ances," the servant is not in the exercise of due care if he remains in the service after the period fixed for the completion of the repairs has come to an end without the master's having kept his promise (*a*). This doctrine is tantamount to an assertion that the general rule as to the effect of a promise is applicable only in cases in which the servant continues in the service supposing that the defect has been already remedied (*b*), and would withdraw the question of the master's liability from the jury in every case in which a breach of the promise was shown. But any such rigid presumption would seem to be scarcely consistent with a reasonable construction of the general principle that dominates cases of this type, viz., that the question whether the plaintiff was negligent in being in the service when he was injured is one of fact to be decided with due reference to all the testimony produced. So far as this particular aspect of the question is concerned, the correct theory would rather seem to be that the servant's continuance of work with knowledge that the promised repairs have not been made within the time stipulated merely affords "a very strong argument that the servant is no longer relying upon the promise, but has decided to take the risk" (*c*).

That the servant, when he is called upon to work with an appliance which he has ceased to handle since the master promised to repair it, may or may not be justified, according to the circumstances, in acting upon the presumption that the repairs have been completed, is clear both upon principle and authority. Thus on the one hand it has been held that an employee who knows that the machine at which he works is out of repair, and that a fellow servant has been ordered to repair it on a specified day, is guilty of such contributory negligence as will prevent a recovery for an injury resulting from such defect, in subsequently going to work upon the machine of his own accord, without ascertaining whether or

(*a*) *Eureka Co.* v. *Bass* (1886), 81 Ala. 200; *Woodward I. Co.* v. *Jones* (1885), 80 Ala. 123; *Gulf, etc., R. Co.* v. *Brailford* (1891), 79 Tex. 619.

(*b*) Wharton on Negl. 221, (adopted in *Woodward I. Co.* v. *Jones* (1885), 80 Ala. 123, but disapproved in *Greene* v. *Minneapolis, etc., R. Co.* (1884), 31 Minn. 249).

(*c*) *Connell* v. *Hall* (1888), 145 Mass. 470.