

act done voluntarily by the superintendent in that field, without the direction or approval of the employer, would not be an act of superintendence (*b*).

10. Acts constituting negligence in the exercise of superintendence.

—An analysis of the decisions shews that negligence in the exercise of superintendence is deemed to have been committed, if the superintendent has been guilty of any of the various breaches of

stationary, and beams or planks could then be moved by resting them upon the roller and moving them while so supported. The truck was in use by the latter method when the accident occurred. It was a movable tool, designed and adapted for various uses, and in different places about the building. It was complete and in good order, and only dangerous, as any heavy object is dangerous, if carelessly allowed to fall from above upon a person below. When used for certain purposes, for which it was among others designed, it would have a tendency to be displaced by the motion of the articles put upon it, to facilitate the motion of which its roller was designed and adapted to be used while the truck was stationary. If so used at the edge of an open well, it might fall into the well; to prevent this, it could be fastened to the floor on which it rested, or blocked with a cleat. But when used as a vehicle on which to transport articles by its own motion, fastening or blocking would wholly prevent its use. The absence, therefore, of any appliance for blocking or fastening did not make it a defective tool or machine. Like a barrow, an inclined plane, a roller, a screw, or blocking timber, and many other utensils used in building, it was to be often moved about and the means of avoiding danger in its use varied constantly with its situation and the work. It was a common and well known tool, and the duty of using it in a safe manner was the duty of the ordinary workmen who handled and used it, rather than a duty of the employer or a duty of superintendence. The means of blocking or fastening it when necessary were of the simplest, and always at hand, being only nails and bits of wood suitable for cleats. It was not the duty of the employer, but of the ordinary workmen, to see that they were used. The omission to use them was not negligence of a superintendent, or want of superintendence, but mere negligence of fellow workmen in the use of a familiar, simple, and complete tool, well adapted to the work for which it was then in use, and for other work." A superintendent in charge of the running of trains over a single track of a double track road during a snow blockade, who ordered a west-bound train to proceed to a certain station on the east-bound track, is not negligent in failing to direct the switchman at such station to open the switch leading from the east-bound to the west-bound track or so to set the signals as to indicate that it was closed, notwithstanding that a snowplough was on the east-bound track a short distance west of the switch, as he might assume that the switch would be rightly set, or, if not, that the signal would indicate that fact to the trainmen. *Fairman v. Boston & A. R. Co.* (1897) 47 N.E. 613, 169 Mass. 170, 47 N.E. 613. It has been laid down that the mere fact that a foreman sees a workman doing a piece of work in an unusual manner and does not interfere, is not a ground for holding the master liable for the consequences of what the workman does. *Milligan v. Muir* (1891) 19 Sc. Sess. Cas. (4th Ser.) 18. But this statement cannot be accepted without some qualification, as it may clearly be a duty pertaining to superintendency to see that an improper method of doing work is corrected. See next section.

(*b*) *Shea v. Wellington* (1895) 163 Mass. 370, 40 N.E. 173, holding that an employé in a quarry could not recover from the owner for the negligence of the superintendent in failing to tell him of a defective exploder given him by such superintendent for use, the reason assigned being that as no duty could be predicated to inspect the exploders as they had been purchased from a reputable manufacturer.