ing against public policy. But it seems to me that it is contrary to public policy when the supposed agreement, in consequence of which the principle *volenti non fit injuria* arises and has to be applied, comes to anything like this, that the master agrees to employ the servant on the terms that the servant will waive breaches by the master of a statutory obligation, and will in that sense, and to that extent, connive at his disregarding a statute, the obligations of which are imposed for the benefit of others as well as of the parties to the agreement. A great deal is to be said in favour of the opinion that where an accident arises from the breach of a statutory obligation the maxim *volenti non fit injuria* ought not to apply. In the present case I follow that opinion, and hold that there having been a breach of a statutory obligation the maxim *volenti non fit injuria* does not apply, and that the case is taken out of the rule laid down in *Thomas* v. *Quartermaine*." But, see the maxim applied in such a case in *Senior* v. *Ward (infra)*.

We should add, however, that "contributory negligence" may be a defence in case of breach of a statutory duty: *Senior* v. *Ward*, 1 E. & E. 385, 28 L. J. Q. B. 139; *Caswell* v. *Worth*, 5 E. & B. 385, 25 L. J. Q. B. 121; *cf. Britton* v. *G. W. Cotton Co.*, L. N. 7 Ex. 130, and *Holmes* v. *Clarke*, 7 H. & N. 937. "But the doctrine of *volenti non fit injuria*," as Bowen, L.J., put it in *Thomas* v. *Quartermaine*, "stands outside the defence of contributory negligence, and is in no way limited by it." But the mere knowledge of the plaintiff under the circumstances in *Baddeley* v. *Granville* would not have established such a defence, any more than the knowledge of the plaintiff in *Thomas* v. *Quartermaine*. Would there have been contributory negligence, then, if Baddeley had merely trusted that the banksman was on duty, and had worked on without examining for himself as to the risk incurred? *Senior* v. *Ward (ubi supra)* and *Woodley* v. *Metropolitan Ry. Co.* (2 Ex. D. 384) may be referred to; but a case of more resemblance is *M'Inally* v. *King and others* (24 Sc. L. R. 15). In that case, where it appeared that labourers had been engaged in undermining a bank of clay in a quarry when the clay slipped down and killed one of them, the Scottish Court of Session held—on a proof that it was the duty of the employer, according to the practice of the work, to have a watchman to warn the workmen of signs of a fall, but that none had been set, and in consequence the accident had happened—that the deceased was not guilty of negligence contributing to the accident in having trusted that a watch would be set, and worked on without examining for himself as to the risk. "In regard to the question of contributory negligence on the part of the deceased," said Lord Young, "the men who were working here were labourers, and the alleged contributory negligence comes to this, either that they ought to have enough intelligence to see for themselves when they came to a dangerous part of the operation and set a watch for themselves, or else that they should take care not to go on too long without seeing that the foreman did his duty. The usual case of contributory negligence is one of a man rushing into danger and risking his life against all the laws of ordinary prudence, but that is not the case here. I rather think that the deceased was entitled to assume that the foreman Miller had done his duty and sent up a man to watch. Miller was not in ignorance of the state of matters at this face, and I think it accords with the evidence that Miller's duty from the first was to have had some one on the top to watch for signs of danger. I do not think that the deceased was reckless of his own safety in that he went to work without seeing that there was a man on the top watching." It is indeed, in very different circumstances that the doctrine of contributory negligence finds a basis for reasonable application; and no doubt, as it was put in the same case, while employers are bound to take reasonable precautions for the safety of their men, they are not obliged to make provision for the safety of their workmen when they rush into dangers of their own making. *Cf. M'Evoy* v. *Waterford Steamship Co.*, 18 L. R. Ir. 159; *Martin* v. *Connah's Quay Alkali Co.*, 33 W. R. 216. Nor is the defence of contributory negligence done away with by the Employers' Liability Act; for, this statement no longer resting on a mere *semble* in *Stewart* v. *Evans* (49 L. T. N. S. 138), we have now Bowen, L.J., in *Thomas* v. *Quartermaine*, saying: