Another way of stating the legal situation is that the promise continues or revives the original liability of the master (*a*), or what amounts to the same thing, operates as an implied request to the servant to remain in the service, and an assumption of the risk in the meantime (*b*). This theory, however, is open to the objection pointed out by the Supreme Court of Texas (*c*), that, if the original contract is by the hypothesis continued, it is difficult to offer any adequate reason for making a distinction between the effect of an express promise and the effect of the implied promise which that contract is presumed to include.

So far as the servant's rights of recovery are concerned, it is clearly immaterial which of these theories is assumed to be the correct one. In the one case the suit is brought for the breach of the original contract which, by the hypothesis, is kept alive by the promise, unaffected by the inferences which would ordinarily be drawn from the fact that the servant has gone on working with a knowledge of the danger caused by the breach. In the other case the servant seeks to enforce rights alleged to have been acquired by a substituted contract. Whichever view is adopted, therefore, the grounds upon which the master will be able to resist the action must be essentially alike, and the measure of damages the same. His aim will be to show that although the effect of the promise may have been to keep the original contract in force, or to create a new one, the servant has remained so long in the employment that any virtue which the promise may have possessed has been exhausted, the inference being that he has assumed the new risk as a matter of contract, or that, even assuming that he has not lost his contractual rights, the danger to which the promise related was such that a prudent man would not have exposed himself to it at all, or at least would not have exposed himself to it so long as the plaintiff has done. In practice it will be found that the rights

(*a*) *Woodward I. Co.* v. *Jones* (1885), 80 Ala. 123.

(*b*) *Galveston, &c., R. Co.* v. *Drew*, (1883), 59 Tex. 10; compare *Eureka Co.* v. *Bass* (1886), 81 Ala. 200; *Schlitz* v. *Pabst Brewing Co.* (Minn. Supr. Ct. 1894); 59 N.W. 531.

(*c*) *Galveston, &c., R. Co.* v. *Brentford* (1891), 79 Tex. 619.