3. Person in "charge or control of a locomotive engine."—(*a*) *What is an engine under the statute*—The word "engine" is construed as meaning a "machine used to move trains" (*a*). An engine of an essentially stationary type is not brought within the purview of the statute by the fact that, together with the machinery operated by it, it is mounted upon a truck, and its power can be applied so as to move the truck along a set of rails to some other part of the employer's premises (*b*).

(*b*) *What employés are deemed to be in "charge or control" of engines*—It is not disputed that this description is applicable to the employés who actually operate the locomotive engines which move trains. It is a question of fact who was in charge of an engine at any particular time, (*c*) and whether the act alleged as

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section is to be read as punctuated, and no comma is to be inserted between "switch" and "yard." *Baltimore & O.S.W.R. Co.* v. *Little* (1897) 149 Ind. 167, 48 N.E. 862. These particular words occur only in the statute of that State, and their construction is, therefore, not at present a matter of practical interest in any other jurisdiction. But the writer ventures, in passing, to express his strong doubt whether this rule is correct. In the first place the expression is not in common use. The only authority cited by the court is 5 Rap. & M. Ry. Dig. p. 60, where one of the divisions of subjects is entitled "Switch Yards." The expression is also found, though not very frequently in the reports. See for example *Hurst* v. *Kansas City &c. R. Co.* (Mo. 1901) 63 S.W. 695; *Illinois C.R. Co.* v. *Cozby* (1898) 174 Ill. 190, 50 N.E. 1011; *Fay* v. *Chicago &c. R. Co.* (1898) 72 Minn. 192, 15 N.W. 15; *Williams* v. *Louisville &c. R. Co.* (Ky. 1901) 63 S.W. 758; *Walker* v. *Atlanta &c. R. Co.* (1898) 103 Ga. 820. But it is omitted in the Century, Standard, or the other dictionaries to which the writer has access. It seems very improbable that an expression which, as this omission indicates, is far from being a familiar one, should have been used in a statute of this character. But the most fatal objection to the theory of the court is that, in all the acts of a tenor similar to that of Indiana, "switches" are specifically mentioned, and that it is therefore more likely that the Indiana legislators intended to add "yards" to the list of the specified parts of the plant, than that they intended to omit one which is expressly mentioned in the other acts, and substitute another word which, as this very decision shews, is construed as absolving a railway company from liability for a class of accidents which are peculiarly destructive and in which the victims are peculiarly helpless.

(*a*) *Murphy* v. *Wilson* (1883) 52 L.J.Q.B.N.S. 524, 48 L.T.N.S. 788, 48 J.P. 505, 48 J.P. 24. A person in charge of a stationary engine operating a tramway on a mining slope is *not in* "charge of an engine" on a "track of a railway," and is therefore merely a fellow servant with the engineer of a pump engine located in the mine. *Whatley* v. *Zeniah Coal Co* (1898) 122 Ala. 118, 26 So. 124. (Demurrer sustained to count alleging negligence of such an engineer.)

(*b*) *Murphy* v. *Wilson* (1883) 52 L.J.Q.B.N.S. 524, 48 L.T.N.S. 788, 47 J.P. 505, 48 J.P. 24. (Truck supporting a steam crane ran over plaintiff's hand while he was grasping a rail to steady himself in pulling at a stone.)

(*c*) *Louisville & N.R. Co.* v. *Richardson* (1893) 100 Ala. 232, 14 So. 200. An engineer who is in the employment of a railway company, and in charge of an engine which is at the time running upon the company's tracks, is *prima facie* in the discharge of his duties as engineer, and in a complaint based on this subsection it is not necessary to aver that the engineer was in the discharge of the