The English doctrine would seem to be virtually the same as that established by the Massachusetts decisions, the House of Lords having held that the case was for the jury where some detached cars were left by the engineer on a steep gradient, and, being inadequately blocked, ran away and struck the plaintiff (*n*). The members of the court were unanimous in declaring that the action could be maintained upon the theory that the engine-driver was in charge of the train when it stopped at the point where the runaway cars were left, and that he did not cease to be in charge of it because some of the carriages were uncoupled from one another and from the engine in order that they might be separately dealt with in operations all directed to one end, namely the discharging of the freight (*o*). It was also considered that there was another and independent ground which rendered it proper to

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it removes the defence of common employment in some cases, it does not extinguish it altogether, and we do not think that the Legislature intended that it should be abolished in all cases where injuries were sustained by the carelessness of a brakeman. If it had, it would have used language more truly descriptive of a brakeman's usual occupation than the words, 'any person in the service of the employer who has the charge or control of any train upon a railroad.' It is *the* charge or control of which the statute speaks, and not *a* charge or control, and it is the charge or control of the train as a connected whole which is meant. *Thyne* v. *Fitchburg R. Co.* (1892) 156 Mass. 13, 30 N.E. 169."

(*n*) *McCord* v. *Cammell* [1896] A.C. 57, 65 L.J.Q.B.N.S. 202, 73 L.T.N.S. 634, 60 J.P. 180.

(*o*) The following passage from Lord Herschell's opinion (p. 66) sufficiently indicates the reasoning upon which this conclusion was based: "When he removed, or before he removed, the engine from the train, unless he wanted the rest of the train to follow, or was content that it should follow, it was absolutely essential that something should be done to detach that part of the train, and to make it stationary, while the rest of the train went on. That was a dealing with the train under his charge; and it seems to me that it was his duty to take care that all that was necessary for the operation with which he was concerned, namely, conveying these carriages severally and successively to the place where their contents were discharged, was done. It was not necessarily his duty to do it himself. If that duty had been left to some other servant of the company, and if he had every reason to believe that the duty was being properly performed, then it might well be that there could not be said to be negligence on his part—he would have discharged the obligation resting upon him by seeing that the work was being done by the person whose duty it was in that sense to do it. But in the present case there is evidence that he knew the method which was being employed to sprag the wheels; there is evidence that he knew that it was a method which on previous occasions had proved ineffectual; there was the evidence of witnesses who were called before the jury that the use of this slag at all was an improper method that the proper method was to use wood. Under these circumstances it seems to me impossible, when once the conclusion is arrived at that he was in charge of the train, to say there was no evidence of negligence upon his part." Lord Watson took the ground that the disengaging of the cars from the engine and securing them in order that they might remain stationary until the engine returned to take them up, was an act done in the conduct of the train with which that engine started, and that, if that act was negligently done, (which was a matter for the jury to determine), the plaintiff was entitled to recover if the person guilty of negligence had at the time