Usually, of course, it is a question of fact for the jury whether the defect was such that only an imprudent man would have continued to use the defective appliance (*a*). But sometimes a court will undertake to declare, as a matter of law, that the continuance of work was negligence, as where the servant drove a vicious horse with an old and rotten harness, although the employer had promised to fix the harness or give him a new one—especially where a new harness had been furnished which the servant might have used (*b*).

In determining whether or not due care has been observed in a given case, the giving of the promise, and the natural effect which that circumstance would produce upon the mind of a man of ordinary prudence, are to be taken into consideration (*c*). It has been very truly remarked that, relying upon the promises of a master to remove the cause of danger, "the most prudent workmen will often take risks, not merely on account of their own necessities, but in consideration of their employers whose interests require their continued service" (*d*).

V.—The length of the period during which the work was continued—the servants' culpability tested by.—It is well settled that, except in cases where there is an imminent danger of injury (*e*), or, in other words, that, in every case where the servant has good grounds for believing that he may safely remain in the service (*f*), he is entitled to continue at work for a reasonable time after the promise is received without being held guilty of contributory negligence (*g*). What is a reasonable time under the circumstances must,

(*a*) *Hough* v. *Railway Co.* (1879), 100 U.S. 213; *Holmes* v. *Clarke* (1862), 7 H. & N. 937 *Smith* v. *Backus L. Co.* (Minn. Supt. Ct., 1896), 67 N.W. 358; *Schlitz* v. *Pabst Brewing Co.* (Minn. Sup. Ct., 1894), 59 N.W. 188.

(*b*) *Levesque* v. *Janson* (1895), 165 Mass. 16.

(*c*) *Texas, &c., R. Co.* v. *Bingle* (1895), 9 Tex. Civ. App. 322.

(*d*) *Manufacturing Co.* v. *Morrissey* (1883), 40 Ohio St. 148.

(*e*) *Atchison, &c., R. Co.* v. *Midgett* (Kan. App. 1895), 40 Pac. 995; *Greene* v. *Minneapolis, &c., R. Co* (1884), 31 Minn. 249.

(*f*) *Conroy* v. *Vulcan I. Works* (1878), 62 Mo. 35; 6 Mo. App. 102.

(*g*) *Lyttle* v. *Chicago, &c., R. Co.* (1890), 84 Mich. 289; *Woodward I. Co.* v. *Jones* (1885), 80 Ala. 123; *Ferriss* v. *Berlin Mach. Works* (1895), 90 Wis. 541; *Breckenridge Co.* v. *Hicks* (Ky. Ct. of App; 1893), 22 S.W. 554. *In Stephenson* v. *Duncan*, 73 Wis. 404, the complaint was held fatally defective for the reason that it averred that the defendant had ample time to put the appliance in safe condition between the time when the plaintiff informed him of the defect and the time of the injury. This allegation was held to imply that the plaintiff continued in his employment beyond the time within which he might reasonably expect the defendant would keep his promise and remedy the defect.