master could not be held liable, unless the delegation of superintendence was authorized, but, assuming this point to be settled in the servant's favour, it is submitted that, in cases of this type, a court is concerned solely with the relations of the parties during the actual period of deputed superintendence, and that, as to that period, the deputy may justifiably be said to be exercising duties of superintendence, whatever may be his functions at other times.

So far as Massachusetts is concerned this is now the law by virtue of the clauses added in 1894 to the original statute. (See sec. 1 ante) (*b*).

9. Necessity of proving that the injurious act was negligent.—In cases where it is established or conceded that the person whose act or omission was the immediate cause of the injury complained of was a "superintendent" within the meaning of the statutes, and that such an act or omission was one pertaining to the exercise of superintendence, the plaintiff will still fail in his action, unless he can shew that the act or omission constituted a breach of duty. In the subjoined note are collected a number of rulings upon the simple question, whether there was or was not negligence. Other cases involving similar groups of facts, but actually turning upon the question whether the employé alleged to be the defendant's representative was exercising superintendence are cited in the following sections (*a*).

(*b*) Under this amendment a master has been held liable for the negligence of an employé in a small foundry who, when his master was not present, directed the men as to their work, but also participated in that work themselves. *McCabe* v. *Shield's* (1900) 175 Mass. 438, 56 N.E. 699. Where the defendant's general superintendent entrusts to a subordinate the duty of supervising the work of lowering of a heavy shaft, and does not take charge of the work himself and was not present when the injury was received, the jury is warranted in finding that the employé who directed the work was acting as superintendent with the authority and consent of the defendant and in the absence of the defendant's superintendent. *Knight* v. *Overman Wheel Co.* (1899) 54 N.E. 890, 174 Mass. 455.

(*a*) (1) *Master not exempt from liability as matter of law.*—A superintendent may properly be found negligent in absenting himself from the place of work, and delegating his duties to another, when operations of peculiar difficulty and danger are to be carried out. *Cook* v. *Stark* (1886) 14 Sc. Sess. Cas. (4th ser.) 1. Where the evidence leaves it uncertain whether it is the duty of the superintendent of a mine to stop or continue the running of a suction-fan when a fire is discovered in the mine, and also how much time elapsed after the fire began before he learned where it was, and whether or not he acted promptly, and there is also testimony tending to shew that the fan was stopped once and then started again, it is for the jury to say whether the superintendent was reasonably careful in seeing that the fan was not started again, even if it was properly stopped in the first instance, although a large number of people were congregated round the mouth of the mine, and it is not clear who started the fan for the second time. *Drennen* v. *Smith* (1897) 115 Ala. 396. The question as to whether an injury to an employé from the explosion of dynamite in a conduit was due to the negligence