

be wholly impossible to reconcile, on any reasonable basis, all the cases concerning the lower grades of this class of employés. Some of the decisions may be said to reflect the broad conception that, for the purposes of these statutes, there is an essential distinction between employés whose functions are entirely or mainly confined to superintendence, and those who actually perform the work in question²⁵. Thus it has been held that the benefit of the lien or preference cannot be claimed by an overseer of a farm, in respect of his supervisory functions²⁶; nor to the foreman of works at a tunnel²⁷. On the other hand the position has been taken that the expression "labourers" embraces a man employed as a general foreman of the mine to "boss the men, keep their time, and give them orders for their pay at the end of each month"²⁸.

Employés who in respect to the other incidents of their positions do not belong to the classes to which the term is applicable cannot claim the benefit of the preference on the mere ground that they sometimes performed some manual work as an inci-

²⁵ In *Pullis Bros. I. Co. v. Boemler* (1901) 91 Mo. App. 85, it was observed: "The phrase 'wages for labour,' if we construe the words according to their ordinary meaning, defines compensation for either manual labour, or, at most, for any service rendered in performing a necessary detail of a company's business by the employé's personal exertion, rather than for work performed by others under his supervision."

²⁶ *Fleming v. Shelton* (1884) 43 Ark. 168 (decided on the ground that a statute, Gault's Dig. §§ 4079-97, giving a lien to "labourers" must be strictly construed); *Rusk v. Billingdale* (1871) 44 Ga. 308 (Act of 1879), (the court remarking that the rule was subject to an exception in cases where the overseer worked as a common day labourer also); *Hester v. Allen* (1876) 52 Miss. 162; *Whitaker v. Smith* (1876) 81 N.C. 340; *Isbell v. Dunlap* (1887) 17 S.C. 581.

In the case last cited the court said: "An overseer is one who is employed, not to labour himself, but to overlook and direct the labour of those who are employed to do the manual work of planting, cultivating and gathering a crop, and it could be a confusion of terms to call such a person a labourer."

²⁷ *Praitt's Appeal* (1886) 1 Sadler (Pa.) 12, 1 Cent. 218.

²⁸ *Capron v. Strout* (1876) 11 Nev. 304. The court refused to express an opinion regarding the right of a general superintendent to claim the lien; but remarked that the cases were, at all events, distinguishable. The latter of these views is sustained by the analogy of the decisions which relate to statutes in which the expression "work and labour" is used. See § 6a, *post*.