

send the case to the jury, viz., that the evidence adduced in behalf of the plaintiff went to shew that the foreman was negligent in regard to the blocking of the cars after they had been detached. The words "any person having charge or control of the train," did not, it was said, necessarily point to one person who was in charge of the whole train. Different duties in connection with different parts of the train might be assigned to different persons, and, in that case, each and all of those persons were charged with the conduct of the train; and, if any one of them were negligent in his own department, that would constitute negligence, bringing the case within the terms of the sub-section (*p*). This case also lays down the doctrine that the question, who was in charge of a train, is to be determined, as between two or more employés, by considering what duty was violated by the act which caused the injury.

The statutory words are applicable only to cases in which the control exercised over the train is direct. A railway company is not liable, under this particular provision, for the negligence of an employé who has control of a switch, or of a station agent who merely transmits orders to the man in charge of a train (*q*).

"charge or control of the train." Lord Davey agreed in thinking that the engine-driver, was "in charge of the train," and remained "in charge of the train" till the duties with which he was entrusted were fully completed; he considered it a strange thing to say that, when the engine-driver who was thus in charge of the train left three-fourths of it in an exposed and dangerous position, and it turned out that insufficient precautions had been taken to secure the safety of that portion which was so left behind, there was no evidence to go to the jury of negligence on the part of the "person in charge of the train."

(*p*) At p. 66 of the Law Reports the following passage is found in the opinion of Lord Watson:—"It is plain that Hooper was the person who insufficiently scotched the wagon which ran down the incline and killed the deceased: but it may be that, although he was the direct cause of the accident, the engine-driver was also negligent in his duty, if he was charged with that duty. And I think, if that view were taken, he knew quite well the kind of sprag that was being used, and had reason to know that, although for some purposes sufficient, the use of it was attended with danger. On the other hand, if the duty of spragging was properly delegated to Hopper, he was, to that extent, in charge of the train, and was negligent. But on whichever of these alternatives negligence be found, whether it be fixed on the engine-driver or upon the fireman, I think it follows that such person is also fixed in the position of the 'person having control of the train.' It has been suggested by one of the learned judges in the Court of Appeal that the duty having been committed to a great many persons, any one of whom might have performed it, therefore the person actually performing it was not 'in charge.' To my mind these considerations are very immaterial. I think the statute points directly to the person having 'the charge or control of the train' as being that person who, at the time when the negligent act is committed, has the duty laid upon him of performing that act with reasonable care."

(*q*) *Fairman v. Boston & A. R. Co.* (1897) 169 Mass. 170, 47 N.E. 613. See also *Devine v. Boston, &c. R. Co.* (1893) 159 Mass. 348, when the company's non-liability for the negligence of a switchman seems to be assumed in the opinion.