

special facts involved, is rendered quite obscure by two later cases. In one of these an operator of a steam-crane was treated as the representative of the master in respect to controlling its movements (*b*). In another recovery was refused for an injury received by a mechanic engaged in repairing a stationary engine, owing to the negligence of the engineer in starting the engine while the work was going on (*c*). As will be seen when we recur to the second of these cases in a later section (11) the essential and ultimate grounds upon which the decision proceeded was that the negligent act, being a manual one, was not done in the exercise of superintendence. This element, however, though it was not specifically referred to, was clearly present in the other cases, and cannot legitimately be adduced as a differentiating factor. To obtain a ground upon which these cases can be reconciled it seems necessary to have recourse to the theory relied upon in a still later decision, that, as to certain operations, a locomotive engineer exercises both control and superintendence, while as to others he exercises merely control, and that a railway company is liable only for negligence in respect to operations of the former description (*d*). But this is a refinement of doctrine for which it seems difficult to find a warrant in the ordinary meanings of the words thus opposed to each other. Superintendence cannot, it is submitted, be exercised without at the same time exercising control (*e*).

In the other decisions in this State, the conclusion arrived at is not affected by the omission of the qualifying words inserted in the

(*b*) *Anniston Pipe Works v. Dickey* 93 Ala. 418, 9 So. 720.

(*c*) *Dantzler v. De Bardeleben Coal & I. Co.* (1893) Ala. 22 L.R.A. 361, 14 So. 10. The court said: "Whether there may possibly be a case of superintendency purely of machinery or not, it is most clear to us that Gould's position involved no such case, dissociated from consideration of the fact that he had a helper, whose duties are shown in the evidence. Whether he had any superintendence intrusted to him, in view of this consideration is a question not necessary to be decided in this case. If any such superintendency existed in that connection it was not a general superintendency over the helper and the machines, not a general power of having the machines operated as he directed by the hand of the helper, but only a special superintendency to direct the helper to assist him, Gould, in the manual labour of operating them."

(*d*) *Culver v. Alabama M. R. Co.* (1895) 18 So. 827, 108 Ala. 330, holding in an action by a fireman, that it was error to direct a verdict for the defendant, where the injury was caused by the negligence of a railway engineer in not seeing that the coal on the tender was loaded properly by the gang assigned to the work.

(*e*) The definition of the word "superintend" in the Century Dictionary is "to direct the cause and oversee the details of (some work, etc.); regulate with authority; manage."