English, Massachusetts, Colorado, and New York Acts. Employers have been held to be answerable for the defaults of all superior servants, whatever their rank, who are invested with discretionary powers as respects the choice of the means by which the particular work in hand shall be executed (*f*).

5.—Within the Ontario and other Colonial Acts.—The precise significance of the express declaration in the Ontario, British Columbia, and Manitoba Acts that the master is responsible, whether the person exercising superintendence is or is not ordinarily engaged in manual labour, (see sec. 1, ante), has not yet been determined. But the words preceding the clause certainly contemplate something different from that informal superintendence which is often exercised by one member of a gang of men who are sent, without any regularly appointed foreman, to do some particular piece of work (*a*)

The Australian Acts employ virtually the same phraseology, and must therefore receive the same construction, as the English Act.

6. Employés controlling machinery, position of.—The superintendence contemplated by the statutes is that which is exercised over other men, not over inorganic appliances (*a*). So far as

(*f*) Actions have been held maintainable where the negligent persons were the following employés: The superintendent of a mine. *Drennen* v. *Smith* (1897) 115 Ala. 396; *Bessemer, &c., Co.* v. *Campbell* (1899) 121 Ala. 50. The superintendent of an iron company's business. *Woodward I. Co.* v. *Andrews* (1896) 114 Ala. 243, 21 So. 440. A yardmaster, superior to all other railroad employés present, who personally takes the place of the engineer and is running the engine at the time a car is derailed, or is present directing and controlling the engineer. *Louisville & N. R. Co.* v. *Morthershed* (1892) 97 Ala. 261, 12 So. 714. A yardmaster while engaged in making up trains. *Kansas City &c. R. Co.* v. *Burton* (1892) 97 Ala. 240, 12 So. 88; *Louisville &c. R. Co.* v. *Bouldin* (1898) 121 Ala. 197 (First app. 110 Ala. 185); *Highland Ave. &c. R. Co.* v. *Dusenberry* (1892) 98 Ala. 239, 13 So. 308; *Richmond &c. R. Co.* v. *Hammond* (1890) 93 Ala. 181, 9 So. 577; *Alabama M. R. Co.* v. *Jones* (1896) 114 Ala. 519, 21 So. 507. A conductor. *Alabama &c. R. Co.* v. *McDonald* (1896) 112 Ala. 216, 20 So. 472, *Georgia Pac. R. Co.* v. *Propst* (1887) 83 Ala. 518.

(*a*) The fact that one of a small gang of workmen possessed more experience than the rest and took upon himself to give directions as to the manner of executing a general order of their regular foreman with regard to a certain piece of work is not of itself sufficient to shew that he was exercising superintendence. *Garland* v. *Toronto* (1896) 23 Ont. App. 238, rev'g 27 Ont. R. 154. Compare the cases cited under sec. 3 (c), ante.

(*a*) *Kansas City &c. R. Co.* v. *Burton* (1892) 97 Ala. 240. The special point there decided was that this principle did not involve the consequence that a complaint was bad, where the allegation was substantially that some inorganic appliance was left, by the orders of a superior employé, in such a position as to endanger unduly servants engaged in the work assigned to the injured person.