

By the express words of the statutes a servant is not bound to give information of a defect where he knows that it is already known to the master (*i*).

(*c*) *Position of a servant who has reported a defect.*—The rights of action acquired by a servant who has duly reported a defect in compliance with the statute and then goes on working depend largely upon the extent to which the maxim, *Volenti non fit injuria*. A full treatment of the subject, therefore, would carry us beyond the scope of the present article. But a brief reference to the effect of the cases, in so far as they bear directly on the provision now under discussion will not be out of place.

In an oft-cited case Lord Esher expressed the opinion that the effect of this provision was that the servant was always entitled to recover, if he gave information of the defect (*j*). Bowen, L.J., did not refer specifically to this point in his celebrated opinion, but the theory upon which he and Lindley, L.J., proceeded in giving judgment against the plaintiff, viz., that the maxim was, under the circumstances a bar to the action, necessarily implies a disapproval of the doctrine that the right of recovery became absolute as soon as the servant had made a complaint to the proper person.

In another case decided in the same year Lord Esher remarked that it was very difficult to give a sensible construction to the provision, and enunciated a view somewhat different from that intimated in the earlier case, holding the meaning of the words to be that, if the servant did give notice, and the defect was not remedied, he might recover unless he was brought clearly within the maxim (*k*). The plaintiff's action was held by the majority of the court to be maintainable, and the fact that Lindley, L.J., who had concurred with the views of Bowen, L.J., in *Thomas v. Quartermaine*, agreed in the judgment, and that he did not give any intimation that his views had undergone a change since the earlier case was decided, shews that he did not intend to go to the length of holding that the servant had done everything that was required to give him an indefeasible right of action when he had given notice of the defect. The subsequent decision of the House of

(*i*) *Truman v. Rudolph* (1895) 23 Ont. App. 250.

(*j*) *Thomas v. Quartermaine* (1887) 18 Q.B.D. 685 (p. 689).

(*k*) *Yarmouth v. France* (1887) 19 Q.B.D. 647 (p. 656).