

3. What employés are superintendents within the English, New York, Massachusetts, and Colorado Acts.—(a) *General remarks.*—The phraseology employed to define the class of persons for whose negligence the master is responsible is, it will be observed, not quite the same in these statutes. They all define a "superintendent" as an employé whose "sole or principal duty is that of superintendence." But the Massachusetts, New York, and Colorado Acts omit the words which specifically exclude liability for the negligence of an employé who is "ordinarily engaged in manual labour." This complementary clause seems to possess little, if any, real significance, and to be, for practical purposes, nothing but the negative expression of a conception which is adequately defined by that which precedes it. In view of the usual system upon which industrial establishments are conducted, it may be regarded as a necessary implication that an employé whose principal duty is that of superintendence is never "ordinarily engaged in manual labour." And the converse of this proposition also holds.

(b) *Employés held to be vice-principals.*—That the negligent employé was "exercising superintendence" within the meaning of these statutes is obviously a warrantable deduction for a jury whenever the evidence indicates that the authority wielded by him was sufficiently extensive to place him in the category of common law vice-principals, as that term was understood in England before the judgment of the House of Lords in *Wilson v. Merry* (a) restricted, or perhaps wholly abolished, the doctrine that masters are liable for the negligence of managing agents, and as it is still understood in all the American States, which stand outside the list of those in which the doctrine that any superior servant represents the master in so far as he may be performing the function of giving orders (b). The applicability of these provisions to all employés who are entrusted with the full control of the whole of an establishment, or one considerable department thereof, has never, it is believed, been disputed, and is taken for granted in several of the cases in which the actual questions discussed were whether the act which caused the injury was negligent, and, if so,

(a) (1869) L.R. 1 Sc. App. 326.

(b) A complete review of the cases shewing the position of the courts of England, the Colonies, and the United States with respect to the representative character of controlling employés will be found in the writer's note in 51 L.R.A., pp. 513, et seq.