

TATISICH (DEFENDANT) .....APPELLANT;  
 AND  
 HARDING ET AL. (PLAINTIFFS).....APPELLANTS;  
 AND  
 EDWARDS (DEFENDANT) .....RESPONDENT.

1930  
 \*May 7.

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 TATISICH (DEFENDANT) .....APPELLANT;  
 AND  
 EDWARDS (PLAINTIFF) .....RESPONDENT;  
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 TATISICH (DEFENDANT) .....APPELLANT;  
 AND  
 GALL (PLAINTIFF) .....APPELLANT;  
 AND  
 EDWARDS (DEFENDANT) .....RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
 COURT OF ONTARIO

*Negligence—Motor vehicles—Driver of motor car swerving off pavement to avoid collision threatened through negligence of driver of another car, and on regaining pavement colliding with other cars—Question as to which driver was responsible for injuries caused by the collision.*

APPEAL by the defendant Tatisich from the judgment of the Appellate Division of the Supreme Court of Ontario (1), dismissing her appeal from the judgment of Wright J. in the above mentioned actions, which were tried together.

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\*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Smith JJ.

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Mrs. Tatisich (defendant in the three actions) was driving her motor car westerly, and Edwards (defendant in two of the actions and plaintiff in the other) was driving his car easterly, on the highway between Hamilton and Niagara, on August 12, 1928. It was alleged that Mrs. Tatisich turned out to pass a car ahead of her and that Edwards (coming in the opposite direction), in order to avoid a head-on collision with her car, swerved to his right off the pavement, and on returning to the pavement his car collided with others, causing injuries or loss to the plaintiffs.

Wright J. held that the accident was caused by the negligence of Mrs. Tatisich, and that Edwards was not chargeable with any negligence causing the accident, and gave judgment in all actions in favour of the plaintiffs against Mrs. Tatisich, and dismissed the actions against Edwards. This judgment was affirmed by the Appellate Division (1). Mrs. Tatisich appealed to the Supreme Court of Canada. The plaintiffs Harding et al. and Gall also appealed, in so far as their claims against Edwards were dismissed, and asked that, in the event of the appeal of Mrs. Tatisich being allowed, they be awarded judgment against Edwards. Leave to all said appellants to appeal to the Supreme Court of Canada was given by the Appellate Division.

After hearing argument by counsel for the appellant Tatisich, and counsel for the appellants Harding et al. and Gall having stated that they were satisfied to have the judgment below (as given against the appellant Tatisich) sustained as it stands, the members of the Court retired to consider the case, and on their return to the Bench, the Court, without calling on counsel for respondents, delivered judgment dismissing the appeal of the appellant Tatisich with costs. The Chief Justice stated that the Court was of opinion that the question involved was purely a question of fact on which the Court had the explicit finding of the trial judge, confirmed by the majority of the Appellate Division; that question of fact being whether Edwards had recovered sufficiently from the condition of nervous excitement, into which the rash act of the appellant Tatisich had thrown him, to be held responsible for

what subsequently occurred, or, whether he should be regarded as still acting involuntarily under the influence of that condition; the Court took the view, notwithstanding Mr. Hellmuth's very able presentation of the appeal, that nothing had been shewn which would entitle it to determine the question before it otherwise than as the Appellate Division had done.

(The appeals of Harding et al. and of Gall, against Edwards, were, on counsel for the parties concurring, dismissed without costs.)

*Appeal dismissed with costs.*

*I. F. Hellmuth K.C.* and *G. C. Elgie* for the appellant Tatisich.

*H. J. McKenna* and *T. McCombs* for the appellants Harding et al.

*L. W. Gay* for the appellant Gall.

*C. W. R. Bowlby* for the respondent Edwards.

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