In order to hold an employer for positive acts of negligence on the part of his superintendent, if these facts relate to a matter in

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of the superintendent of the contractor while exercising superintendence, is for the jury upon evidence that the latter knew on the Saturday before the accident that a hole loaded with dynamite had not been fired, and that on the Monday following he directed the plaintiff to drill a new hole which pointed towards the loaded hole, and the explosion resulted from contact with the dynamite in drilling the new hole. *Dean* v. *Smith* (1897) 48 N.E. 619, 169 Mass. 569. The question as to whether a superintendent was guilty of negligence while exercising superintendence in directing dynamite to be put into a hole while the rock was heated by a recent explosion is for the jury upon evidence that, under such circumstances, an explosion was likely or liable to occur, and the explosion which followed and caused the death of the deceased was the result of such direction. *Green* v. *Smith* (1897) 48 N.E. 621, 169 Mass. 485. Cotton waste in a chimney belonging to defendant company caught fire, and its superintendent had sent a man up the chimney to put it out; and in doing so the man threw down two planks which were burning, which act the superintendent approved. Afterwards a second fire broke out, and the superintendent ordered plaintiff's husband and others to assist in putting it out, and the same man was sent up the chimney and threw down a burning plank, as at the former fire; and just as it was thrown, without warning, plaintiff's husband stepped inside the chimney and was instantly killed by the plank. Held, that the fact that the employé who was sent up the chimney failed to give deceased warning of the danger from planks being thrown down did not necessarily shew negligence of a fellow-servant, since the jury might have found that the fellow-servant did all that he should have done, and that it was the duty of the superintendent to give deceased warning. *Cote* v. *Lawrence Mfg. Co.* (1901) 59 N.E. 656, Mass. Where the complaint alleges negligence on the part of defendant's superintendent, or one exercising superintendence, it is proper to admit evidence of statements to defendant's foreman, and in his presence, of the dangerous character of the trench and the need of bracing. *Bartholomeo* v. *McKnight* (1901) 59 N.E. 804, Mass. The fact that it suited the convenience of the consignee of the cargo of a car left standing in dangerous proximity to an adjacent track, to unload it at that place, will not relieve the railway company from liability for the negligence of the yardsmaster in leaving it in that position, the consequence being that a switchman on the adjacent track was injured by collision with the car. *Kansas City, M. & B. R. Co.* v. *Burton* (1892) 97 Ala. 240, 12 So. 88. Allowing an oil box in a railway yard to be so near the track as to catch the foot of a switchman, casually allowed to slightly protrude beyond the end of the footboard of an engine on which he is riding, is negligence in the person whose duty it is to keep the tracks in the yard free from obstructions. *Louisville & N. R. Co.* v. *Bouldin*, (1898) 25 So. 903, 121 Ala. 197, reiterating opinion expressed in first appeal, 110 Ala. 185. The question as to negligence by a superintendent in failing to take any precaution to protect an employé while in an elevator well picking up paper is for the jury, whether the superintendent did or did not promise to look out for him, where the circumstances warrant an inference that he knew that such employé or some other employé would have to go into the well. *Scullane* v. *Kellogg* (1897) 169 Mass. 544, 48 N.E. 622. An employer is answerable for the negligence of a superintendent in stationing a labourer underneath a large overhanging rock which was known to be likely to fall. *Collins* v. *Greenfield* (1898) 172 Mass. 78, 51 N.E. 454.

(2) *No negligence, as matter of law.*—Negligence in regard to the piling of planks, some of which fell on plaintiff, cannot be inferred simply from the fact that the foreman had directed him to lower the stack, especially where he and his witness admit that they did not observe anything unsafe in the appearance of the stack. *Connell* v. *Surrey &c. Co.* (Q.B.D. 1887) 3 Times L.R. 630. A servant injured by the falling of bales of hay in a shed cannot recover on the ground of negligence of the superintendent, in the absence of evidence that he had anything to do with piling the hay, or that he appointed the particular place at which the servant was to work at the time of the injury, or that he knew or ought to have known that the hay was liable to fall. *Fitzgerald* v. *Boston & A. R. Co.*