

the danger arising from the practice of omitting to give warning, and had so worked for months, when a stone fell and injured him whilst being swung over his head. Several questions had been left by the judge to the jury, who found the machinery for lifting the stone was not reasonably fit for the purpose; that not making provision to supply special means of warning was a defect within the meaning of the Act; that the defendants were guilty of neglect in not remedying that defect; that the plaintiff was not guilty of contributory neglect, and that the plaintiff did not undertake a risky employment with a knowledge of its risks. The jury found for the plaintiff. The House of Lords held that the mere fact that the plaintiff having remained on in the defendants' service with knowledge of the dangerous practice, did not, as a matter of law, preclude him from recovering; and that it was a question for the jury whether he had contracted to take the risk of accidents upon himself.

Lord Halsbury, L.C., in the course of his judgment, after referring to the facts of the case, said: "My Lords, I am of opinion that the application of the maxim '*volenti non fit injuria*' is not warranted by these facts. I do not think the plaintiff did consent at all. I am of opinion myself, that in order to defeat a plaintiff's right by the application of the maxim relied on, who would otherwise be entitled to recover, the jury ought to be able to affirm that he consented to the particular thing being done which would involve the risk, and consented to take the risk upon himself." Lord Bramwell, dissenting from the majority of the noble Lords, said he thought the maxim applied where, knowing the risk or danger, the workmen is *volens* to undertake the work. And he thought the maxim applied in this case. Lord Watson, at page 355, is thus reported: "When, as is commonly the case, his acceptance, or non-acceptance of the risk, is left to implication, the workman cannot reasonably be held to have undertaken it unless he knew of its existence, and appreciated, or had the means of appreciating, its danger. But, assuming that he did so, I am unable to accede to the suggestion that the mere fact of his continuing at his work, with such knowledge and appreciation, will, in every case, necessarily imply his acceptance. Whether it will have that effect or not, depends, in my opinion, to a considerable