

notice that the injury was sustained, or to bring the action within the statutory period, the true doctrine on this subject is still a question of more than theoretical interest in England and her Colonies, where it has not yet been determined how far the doctrine enunciated in *Smith v. Baker* (e) may, when the question arises, be held to have modified, in common law cases, the theory of the older decisions that the servant's acceptance of a risk is to be inferred, as matter of law, from his continuance of work with a knowledge of its existence. In Massachusetts it seems to be immaterial in this point of view, whether the action is brought at common law or under the statute, as the English doctrine that the servant's assumption of risks is a question for the jury where the statute is relied upon, has been definitely repudiated in recent decisions (f).

(b) *Position of a servant who fails to report a defect.*—In an action brought under a statute which merely declares that the servant cannot recover unless he reports the defect, it is clear that if he fails to make the report, and goes on working without knowing that the master is aware of the defect, he cannot recover for any injuries which he may thereafter receive by reason of its existence (g). The doctrine laid down in *Smith v. Baker* (h) is presumably not applicable under such circumstances, though the writer is not aware of any case in which the point has been discussed. In Ontario and British Columbia, the position of the servant is more favourable, the legislature having expressly enacted that the servant is not debarred from recovery merely by reason of his having continued to work with knowledge of the risk. If the extreme unlikelihood that any jury will even, in a case of this description, pronounce the risk to have been assumed by the plaintiff is adverted to, it will be apparent that the practical effect of this provision is to render almost nugatory the protection afforded to the master by the clause which makes it the duty of the servant to give notice.

(e) [1891] A.C. 325. It is significant that in this case Lord Watson was prepared to hold that, apart from the Act of 1880, the plaintiff's remedy was not necessarily taken away by the mere fact that, in the knowledge of the risk and after remonstrance, he continued to work (p. 352).

(f) *O'Maley v. South Boston Ice Co.* (1893) 158 Mass. 135; *Davis v. Forbes* 1898) 171 Mass. 548.

(g) *Thomas v. Bellamy* (1900) 28 So. 707, 126 Ala. 253.

(h) [1891] A.C. 325.