7. Railway servant.—It has been suggested that this term which is employed in the English Act for the purpose of designating one of the specific classes of persons to which their provisions are applicable should be understood as referring only to servants engaged in the conduct and management of railways, and not as embracing servants hired to do work in connection with a collateral undertaking carried on by a railway company as an adjunct to their proper business of carriage by land—e.g., the keeping of a hotel, or the operation of a line of steamboats (*a*). Such a doctrine would limit the benefit of the acts in a manner analogous to the decisions under the Acts of Iowa, Kansas, and Minnesota, which, it is held, abolish the defence of co-service only in cases where the injuries were received in the actual operation of a railway. But, so far as the writer knows, there has not been any judicial expression of opinion as to the point just raised.

In an English case referred to in sec. 8 (h), post, it was held that a driver of a tram-car could not sue under the Act, as being engaged in "manual labour" (*b*). The possibility of his recovering as a "railway-servant" was not discussed, and it seems to have been assumed both by the court and counsel that this description was not applicable to an employé of a street railway company.

In the Ontario and British Columbia Acts it is expressly declared that the term "railway servant" includes "tramway and street railway servant."

In Canada it has been held that an employé working on a railway controlled by the Dominion Government may recover

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and falls through an unguarded hole in the floor. *Finlay* v. *Miscampbell* (1890) 20 Ont. Rep. 29. In *Toomey* v. *Donovan* (1893) 158 Mass. 232, 33 N.E. 396, the case was held to be for the jury, where the evidence was that the defendant had given to another person charge of a certain room in his factory under an agreement by which the defendant was to furnish the machinery and materials, and the contractor was to hire and pay the men; that the defendant was to pay for the repairs; that the contractor had the right to order the repairs to be made; that the defendant had the right to inspect the machines, and was often in the room; and that the injury was received owing to a defect in one of the machines by one of the men in the employ of the contractor. In this case the contractor was also the person entrusted by the defendant with the duty of seeing that the machine was in proper condition, under sec. 1, sub-sec. 1 of the statute. It was held that the relation which he occupied as contractor would not relieve the defendant from liability for his negligence in the discharge of this duty.

(*a*) Rob. and Wal. on Employers, 3rd ed., p. 231.

(*b*) *Cook* v. *North Metropolitan T. Co.* (1887) 18 Q.B.D. 683.