

NOVEMBER 9TH, 1915.

McPHEE v. CITY OF TORONTO AND BULMER.

Negligence—Injury to Person by Breaking of Bench in Public Park—Duty of Owner of Bench to Public Resorting to Park—Evidence—Condition of Bench—Reasonable User.

Appeal by the defendant Bulmer from the judgment of DENTON, Jun. Co. C.J., in favour of the plaintiff, upon the findings of a jury, against the appellant, in an action in the County Court of the County of York brought to recover damages for personal injuries sustained by the plaintiff by the breaking of a bench upon which she was sitting. The bench was owned by the appellant and was placed by her in a pavilion in a public park in the city of Toronto.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

James Haverson, K.C., for the appellant.

J. M. Godfrey, for the plaintiff, respondent.

HODGINS, J.A., delivering judgment, said that the bench which broke down was one intended "comfortably and adequately to seat and accommodate 25 persons," and was owned by the appellant. It was in use by a party, and this could not have been the case except with the consent and approval of the appellant, who was accustomed to rent such benches for the convenience of those who came in to partake of their own refreshments or to purchase them from her. There was a vacant space on it, upon which the respondent and her daughter sat down preparatory to going into the inner room to get some tea from the appellant.

As the bench was intended to provide safe accommodation for 25 persons, and as no evidence as to its condition, except that afforded by the accident itself, was given, the appellant must be held to be responsible for its failure to serve its purpose.

The respondent's user was natural, and was such a user as was contemplated when it was rented. She was properly in the pavilion, and there was nothing to indicate to her that the bench was not available for her temporary use while on her way to procure and pay for a cup of tea. No objection was made by those already occupying it. The accident happened because the appellant had supplied an unsafe bench and allowed it to be