

and, swerving suddenly upon the plaintiff, who was passing on a bicycle, injured him. The roller was the property of the City Corporation, and was being used by paving contractor under a provision in the contract. The work was being done for the corporation, and it necessitated the use of the roller. It was shewn that the roller was a machine likely to frighten horses of ordinary courage and steadiness; that of this the City Corporation's servants were aware; and that proper precautions were not taken on the occasion in question to warn persons of the approach of the roller to the street on which the horse was passing.

*Held*, that the place where the work was to be done and the means by and the manner in which it was to be performed made it incumbent on the City Corporation, if they had been doing the work otherwise than through a contractor, to see that proper precautions were taken to guard against danger to the public from the use of the roller; and the corporation could not rid themselves of this obligation by intrusting the work to a contractor.

*Penny v. Wimbledon Urban District Council* (1898), 2 Q.B. 212; (1899), 2 Q.B. 72, followed.

*Held*, also, that the contractors were bound equally with the corporation to take notice that the roller was likely to cause danger to the public, and their failure to take proper precautions occasioned the accident.

Judgment of MEREDITH, C.J., affirmed.

*Fullerton*, K.C., and *Chisholm*, for City Corporation, appellants. *D. C. Ross* and *W. H. Irving*, for Dominion Paving and Construction Co., appellants. *Russell Snow* and *Nasmith*, for plaintiff, respondent.

---

## HIGH COURT OF JUSTICE.

---

Master in Chambers.]

[Sept. 7. 1904.]

MCBAIN v. WATERLOO MANUFACTURING CO.

*Infant*—*Next friend* out of jurisdiction—*Security for costs* or *appointment of next friend* within jurisdiction.

Where an infant, as well as his father, who sues on his behalf as next friend, reside out of the Province, either security of costs must be given, or a next friend within the jurisdiction appointed.

*D. L. McCarthy*, for defendants. *J. E. Jones*, for plaintiff.