(3) Did the plaintiff know and appreciate the danger of the work at which he was employed at the time the accident happened, and did he, knowing the danger, voluntarily undertake the risk? A. Yes.

(4) Could the plaintiff, by the exercise of reasonable care, have avoided the accident? A. No.

(5) Amount of damages? $1,000.

There was no evidence that the guard when over the set screw was insufficient, and it was only unguarded when put in that condition by the plaintiff himself. The plaintiff's contention was, that it was part of his work to apply belt dressing, and this should be done when belt on and machinery in motion—that it was reasonably necessary for any person, in applying this belt dressing, to go into the pit close beside the shaft; and to go into that place it was necessary to remove the usual set screw guard; and that it was negligence on the part of the defendants not to have the head of the set screw guarded against danger to the workmen—when on duty in the place mentioned and when machinery in motion. There was evidence that the head of the set screw could have had a guard for protection of workmen in pit when machinery in motion, or that the head of the screw could have been counter-sunk.

The question of sufficiently guarding, or of guarding the machinery "so far as practicable," is one of fact, and, therefore, is for the jury; so the defendants' motion for dismissal of the action cannot prevail.

Then as to contributory negligence. There certainly was very strong evidence of that, but I cannot say that it was so conclusive and undisputed as to have it withdrawn from the jury. There was evidence that there was another way of applying the belt dressing.

The defendants also contend that upon the answer of the jury to the third question the defendants should have judgment.

The authorities cited by the plaintiff's counsel, viz., Dean v. Ontario Cotton Mills Co., 14 O.R. 119, Rodgers v. Hamilton Cotton Co., 23 O.R. 425, Love v. New Fairview Co., 10 B.C.R. 330, are against the defendants.

The maxim "volenti non fit injuria" does not apply when an accident is caused by the breach of a statutory duty.

The finding of the jury of negligence in not having proper appliances for applying the belt dressing may be entirely disregarded. There was no charge in the statement of claim or in the evidence of any such negligence. There was evidence that