The location of the rails is not material, so long as the injury was caused by a moving engine or car. Thus cars are on a "railway" while they are being moved on the lines in a freight shed with a view to their being loaded or unloaded (*c*). On the other hand, an engineer is not in charge of an engine "on a railroad" while it is stalled in a roundhouse for repairs (*d*).

II. SERVICE OF NOTICE UPON THE EMPLOYER.

7. Notice a condition precedent to the maintenance of an action under the statute.—Nearly all the Acts with which we are now concerned provide that the employer shall be served before the expiration of a specified period with notice that the employé in question has sustained an injury (*a*). Compliance with the statutory requirement is as a condition precedent to the plaintiff's right to avail himself of the remedial rights conferred by the legislature. This rule the courts have construed strictly for the reason that the manifest object of inserting the provisions as to notice was to insure that the master should have a sufficient opportunity to prepare his case. See sec. 11 (a), post. No action can be maintained where the notice is not served until after the writ is made, although it was left at the defendant's house on the day the writ is dated (*b*).

It has also been held that the provision in the English (sec. 4) and Colonial Acts, by which it is declared that the want of notice shall be no bar to the maintenance of the action if the trial judge shall be of opinion that there was a reasonable excuse for such want of notice, applies only where due notice has not been given and not

(*c*) *Cox* v. *Great Western R. Co.* (1882) 9 Q.B.D. 106.

(*d*) *Perry* v. *Old Colony R. Co.* (1895) 164 Mass. 296. [Machinist making repairs was injured by the engineer's blowing down the engine into the ashpit in which the machinist was.]

(*a*) England, Newfoundland and Australian Colonies, sec. 1; Ontario, secs. 9, 13; British Columbia, sec. 9; Manitoba, sec. 7; Alabama, Code, sec. 2590; Massachusetts, sec. 3; Colorado, sec. 2; New York, sec. 2.

The Manitoba Act of 1893, as at first passed, contained the same provision with regard to notice as that of Ontario from which it was copied. But by 58 and 59 Vict. ch. 48, sec. 2, the original Act was amended by providing simply that the action could be brought at any time within two years after the occurrence of the accident. In this Province, therefore, the requirement as to notice has been abrogated altogether. Soon after the passage of this amendment it was held not to have any such retrospective operation as would extend the time for bringing in a case where the injury had been received before the amending Act had been passed. *Dixon* v. *Winnipeg El. St. R. Co.* (1897) 11 Man. 528.

The Acts of Alabama and Indiana contain no provision as to notice.

(*b*) *Vequsan* v. *Morse* (1893) 160 Mass. 143.