ing that he voluntarily incurred the risk which caused his injury seems to me to be quite inconsistent on the facts of this case.

One subject, and the subject of the greatest controversy at the trial, was whether the plaintiff's manner of doing the work he was engaged in when injured, or some of the other ways deposed to by other witnesses, was the safer and better; and the jury seem to have found in favour of his way, at all events have plainly found that it was not a negligent way, having acquitted him of contributory negligence.

Then it being the fact that the plaintiff was not negligent in getting into the box to do the work, it follows that there was no evidence that he voluntarily incurred the risk: in short he was doing that which it was his duty to do, without incurring any greater risk than that duty made necessary. In doing that which his duty required him to do, and doing it in a reasonable manner, in a manner which did not increase the risk, he did not bring himself within the rule volenti non fit injuria: he was not a volunteer; that which he did was done under the requirements of his service, his duty to his master. A master who requires his servant to perform a dangerous service cannot say that it was done voluntarily, merely because the servant performed the service, did his duty, instead of refusing to do it, at the risk of dismissal or other disadvantage likely to follow such a refusal. If the servant do it in a negligent way he fails because of contributory negligence, not because he voluntarily incurred the risk.

There was therefore, in my opinion, no evidence to support the finding in this respect, and consequently no such question should have gone to the jury, and the case is now to be treated as if there were no such finding; with the result that the verdict and judgment in the plaintiff's favour must stand. Under all the circumstances, the jury's finding in this respect can have meant only that the plaintiff was not compelled to do the work; he might have refused to do it, but did not.

And the jury having found in favour of the plaintiff on the question of the propriety of his method of applying the paste to the belt, a clear case, under the Factories Act, is made out against the defendants; because to anyone getting into the box, that box was rather a snare than a safeguard against the danger caused by the set screw.

I would dismiss the appeal.

GARROW, MACLAREN, and MAGEE, JJ.A., and LENNOX, J., concurred in dismissing the appeal, the first named giving reasons in writing.