HON. MR. JUSTICE SUTHERLAND:—A perusal of the evidence leads me to the conclusion that the disposition of the case is unsatisfactory, and I am disposed to think that the proper course is to send it back for a new trial. The learned trial Judge has given no reasons which might afford a guide to us upon the appeal.

It is true that in the case of the trial of an action by a Judge without a jury, "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. Ltd.* v. *Mayor of Wednesbury,* [1908] A. C. 323, at 326.

It has, however, been frequently pointed out how desirable it is for a trial Judge to give the reasons on which he bases his judgment. "If the Judge simply disbelieved McFarquhar his so finding would have been of assistance to us." Sir Glenholme Falconbridge, C.J.K.B., in *Gurofski* v.