

form, and did conform, within the meaning of the Workmen's Compensation Act, and though the plaintiff was sent to do what work Teasdale required of him, and for that purpose take his instructions from Teasdale, it was not because Teasdale was a person in superintendence, but simply because he was the man who knew what was required to be done by each of them—and that the accident did not happen by reason of the orders of Teasdale, but by reason of the failure of both men to satisfy themselves that there was no danger, and that they were equally guilty of negligence to obey the company's rule, and also that the plaintiff voluntarily undertook the risk, or the question whether he did so should have been submitted to the jury.

The questions to the jury were evidently intended to ascertain whether the facts brought the case within sub-sections 2 and 3 of section 3 of the Workmen's Compensation for Injuries Act. Sub-section 2 applies to negligence of an employee who has any superintendence entrusted to him, whilst in the exercise of such superintendence. Sub-section 3 applies to negligence of an employee to whose orders or directions the plaintiff was bound to conform, and did conform, where the injury resulted from his having so conformed.

Read by themselves the questions to the jury do not in terms ask whether the negligence of the person in superintendence was whilst in the exercise of such superintendence, nor whether the plaintiff did conform to orders or directions.

As to the first of these inquiries, the issue before the jury was whether it was Teasdale's duty, as the superintendent for the time being, to put out the flags, or the plaintiff's duty not to work unless they were out. The jury find that it was not the plaintiff's duty, and indeed it would seem from the change in the form of the fifth and sixth questions made at the defendants' instance, that disregard of his duties was not being strongly relied upon by the defence. The jury also find the negligence was Teasdale's in not putting out the flags. That involves the finding that the negligence was whilst in the exercise of the superintendence. The second inquiry as to whether the plaintiff acted under an order or direction, is perhaps not so clearly decided. It is manifest from the statement of the learned Chief Justice, on the motion for nonsuit, that he intended the jury to pass upon it, and in dealing with the fifth and sixth questions, he stated his own view that the plaintiff did not act under any compulsion. That would clearly be a matter for the jury, and they would have to consider not only the relations of the parties and their words,