but the time and manner in which they were spoken and the occasion. A very mild request or suggestion in form, might be an absolute command: a velvet glove may cover the iron hand. The plaintiff says he was ordered.

But it is not necessary to consider whether the jury did in fact necessarily have to find upon that subject. As I have said the third question was evidently intended to cover possible liability under both clauses, 2 and 3, of the third section of the Workmen's Compensation Act. By the answer that the negligence was that of a person in superintendence, and the necessary implication that it was whilst in the exercise of such superintendence, the case is brought within the second clause, and the defendants become liable.

As to whether a question should have been put, as asked by the defendants, whether the plaintiff voluntarily incurred the risk, the learned Chief Justice pointed out that it would have been unfair at that stage. Neither the pleadings, the questions to the plaintiff, nor the conduct of the trial were directed towards such an issue, and asked as it was after even the counsel on both sides had addressed the jury, it would not have been fair to the plaintiff, who was given no opportunity of stating other than as he did, in what position he was acting. So far as he did state it, the evidence is against the defendants.

It was a case for a jury and in my opinion could not be withdrawn from them. In my opinion the appeal should be dismissed.

MOSS, C.J.O., gave written reasons for arriving at the same conclusion.

MACLAREN, J.A., concurred in dismissing the appeal.

MEREDITH, J.A., dissenting, was of opinion, for reasons stated in writing, that the judgment for the plaintiff could not be supported upon the findings of the jury, nor upon the evidence, even had the findings been sufficient.