In *Thomas* v. *Quartermaine*, L.R. 17 Q.B.D. (1886) p. 414, the Divisional Court likewise held that the Act deprived the employer of the benefit of the maxim. They, however, found for the defendant on the ground there was no evidence of a defect in the condition of the ways, works, machinery, or plant connected with the business of the employer. However, in the Court of Appeal, in this case (L.R. 18 Q.B.D. (1887) page 685), it was held (by Bowen and Fry, L.JJ., Lord Esher, M.R., dissenting) that the defence arising from the maxim, volenti non fit injuria, had not been affected by the Employers' Liability Act, 1880, and applied to this case. Bowen, L.J., in his masterly judgment, at page 698, says: "These two defences, that which rests on the doctrine, volenti non fit injuria, and that which is popularly described as contributory negligence, are quite different, and both, in my opinion, are left open to an employer, if sued under the Employers' Liability Act of 1880."

He further remarked: "For many months the plaintiff, a man of full intelligence, had seen this vat—known all about it—appreciated its danger—elected to continue working near it. It seems to me that legal language has no meaning unless it were held that knowledge such as this amounts to a voluntary encountering of the risk." Fry, L.J., at p. 700, is reported as follows: "The first section provides that when personal injury is caused to a workman by reason of any one of five things enumerated, the workman shall have the same right of compensation and remedies against his employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work. If the workman is to have the same rights as if he were not a workman, whose rights is he to have? Who are we to suppose him to be? I think that we ought to consider him to be a member of the public entering upon the defendant's property by his invitation. Can such a person maintain an action in respect of an injury arising from a defect, of which defect and of the resulting damage he was as well informed as the defendant? I think not. To such a person, it appears to me, that the maxim, volenti non fit injuria, applies."

In the case of *Yarmouth* v. *France*, 19 Q.B.D. 675, the Divisional Court on appeal held that they had no right from the mere