

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 DEN-  
TON, 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, MAC-  
LAREN, 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 adequ-  
ately 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 ap-  
pellant, who was accustomed to rent such benches for the con-  
venience of those who came in to partake of their own refresh-  
ments 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