For an extensive collection of cases on which this question is discussed, see a note by the present writer in 37 L.R.A. at pp. 33, et seq.

3. Volunteers.—A mere volunteer as regards the service under performance is not entitled to the benefits of those Acts (*a*).

4. Persons who have temporarily or permanently ceased to be in the employment of the defendant.—If the plaintiff, though he may at some previous time have worked for the defendant, was not actually in his service at the time when the injury was received, it is clear that he cannot sue under these statutes (*a*).

---

tion that the plaintiff was not working under any contract with the defendants, and therefore was not a workman within the meaning of the Act, and capable of suing under it, said: "The only effect of that objection, if it prevailed, would be this, that there would be no question as to the defendant's liability, but the action should have been one brought at common law, and not brought under the Employers' Liability Act. But I think that in this case there is evidence that the plaintiff was a workman employed by the defendants. Duplea had requested Horton's foreman that he should have furnished to him a man for the purpose of doing the work in connection with the lift. It was not work which Horton had to do, but work which the defendants had to do. There is evidence that Duplea needed and obtained assistance for the work he had to do, and his employers recognized it as being rendered on their behalf and asked to have an account sent in for the work the man had done, so that they might pay his wages during the time he was so engaged. It is enough to say that there was evidence which it was impossible to withdraw from the jury that the plaintiff was in the service of the defendants within the meaning of this Act."

(*a*) *McCloherty* v. *Gale Mfg. Co.* (1892) 19 Ont. App. Rep. 117, where the court refused to say that this doctrine barred recovery in the case of a female employe whose hair was caught in an uncovered revolving shaft, while she was on a bench endeavoring to open a window for ventilation purposes.

A brakeman who is travelling as a passenger on a train, and is not under the control of the conductor for the purpose of the performance of the duties characteristic of his position, cannot recover for injuries received in coupling a car in compliance with the directions of the conductor. Such a direction is entirely unauthorized, and fastens no liability on the company. *Georgia Pac. R. Co.* v. *Propst* (1887) 83 Ala. 518. There the court held demurrable a count which began thus: "When on a trip down defendant's said road, plaintiff, being aboard defendant's train was there ordered by the conductor, employed to manage or superintend the business affairs of said company on the aforesaid train, and whilst in the exercise of his superintendence, to couple a freight car to others attached." It was declared that there was nothing in this count which showed that the plaintiff was acting as brakeman, or had been requested to do so. But probably the rule of pleading here applied will in many jurisdictions be considered too strict.

(*a*) By the rules of a mine workmen, upon their discharge, were not entitled to receive their wages until they had returned their tools. A miner who was discharged on a Saturday, but had no opportunity to go down for his tools on that day, went down on Monday and was injured by an explosion of gas due to inadequate ventilation. *Held*, that at the time of the injury he was acting in the employment of the mine owner. *Cowler* v. *Moresby Coal Co.* (Q.B.D. 1885) 1 Times L.R. 575. In *Lovell* v. *Charrington*, reported in the Law Times Newspaper, March 1882, (see also Rob. & Wall. on Empl. 3rd Ed., p. 230), the plaintiff had been occasionally employed by the defendant as a trolleyman, but on the day in question, he arrived too late, and was told that he was out of employment for that day. While leaving the premises he was injured owing to a defect herein. Held that he was not a "workman" within the statutory definition.