36 S.C.R. 1; Blanquist v. Hogan, 1 O.W.R. 15; Gordanier v. Dick, 2 O.W.R. 1051; Brooks Scanlon O'Brien Co. v. Fakkema, 44 S.C.R. 412; Cameron v. Douglas, 3 O.W.R. 817; Grand Trunk Pacific R.W. Co. v. Brulott, 46 S.C.R. 629; Thrussell v. Handyside, 20 Q.B.D. at p. 364.]

I am satisfied that, in the circumstances . . . as to the situation created by the letter, the conditions during the week preceding and on the morning of the 14th January, the deceased did not, within the meaning of the maxim "volenti non fit injuria," as explained by these cases, voluntarily accept the risk. He falls within none of the three descriptions, and his case is well covered by Mr. Justice Anglin's view in Grand Trunk Pacific R.W. Co. v. Brulott.

The last question is, whether, notwithstanding the defect in the condition of the ways, etc., and although the defendants cannot succeed upon their plea that the deceased voluntarily accepted the risk—as I hold they cannot—they have still shewn such contributory negligence in the deceased as to prevent the plaintiff—his widow and personal representative—from succeeding.

In cases of neglect of duty by the master, contributory negligence is a good defence, and may be proved by shewing any act of negligence on the part of the workman but for which the accident would not have happened, which negligence may well include recklessness even in a needful exposure to danger.

I confess that this aspect of the case has given me considerable anxiety, and I am not wholly satisfied that I am right in the view that the defendants must fail here too. . . .

[Examination of the evidence.]

On the whole, therefore, and with some hesitation, I think that the defendants have failed to shew contributory negligence in the deceased.

There will be judgment for the plaintiff for $2,500, with costs of action. The apportionment of this sum may be spoken to before the formal judgment is settled.