4.—Within the Alabama Act.—As the master is by this Act made liable for the negligence of employés who have "any superintendence entrusted to them," and these very general words are not qualified by any limiting or explanatory expressions, the inference would seem to be that the legislature intended to create a larger class of vice-principals than that which is constituted by the Acts commented upon in the last section. But how much wider the responsibility of the master really is cannot be determined with any degree of precision from the decisions, as they stand. The only case in which it seems impossible to avoid the conclusion that the result would have been different if the action had been brought under the Acts just mentioned is one in which it was held that a railroad company must answer for injuries to a brakeman resulting from the negligence of an engineer in running the engine (*a*). Under these statutes, of course, an action may be maintained for such an injury, if the declaration is based on the subsection expressly declaring engineers to be vice-principals. But in view of the decisions cited in the last section, by which the master's liability for the negligence of an employé operating a piece of machinery is denied, it is difficult to draw any other inference than that this ruling indicates a real difference between the scope of the Alabama and of the other Acts. It must be admitted, however, that the real scope of this case considered as an application of a general principle, and, not as one determined with reference to the

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the engineer was to some extent a superintendent. The employment and discharge of workmen, setting them at work, and shewing them how to do work, are acts consistent with superintendency. But these acts in connection with the evidence that his station was on the lighter, and his work there the continuous labour of running the engine in accordance with orders transmitted to him from others, shew that neither his sole nor principal duty was that of superintendence." A finding that a direction given as to the disposal of goods was an act of superintendence is not warranted where the injured servant testifies that the delinquent used to give orders to some twelve or thirteen persons in the room where the goods were, but subsequently qualifies this statement by saying, "when anybody gave what I call orders with respect to the load or weight, it was to tell where the load was to go, and that was all there was of it." *Sullivan* v. *Thorndike Co.* (1899) 175 Mass. 41, 55 N.E. 472. [Holding an instruction to be correct by which the jury were told that, if the delinquent had the right to say to the plaintiff, "take these goods upstairs," and it was the duty of the injured servant to obey this direction, that would be a superintendence; but that, if the delinquent merely pointed out where the goods were to go, that would not be a superintendence.] In an English case it was laid down by Smith, J., arguendo, that a "ganger, the foreman of a gang of labourers, who is working with his hands all the day, is not a vice-principal." *Kellard* v. *Rooke* (1887) 19 Q.B.D. 585 (p. 588).

(*a*) *Louisville & N. R. Co.* v. *Mothershed* (1892) 97 Ala. 261, 12 So. 714.