the former statutes, no less than under the latter, the fact that a person is engaged in superintendence does not make his employer liable for every act which he does while so engaged (*a*). On the other hand, all the courts are agreed that the action is not barred simply by proof that the default of the superintendent was committed while he was assisting the plaintiff in manual labour (*b*). A collation of the authorities, however, discloses considerable divergence of opinion as to the theory upon which the boundary line is to be drawn between the acts for which the master is and is not responsible.

Some cases present little or no difficulty. Thus there is clearly no ground upon which the master can be held liable for a merely manual act done by an employé whose characteristic functions are not those of a superintendent at all (*c*). Compare sec. 3 (c), ante. Again it is obvious that, wherever the duties of an employé are susceptible of a definite segregation into two specific classes, so that it is possible to say that the duties in one class are those of a superintendent, while the duties in the other class are those of a mere servant engaged in manual labour, or discharging some function which is characteristic of and customarily entrusted to subordinate workmen, the exercise of superintendence cannot, without doing violence to the express ends of the statute, be predicated as to what is done in performing the latter class of duties (*d*). The position taken is that, when a person is employed

(*a*) *Joseph* v. *Whitney Co* (1900) 177 Mass. 176, per Holmes, J. See also the cases cited in the following notes.

(*b*) *Kansas City &c. R. Co.* v. *Burton* (1892) 97 Ala. 240, 12 So. 88; *Ray* v. *Wallis* (1887) 51 J.P. (C.A. Engl.) 519; and the cases cited in note (*f*), infra.

(*c*) The starting of a table used for the transfer of cars in a street car barn by a car shifter whose duty was to get cars ready for the conductors and motormen is not an act of superintendency as to a conductor who was injured by the table. *Whelton* v. *West End Street R. Co.* (1899) 172 Mass. 355, 52 N.E. 1072.

(*d*) *In Kellard* v. *Rooke* (1887) 10 Q.B.D. 585, where an employé alleged to have been intrusted with superintendency habitually engaged in the manual labour of hauling and throwing bales of wool into a ship's hold, and the injury was caused by one of these bales falling upon the plaintiff. It was held that, assuming this to be the situation, it could not be said to come to anything more than this:—that an employé who was a superintendent for some purposes, and who was also an ordinary working man engaged in the work in which the plaintiff was likewise engaged, was guilty of negligence, whereby his fellow workman was injured, and that the negligence having been committed whilst he was in the exercise of the manual labour in which he was engaged was not in the exercise of superintendence. In *Cashman* v. *Chase* (1892) 156 Mass. 342; 31 N.E. 4, where it was held that the act of an engineer of a hoisting apparatus in improperly raising the fall when ordered to lower it, was not an act of superintendence, for the reason that in operating the engine he was doing the work of a labourer, acting upon