

If a charge is given at the request of the plaintiff, and afterwards a charge is given at the request of the defendant, eliminating from the case the count of the complaint on which the first charge is based, the most that can be said of the first charge is that it was abstract—an infirmity not demanding a reversal (*b*).

25. Province of court and jury.—Whether the acts of omission or commission covered by the various sections of these statutes shew an absence of due care is a question for the jury, whenever the evidence is such that reasonable men may differ as to the proper inference to be drawn from it (*a*). A verdict for the plaintiff, therefore, should not be set aside where there was any evidence to support the cause of action alleged (*b*). But an examination of the facts in the cases decided under the statutes shews that they have exercised with considerable freedom their power of controlling the action of juries.

The question whether the material substances constituting the instrumentality which was the immediate cause of the injury were among those covered by the statutes is also one for the jury, wherever the proper inference from the facts is a matter of doubt, or the facts themselves are a subject of controversy (*c*). But a court is almost always warranted in reviewing a verdict for the plaintiff which involves the determination of this question, for the elements of uncertainty which render the finding of a jury conclusive are seldom present. See cases cited ante, vol. 38, pp. 276-288, 327-329, and vol. 39, pp. 131-142.

It is also for the jury in the first instance to say whether the negligent employé was a superintendent (ante vol. 38, pp. 619-625), or a person to whose orders the plaintiff was bound to conform (ante vol. 39, pp. 8-11), or a person delegated with the authority of the employer to make rules or to give particular instructions (ante vol. 39, pp. 8-12), or a person in charge of one of the various appliances specified in the provision relating to negligence in the operation of railways (ante vol. 39, pp. 131-

(*b*) *Bessemer, &c. Co. v. Campbell* (1898) 121 Ala. 50.

(*a*) *McCord v. Cammell* (H.L.E. 1896) A.C. 57, per Lord Watson (p. 65.)

(*b*) *Reynolds v. Holloway* (C.A. 1898) 14 Times L.R. 551.

As to the grounds upon which a new trial will be granted under the English Judicature Act, see generally, Ruegg on Empl. L. pp. 142: et seq.

(*c*) *Prendible v. Connecticut Riv. Mfg. Co.* (1893) 160 Mass. 131, 35 N.E. 675.