

tion, and the frequent adjudications on the subject to be found in the American reports evince the assiduity with which the jurists of that country have devoted themselves to the solution of the minor problems which are involved in the application of the general doctrine. That many of these problems are still regarded by them as open to debate is indicated in a very striking manner by the fact that there was quite recently an almost equal division of opinion in the Supreme Court of Illinois with regard to the phraseology which should be used by a trial judge in instructing the jury as to the length of time during which the servant is entitled to remain at work after the giving of the promise, without being disabled from maintaining his action (a). But, on the whole, it may be said that the outcome of the prolonged discussion has been to produce a fairly stable and definite body of rules, and, as there is at least a possibility that cases of this type may be presented under the Canadian Employers' Liability Act, a review of the entire subject, in which the English decisions will be supplemented and illustrated by the vast mass of materials accumulated by our neighbors will perhaps be not unwelcome to the readers of this journal. The limitations upon our space will prevent our dwelling much upon the specific facts involved in the cases, but, as the authorities will all be cited, the inquirer will have a ready means of access to all the learning there may be in the reports upon any particular point.

*II.—Relation between the master and servant after a promise, generally.*—The first question which demands an answer is—what is the true rationale of the contractual relations between the master and the servant after the former has promised to remove a danger which threatens the latter? Upon this point there is a considerable difference of judicial opinion. To us the most satisfactory theory seems to be that indicated by the remark which Byles, J., interjected during the argument of counsel in the leading case of *Holmes v. Clark* (b),

(a) See *Illinois Steel Co. v. Mann* (1897), 43 N.E. 418. The substance of this case will be stated below. See sec. V, note (2).

(b) (1862), 7 H. & N. 937.