

extent, upon the nature of the risk, and the workman's connection with it, as well as upon other considerations which must vary according to the circumstances of each case."

Lord Herschell stated his view of the crucial point in question in the following incisive language: "It was a mere question of risk which might not eventuate in disaster. The plaintiff, evidently, did not contemplate injury as inevitable, not even, I should judge, as probable. Where, then, a risk to the employed, which may or may not result in injury, has been created or enhanced by the negligence of the employer, does the mere continuance in service, with knowledge of the risk, preclude the employed, if he suffer from such negligence, from recovering in respect of his employer's breach of duty? I cannot assent to the proposition that the maxim 'volenti non fit injuria' applies to such a case, and that the employer can invoke its aid to protect him from liability for his wrong."

Lord Morris was of the opinion the plaintiff was both "sciens" and "volens" as to all the danger except that arising from unfit machinery; the plaintiff may have voluntarily entered on a risky business; but he did not voluntarily undertake it plus the risk from defective machinery; and that there must be an assent to undertake the risk with the full appreciation of its extent.

In *Williamson v. Birmingham Battery and Metal Co.* (1899) 2 Q.B.D. at page 345, L. J. Romer, following *Smith v. Baker*, thus briefly summarizes the law: "If the employment is of a dangerous nature, a duty lies on the employer to use all reasonable precautions for the protection of the servant. If, by reason of breach of that duty, a servant suffers injury, the employer is prima facie liable; and it is no sufficient answer to the prima facie liability for the employer to shew merely that the servant was aware of the risk, and of the non-existence of the precautions which should have been taken by the employer, and which, if taken, would, or might, have prevented the injury. Whether the servant has taken that upon himself is a question of fact to be decided on the circumstances of each case. In considering such a question the circumstances that the servant has entered into, or continued in his employment, with knowledge of the risk, and