fact that the workman continued in the employment after knowledge of the risk, to draw the conclusion he could be said to be "volens." This was a question of fact to be determined by the evidence in each case.

It was further held that if nothing more is proved than that the workman saw the danger, reported it, but on being told to go on with the work, did so, to avoid dismissal, a jury might properly find that he had not agreed to the risk, and had not acted voluntarily in the sense of having taken the risk upon himself. The jury might properly draw the inference as a matter of fact that fear of dismissal, rather than voluntary action, induced continuance in the work.

In *Thrussell* v. *Handyside,* L.R. 20 Q.B.D. (1888) 359, it was held that the case was rightly left to the jury, that, although the plaintiff was aware of the danger, yet, as he was compelled by the orders of his employer to work where he was working when the accident happened, the maxim "volenti non fit injuria" did not apply, and he was entitled to recover. Hawkins, J., in the course of his judgment in this case, said: "It is true that he knows of the danger, but he does not wilfully incur it. 'Scienti,' as was pointed out in *Thomas* v. *Quartermaine,* and in *Yarmouth* v. *France,* is not equivalent to 'volenti.' It cannot be said where a man is lawfully engaged in work, and is in danger of dismissal if he leaves his work, that he wilfully incurs any risk which he may encounter in the course of such work, and here the plaintiff had asked the defendants' men to take care. If the plaintiff could have gone away from the dangerous place without incurring the risk of losing his means of livelihood, the case might have been different; but he was obliged to be there; his poverty, not his will, consented to incur the danger."

The maxim, after most careful consideration, was finally interpreted and settled beyond further dispute by the House of Lords, in the great case of *Smith* v. *Baker* (1891) A.C. 325. The facts were that the plaintiff was employed by the defendants, who were railway contractors, to drill holes in a rock cutting, near a crane, which was being used for the purpose of raising. The crane was periodically swung round with stones over the plaintiff's head without warning. The plaintiff was aware of