

MASTEN, J., in a written judgment, said that the plaintiff alleged that the defendants were occupiers in control and management of an amusement park and athletic field; that he went to this park as an invitee of the defendants; that the sidewalk adjoining the grand-stand was defective in that one of its planks had become rotted and broken away, thus developing a hole in which the plaintiff tripped and fell and broke his arm.

At the close of the plaintiff's case, the defendants moved for a nonsuit, and renewed it after evidence had been given for them and the case had gone to the jury.

Considering the motion, the learned Judge said that the defendants and the St. Simon's Athletic Club were, for the afternoon on which the plaintiff was injured, joint adventurers—that it was not shewn by the evidence that the defendants gave up occupation of the premises. The defendants were operating the park as a permanent enterprise and for gain, as owners of the park and carriers of passengers to it. It was to the advantage of the defendants to get as many persons as possible to the park because they thus secured 30 per cent. of the entrance fees and the street railway fares of many of the spectators. The evidence established a license to the club to use the park on the afternoon referred to for their lacrosse match, that the club had a right to admit whom it chose, and a right to 70 per cent. of the gate-money, but no other rights. The evidence established a duty in respect of the fitness and safety of the premises on the part of the defendants to an invitee or licensee with an interest coming into and using the park in accordance with the general purpose for which the defendants maintained, operated, and managed the park; and the defendants were not absolved from that duty by the temporary arrangement with the club.

Nevertheless, the motion for a nonsuit must succeed, for the plaintiff paid no entrance-fee upon entering the park. He was a bare licensee, and had no right of recovery, in the circumstances shewn by the evidence.

Reference to *Hayward v. Drury Lane Theatre Limited*, [1917] 2 K.B. 899, 914; *Pollock on Torts*, 11th ed., p. 531; *Latham v. R. Johnson & Nephew Limited*, [1913] 1 K.B. 398, 404, 405, 406.

The plaintiff was a non-paying licensee who came to the premises merely for his own pleasure.

If the defendants had repaired the sidewalk with planks known to be rotten and dangerous, they might have been liable to him, but not where the only fault was nonrepair of a sidewalk which had in the ordinary course of time developed a hole through rot.

The defendants' motion should be granted and the action should be dismissed, with costs if asked.