other words, the servant's continuance of work with knowledge of a danger will not be pronounced negligence, as a matter of law, where the continuance was induced by a promise of the master to remove the cause of that danger (*a*). The theory is that, in view of the giving of the promise, the servant's knowledge and appreciation of the risk is to be regarded, not as a fact which conclusively charges him with negligence, but simply as a fact which may be considered with others as bearing upon that point (*b*). To preclude the servant, therefore, from maintaining an action where he has been assured that a defect will be remedied, it must be shown that his voluntary exposure to danger was for, some special reason, imprudent under the circumstances. Was he, in other words, justified in believing that by exercising an appropriate degree of care he could avoid an accident until the promise was fulfilled? (*c*).

An answer to this question may be arrived at by considering both the elements which, in a given case, indicate what may be termed the aggregate amount of the danger to which the servant has exposed himself by continuing work, viz.: the imminence and greatness of the peril, and the length of time during which the exposure to it has continued. On the one hand, the more serious the peril, the more rapidly will the permissible period of continuance run out. In some instances, indeed, the peril may be of such a kind that nothing can excuse the servant for continuing to expose himself to it a moment after he knows it to exist (*d*). On the other hand,

(*a*) *Holmes* v. *Clark* (1862), 7 H. & N. 937: *Laning* v. *New York, &c., C. Co.* (1872) 49 N.Y. 521 *Roux* v. *Blodgett, &c., Co.* (1891), 85 Mich. 519; *Lyttle* v. *Chicago, &c., C. Co.* (1890), 84 Mich. 289; *Northern, &c., C. Co.* v. *Babcock* (1893), 154 U.S. 190; *Kane* v. *Northern Centr. R. Co.* (1888), 128 U.S. 94; *New Jersey, &c., C. Co.* v. *Young* (1892), 49 Fed. 725; *Union Mfg. Co.* v. *Morissey* (1883), 40 Ohio St. 148; 48 Am. Rep. 669; *Wust* v. *Erie City Iron Works*, (1892), 149 Pa. St. 263; *Gulf &c., R. Co.* v. *Donnelly* (1888), 70 Tex. 371; *St. Clair Nail Co.* v. *Smith* (1890), 43 *Ill. App.* 105; *Missouri Furnace Co.* v. *Abend* (1883), 107 Ill. 44; 47 Am. Rep. 425; *Fairbank* v. *Haentsche* (1874), 73 Ill. 236; *McKelvey* v. *Chesapeake, &c., R. Co.* (1891), 35 W. Va., 500; *Gibson* v. *Minneapolis, &c., R. Co.* (1893), 55 Minn. 177; *Greene* v. *Minneapolis, &c., C. Co.* (1884), 31 Min. 248; *Lyberg* v. *Northern P. R. Co.* (1885), 39 Minn. 15.

(*b*) *Holmes* v. *Clarke* (1862), 7 H. & N. 937.

(*c*) *Conroy* v. *Vulcan Iron Works*, 6 Mo. App. 102; *Sioux City, &c., R. Co.* v. *Finlayson* (1884), 16 Neb. 578; 49 Am. Rep. 724, are cases in which the fact that the servant believed that he might go on working safely if he exercised care was emphasized.

(*d*) That cases in which the use of dangerous explosives found to be defective is involved would fall into this category is, perhaps, a reasonable inference from the language used in *Eureka Co.* v. *Bass* (1886), 81 Ala. 200; *Davis* v. *Graham* (1892), 2 Colo. App. 210.