the fact that some accident will sooner or later occur as a result of exposure to an even moderate peril, when it is constantly incurred for a considerable period, justifies the argument that, the longer the time that has elapsed without a fulfilment of the promise to remedy a defect, the more certainly has the servant been guilty of negligence in continuing in the employment.

IV.—The extent of the danger incurred—the servants' culpability tested by.—It is obvious that the doctrine which makes the servants' right of recovery dependent upon the extent of the danger may be stated in two forms. We may say that the mere giving of a promise will not of itself suspend the operation of the principle that a servant cannot recover for an injury of which his own negligence was an efficient cause, and that he will, therefore, be unable to maintain an action wherever the danger to which he was exposed after receiving the promise is such that no man of ordinary prudence would have run the hazard of remaining in the employment (*a*). Or we may say that the giving of the promise will entitle the servant to recover for any injury received within a reasonable time after the promise was given, unless the danger which the master agreed to remove was so great that no prudent man would have exposed himself to it. This is the form which the rule most naturally takes in cases in which the servant's action is held to be maintainable (*b*).

(*a*) *Holmes* v. *Clarke* (1862), 7 H. & N. 937; *District of Columbia* v. *McElligott* (1885), 117 U.S. 621; *Kane* v. *Northern R. Co.* (1888), 128 U.S. 91; *Indianapolis, &c.*, v. *Watson* (1887), 114 Ind. 20; *Railway Co.* v. *Kelton* (1892), 55 Ark. 933; *Texas, &c., R. Co.* v. *Bingle* (1895), 9 Tex. Civ. App. 322 (1895); *McAndrews* v. *Montana U. R. Co.* (1894), 15 Mont. 290. An instruction is erroneous which in effect declares as a conclusion of law, that, if the master promised repairs, he is liable without regard to the character of the defects, or the probability or improbability of danger, or whether, all things considered, the plaintiff was or was not so negligent in continuing to work that he ought not to recover: *McKelvey* v. *Chesapeake, &c., R. Co.* (1891), 35 W. Va. 500. Compare *Counsell* v. *Hall* (1888), 145 Mass. 468; *Gulf, &c. R. Co.* v. *Brentford* (1891), 79 Tex. 619; *International &c. R. Co.* v. *Williams* (1891), 82 Tex. 342

(*b*) *Brownfield* v. *Hughes* (1889), 128 Pa. 194; *Patterson* v. *Pittsburg, &c., C. Co.* (1874), 76 Pa. 389; *Conroy* v. *Vulcan I. Works* (1876), 62 Mo. 35; *Rothenberger* v. *Northwestern, etc., Co.* (Minn. Supr. Ct., 1894), 59 N. W. 531; *Greene* v. *Minneapolis, &c., R. Co.* (1884), 31 Minn. 249; *Harris* v. *Hewitt* (Minn. Sup. Ct., 1896), 65 N.W. 1085; *Smith* v. *Backus L. Co.* (Minn. Supr. Ct., 1896) 67 N.W. 358; *Homestake Min. Co.* v *Fullerton* (1895), 69 Fed. 23 (C. C. A.); *Atchison, &c., C. Co.* v. *Midgett* (Kan. App. 1895), 40 Pac. 535. A finding, in answer to a special interrogatory, that the danger of using a defective appliance was great, apparent, and continuous, will not overcome the effect of a general verdict for the plaintiff, where there is no finding that an ordinarily prudent man would not have used it under the circumstances: *Indianapolis, &c., R. Co.* v. *Ott.* (Kan. App. 1893), 38 N. E. 842; 39 N. E. 52.