

been observed by Chief Justice Holmes, "one of degree, and naturally different people will draw the line at different points" (*k*).

(*k*) *Joseph v. Whitney Co.*, ubi supra. There the plaintiff was at work on an embossing machine, which was not running, and had his hands between its jaws, when another workman called the superintendent, who leaned over between plaintiff's machine and another to give directions to the second workman, and accidentally touched the shipper, thereby starting plaintiff's machine, and causing the injury. Held that plaintiff could not recover. "The precise place," it was said on the opinion of the court, "in which Meyer, the superintendent, should be while giving his directions, the way in which he should stand or sit, and his care in managing his body in the place he selected, were too much the accident of his independent personality and too remote from the act of giving the orders for us to charge the defendant with the consequences of his neglect in that regard. The matter may be stated in a different form. If the motion of Meyer which caused the injury be regarded as part of an act of superintendence, the fact that he was superintending was in no way a necessary element in producing the injury. But we are of opinion that by a true construction of the statute the superintendence must contribute as such, and that when, as here, it had nothing to do with the injury qua superintendence, the case is not within the act." Even if a superintendent, travelling on a street car, as a passenger, is a superintendent to the extent of having his eye on the way in which the car was managed, his superintendence, as such, does not contribute to an injury received by the conductor through striking against a tree close to the track in consequence of his having to step round the superintendent while he was standing on the running board. *Hall v. Wakefield &c. R. Co.* (Mass. 1901) 59 N.E. 668. On the other hand it has been held that a jury is justified in finding that a superintendent in general control of the entire work of digging a new trench was engaged in an act of superintendence in walking along the bank, and in stopping to look down at the work, in the course of which he precipitated a fall of the bank. *McCoy v. Westboro* (1899) 172 Mass. 504, 52 N.E. 1064. See also *McCauley v. Norcross* (1892) 155 Mass. 584, the facts of which are stated under sec. 10, note (*f*) supra.

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