Another conception is that a superintendent who, during however brief a period, engages in manual labour, is primâ facie deemed to have abdicated his functions of superintendence and to be acting ad hanc vicem in the capacity of a mere workman (*g*). An extreme application of this doctrine is found in a case which seems to embody the principle that an act which is deemed to have been done as a mere servant, for the reason that it is manual, communicates its quality, as an act of that character, to acts incidentally connected with it, which would otherwise have been regarded as pertaining to superintendence (*h*). The conclusion thus arrived at, though in a sense logical, seems to ignore the essential rationale of the theory of differentiation which the court professes to be applying. It is submitted that, if the mere doing of a manual act implies ad hanc vicem a temporary divestiture of the functions of superintendence, the discharge of one of those functions, even when it is intimately associated with the manual

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(*g*) It is not an act of superintendence to push a heavy beam with the foot, so that it falls through a hole in the floor. *McCauley* v. *Norcross* (1891) 155 Mass. 584. The act of a person whose principal duty was that of superintendent, in permitting himself or another labourer to be in the neighbourhood of a third labourer with a crowbar in his hands, cannot be found to be negligent superintendence merely because the event shewed that it was possible to harm the latter employé by negligently handling or dropping the bar. *Fleming* v. *Elston* (1898) 50 N.E. 531, 171 Mass. 187. A street railway company is not liable for injuries to servant due to negligence of the superintendent of its paint-shop, where at the time of the injury the superintendent was acting as motorman. *Brittain* v. *West End Street R. Co.* (1887) 168 Mass. 10, 46 N.E. 111.

(*h*) In *Whittaker* v. *Bent* (1896) 167 Mass. 588, 46 N.E. 121, it was held that a superintendent of an iron foundry does not exercise superintendence in setting up molds and inspecting them with reference to their condition as to dampness, or in assuring an employé that they were all right, where such acts are mere matters of detail and of recurring necessity. According to the plaintiff's testimony he asked the superintendent if the molds were all right, and received the answer, "Yes, go ahead, Bob." It was argued that, assuming the superintendent not to have acted as such in setting up the mold, he did exercise superintendence in what he said to the plaintiff, according to a distinction pointed out in *Kalleck* v. *Deering*, 161 Mass. 469, 470. But the court said: "We think that the answer, 'Yes, go ahead,' was not the direction of a superior, but merely the assurance, in a customary colloquial form, of the fellow-workman who had inspected the mold, that all was safe. A doubt might be raised as to the effect of a previous statement by the plaintiff that the foreman gave him a ladle of iron to pour, which looks at first like a direction to do what the foreman ought to have known to be dangerous. But it appears from the context that it means only that the foreman that morning was doing the manual work of filling the ladles, and handed one to the plaintiff. It was part of the plaintiff's regular business to pour." In a later case it was laid down that "the employer is not made answerable by the statute for acts of superintendence negligently performed in his service by an ordinary workman, or by one who is both workman and superintendent, in making declarations which may be interpreted either as orders of a superintendent or as assurances of a fellow-workman, if in fact they are merely such assurances." *Cavagnaro* v. *Clark* (1898) 171 Mass. 367.