

Full Court.]

HARDY v. ATKINSON.

[Dec. 21, 1908.]

*Gift—Delivery.*

Appeal from verdict of a jury in favour of defendant in an action of replevin of a horse tried in a County Court. The plaintiff owned a horse of small value which was allowed to wander about the country near Lake Winnipeg. Being about to leave the lake for the winter he instructed one Rowland to let the horse to some one who would keep him until the following summer. The defendant bought the horse from one Park, who claimed that plaintiff had given him the horse. Park's story was that he had met the plaintiff in October and said, "Mr. Hardy, how's chances for that horse of yours?" to which Hardy replied: "You can have the horse, but go down and see Mr. Rowland before the horse gets back home." After seeing Rowland, Park went out on the prairie and took possession of the horse.

*Held*, allowing the appeal, that there was no sufficient delivery of the horse to constitute a valid gift of it to Park, even if the words used by plaintiff could be held to shew an intention to part with his ownership.

*Irons v. Smallpiece*, 2 B. & Ald. 551; *Cochrane v. Moore*, 25 Q.B.D. 57, and *Re Bolin*, 136 N.Y. at p. 180, followed.

*Blackwood*, for plaintiff. *Knott and Heap*, for defendant.

Full Court.]

ROY v. HENDERSON.

[Dec. 21, 1908.]

*Negligence—Contributory negligence—Volenti non fit injuria.*

The plaintiff sued as administrator of the estate of his son, a youth of twenty years, who was killed while loading sand in a pit owned and operated by the defendants in consequence of the caving in of the frozen crust overhanging the place where he was working. Young Roy and others had excavated the sand underneath the frozen crust to such an extent that, 10 or 15 minutes before the accident, a man employed by defendants for that purpose, warned all those working in the pit that the crust was cracking. The others withdrew in time, but Roy thought he could complete loading before the roof came down and took the risk.

*Held*, that although it was defendant's duty to break down the crust as soon as it became dangerous to their customers, yet