

of the absence of precautions, is important, but not necessarily conclusive against him."

From the decisions referred to, the following rules have been established under the Act:—

1. The defence of "common employment" cannot be set up in the five cases specified in the second section of the Act. It is however, available in all other cases that may arise under it.

2. Contributory negligence may still be relied upon as a defence.

3. The master is still liable for personal negligence, the same as before the Act.

4. He is also liable for injury caused by a negligent system of using machinery, as before the Act.

5. The defence of "volenti non fit injuria" is still available, as modified by the House of Lords in *Smith v. Baker*.

6. The employer is not liable for injuries resulting from defects, which were unknown to him or his deputies.

7. The question of "volens" is one of fact to be found by the jury in each case.

8. In an action under the Employers' Liability Act, 1880, it was held, in *Baddeley v. Earl Granville* (1887) L.R. 19 Q.B.D. 423, that the defence arising from the maxim, volenti non fit injuria, was not applicable in cases where the injury arose from the breach of a statutory duty on the part of the employer, and that the plaintiff was entitled to recover. Nothing was said in *Smith v. Baker* to impugn this judgment.

In order to shew how great a change has taken place in a few years as to the applicability of this legal maxim, it is only necessary to place the judgment of two eminent jurists in juxtaposition.

Lord Chief Justice Cockburn, in 1877, in *Woodley v. Metropolitan District Ry. Co.*, L.R. 2 Ex. D. at page 389, said: "It is competent to an employer, at least so far as civil consequences are concerned, to invite persons to work for him under circumstances of danger caused or aggravated by want of due precautions on the part of the employer. If a man chooses to accept the employment, or to continue in it with a knowledge of the danger, he must abide the consequences, so far as any claim to compen-