

1942
* June 17, 18
* Oct. 6.

BERTHA MCFADYEN AND DOUGAL }
MCFADYEN (PLAINTIFFS) }

APPELLANTS;

AND

C. A. HARVIE (DEFENDANT) RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Physicians and surgeons—Negligence—Patient injured by a burn during operation—Cause of burn not established—Procedure followed in operation in accordance with recognized practice—Extent of responsibility of operating surgeon—Evidence—Onus of proof—Applicability of maxim res ipsa loquitur.

APPEAL by the plaintiffs from the judgment of the Court of Appeal for Ontario (1) dismissing their appeal from the judgment of McFarland J. dismissing their action.

* PRESENT:—Duff C.J. and Rinfret, Kerwin, Hudson and Taschereau JJ.

(1) [1941] O.R. 90; [1941] 2 D.L.R. 663.

The action was for damages for alleged negligence in connection with an operation performed on the appellant Bertha McFadyen by the respondent, a physician and surgeon.

1942
MCFADYEN
v.
HARVIE.

J. R. Cartwright K.C. for the appellants.

D. L. McCarthy K.C. and *W. R. West* for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE—We are of opinion that this appeal should be dismissed. We agree with the reasons delivered by the Chief Justice of Ontario (1) and find it unnecessary to add anything to them.

Appeal dismissed with costs.

Solicitor for the appellants: *Hugh W. Grant.*

Solicitors for the respondent: *McCarthy & McCarthy.*

(1) [1941] O.R. 90; [1941] 2 D.L.R. 663.