natural result was that, although the failure of the servant to report or complain of a defect was mentioned in some of the cases (*c*) this fact was never treated as a material element in the case, the master's defence being regarded as complete without any reference to the question whether the servant had communicated his knowledge. In none of these cases was the evidential significance of the servant's silence considered in any other point of view than as a circumstance tending to shew his acquiescence in the conditions that is to say, as a circumstance, corroborating a presumption already absolute that the risks in question had been accepted. Such being the state of the authorities, the mere fact that the existence of a duty on the servant's part to notify his master of a defect was never affirmed cannot fairly be adduced as a ground for denying that there was such a duty. When subjected to the test of to general principles, the correctness of Lord Watson's theory seems be equally disputable. It is impossible to adopt it without accepting the conclusion, that, if a jury has, in a common law action, found that the servant was guilty of contributory negligence in failing to give notice of the defect which caused his injury, and it is clear that the verdict was based on the hypothesis that there was a legal duty incumbent on the servant to give the notice, a court of review would be constrained to set the verdict aside. Such a proposition seems too preposterous to entertain. The extreme improbability of such a verdict's even being rendered may be readily conceded, but this practical consideration is immaterial in a discussion of the abstract point of law which is involved.

The general effect of the American decisions in this connection is inconclusive for the same reason as that which has been adverted to in commenting on the English cases. The failure to report a defect is usually treated merely as a cumulative ground for denying the servants' right of recovery, and not as the breach of a specific duty (*d*).

Inasmuch as a servant frequently finds himself relegated to his common law rights, owing to his having failed to give due

(*c*) For example, *Skipp* v. *Eastern &c. R. Co.* (1853) 9 Exch. 223.

(*d*) See, for example, the language used in *Baltimore &c. R. Co.* v. *Baugh* (1893) 149 U.S. 368; *Hough* v. *Texas &c. R. Co.* (1879) 100 U.S. 213 (p. 224) *McQueen* v. *Central Branch &c. R. Co.* (1883) 30 Kan. 691; *Pollock* v. *Sellers* (1890 42 La. Ann. 623.