to work with his hands, as well as to exercise superintendence, the line must be drawn somewhere between what are acts of superintendence, and what are acts of manual labour, or all that he does

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the directions of others, and not directing them. The court said: "The negligence for which the statute makes the employer liable is that of a person 'intrusted with and exercising superintendence.' The employer is not answerable for the negligence of a person intrusted with superintendence, who at the time, and in doing the act complained of, is not exercising superintendence, but is engaged in mere manual labour, the duty of a common workman. The law recognizes that the employé may have two duties: that he may be a superintendent for some purpose, and also an ordinary workman, and that if negligent in the latter capacity the employer is not answerable. Unless the act itself is one of the direction or of oversight, tending to control others and to vary their situation or action because of his direction, it cannot fairly be said to be one in the doing of which the person intrusted with superintendence is in the exercise of superintendence. For the negligence of such a person in doing the mere work of an ordinary workman, in which there is no exercise of superintendence, the employer is not made responsible by the statute." In *Flynn* v. *Boston Electric Light Co.* (1898) 171 Mass. 395, a verdict for the plaintiff was sustained where the foreman of a gang of linemen used to labour as an ordinary workman, and caused the injury, while he was helping to pull back an electric wire which caught the branch of a tree which the plaintiff was cutting and broke it off, allowing him to fall. Negligence in the exercise of superintendence entrusted to an employé does not exist in the case of an engineer whose duty it is personally to operate the engine, although he usually has a helper, where, in the absence of the helper, by the negligence of the engineer in starting the engine, or in failing to prevent a third person from starting it, a person engaged in repairing the engine is killed. *Dantzler* v. *De Bardeleben Coal & I. Co.* (1893) (Ala.) 22 L.R.A. 361; 14 So. 10. The court said: "It being his duty personally to perform—not merely direct—this labour, and his right only to have the other man help him to perform it, his relation to the machinery being primarily that of a labourer, it cannot be said that he was in the exercise of any superintendence while he was discharging this primal duty of a manual labourer. His superintendence, if any he had, extended only to his actual direction of the helper, and ceased whenever he did any act in person and in the line of his duty as the engineer in charge of these machines. The evidence in this case is without conflict to the effect that when the engine moved or was set in motion Gould's helper was not even on the premises, and that, if the engine started by Gould, it was the direct negligent act of a manual labourer, not in any sense done in the exercise of superintendence, conceding that at any time superintendence was intrusted to him. This leaves the case outside of sub-sec. 2 of sec. 2590 [of the Code]. The death of McKay, on this hypothesis, was not caused by the negligence of a person to whom superintendence was intrusted 'while in the exercise of such superintendence.' On the other hand, had the jury concluded that Gould did not start the engine, but that it was set in motion by some third person in consequence of his failure to prevent outside interference, the result must have been the same. On this hypothesis Gould was a mere watchman, for whose negligence the company was not responsible to his fellow servant, McKay. Rob. & W. Employ. Liab. 260. In no possible aspect of the evidence was the plaintiff entitled to recover. The affirmative charge for defendant was properly given." The negligence of a conductor of a freight train while engaged in unloading freight, causing an injury to a brakeman assisting him, is that of a fellow servant. *Louisville, N. A. & C. R. Co.* v. *Southwick* (1896) 16 Ind. App. 486, 44 N.E. 263. A foreman is a fellow servant with the employés under him, where both are engaged in throwing rails upon a car. *Louisville, N. A. & C. R. Co.* v. *Isom* (1894) 10 Ind. App. 691, 38 N. E. 423.