
 REPORTS AND NOTES OF CASES.

 Province of Ontario.

COURT OF APPEAL.

Full Court.]

[Feb. 15.]

SIVEN *v.* TEMISKAMING MINING COMPANY.

*Mining Act—Accident—Master and servant—Negligence—
“Pentice.”*

Appeal by defendants from judgment of FALCONBRIDGE, C.J. K.B., upon the findings of a jury in favour of plaintiff for \$2,500 as damages for an accident to the plaintiff, who was seriously injured by a stone falling down a shaft in which he was working. This stone came through a man-hole situated above the mouth of the shaft. There was a trap door over the mouth of the shaft in which the plaintiff was, but it was left open by one of the workmen, causing the accident. The Mining Act, 8 Edw. VII. c. 21, s. 164, provides that where a shaft is being sunk below levels in which work is going on, a suitable “pentice” should be provided for the protection of the workmen in the shaft.

Held, 1. That, under the circumstances, a suitable “pentice” had not been provided, because when the trap door was opened there was in fact no “pentice” at all. The defendants were, therefore, liable.

2. That the defence that another workman was negligent in not keeping the trap door shut was not a defence of common employment, which has no application in the case of a breach of a statutory duty; and a statutory duty takes no account of inconvenience or expense when it is absolute in its terms.

Rose, K.C., and *Sedgewick*, for defendants. *Slaght*, for plaintiff.

 Province of Manitoba.

COURT OF APPEAL.

Full Court.]

[Feb. 19.]

HUGGARD *v.* BENNETTO.

Gift—Husband and wife—Delivery of possession—Evidence.

In order to transfer the property in a chattel by a verbal gift only, there must be an actual delivery to the donee. If