5. Person having "charge or control" of a car.—It is held that the word "car," which is found only in the Alabama Act, is not confined to those cars which are intended to be hauled by locomotives, but is applicable to hand-cars also (*a*). The question whether an employé actually had charge or control of such a car can very rarely cause any doubt, and, as a matter of fact, the only points discussed, apart from those of mere pleading, have been, whether the conduct of an employé conceded to be in charge of a car was negligent in handling (*b*).

6. "On a railway" or "railroad": effect of these words.—The word "railway" is used in its popular sense, viz., as meaning a way upon which trains pass by means of rails, and is not confined to railways belonging to those companies which are subject to the provisions of the English Railway Regulation Acts. Hence this sub-section applies to a temporary railway laid down by a contractor for the purposes of the construction of works (*a*). A similar doctrine is held in Massachusetts where a plaintiff has been allowed to recover for an injury received on a short railway track intended for temporary use by a city in transporting gravel (*b*).

(*a*) *Kansas City, M. & B. R. Co.* v. *Crocker* (Ala.) (1892) 11 So. 262.

(*b*) The inference of negligence has been held to be "sure and certain," where a foreman in charge of a hand-car, with knowledge that the operators are at times in the habit of turning loose the lever on a down grade and standing without support, suddenly applies the brakes on such a grade without notice to the operators and without looking to see whether they are holding to the lever. *Kansas City, M. & B. R. Co.* v. *Crocker* (1891) 95 Ala. 412. The foreman of a hand-car is, as matter of law, guilty of negligence in entering at full speed a place on the track obscured by dense smoke without sending a flagman ahead to ascertain if any train is on the track in accordance with a custom regulating the running of hand-cars through smoke. *Woodward Iron Co.* v. *Andrews* (1896) 114 Ala. 243, 21 So. 440. A railway company is liable for an injury received by a labourer on a railroad in jumping from a hand-car to avoid a collision occasioned by the failure of a foreman to give signals required by the rules of the road. *Richmond & D. R. Co.* v. *Hammond* (1890) 93 Ala. 181, 9 So. 577. A jury is properly directed to find for the plaintiff if they find from the evidence that a foreman ran two cars close together at a high rate of speed on a trestle; that, without warning to the men on the rear car, he signalled to those on the front car to slacken speed; that one of the employés on the rear car, seeing the signal, applied the brake on that car so suddenly that the lever was jerked out of the hands of the plaintiff's decedent, and that when the cars came into collision immediately afterwards, he was thrown to the ground. The facts thus set forth shew negligence on the foreman's part and exclude the hypothesis of contributory negligence *Jones* v. *Alabama M. R. Co.* (1895) 107 Ala. 400, 18 So. 30, second appeal, sub nom. *Alabama Mineral R. Co.* v. *Jones* (1896) 114 Ala. 519, 21 So. 507.

(*a*) *Doughty* v. *Firbank* (1883) 10 L.R. 10 Q.B.D. 358, 52 L.J.Q.B.D. 480, 48 L.T.N.S. 530, 48 J.P. 55. [Driver injured by a collision.]

(*b*) *Coughlan* v. *Cambridge* (1896) 166 Mass. 268, 44 N.E. 218.