

(d). *Employés other than conductors*.—It has been laid down by the Supreme Court of Massachusetts that by the words, "any person . . . who has the charge or control" of a train is meant a "person who, for the time being at least, has immediate authority to direct the movements and management of the train as a whole, and of the men engaged upon it" (k). A railway company, therefore, is responsible for the negligence either of an engineer or of a brakeman, if, as a matter of fact, either of them was in charge of the train (l). But the mere fact that a brakeman has been put in such a position that for the moment he physically controls and directs its movements under the eye of his superior does not of itself constitute him a person who has charge or control of the train (m).

either wholly or in part, control its movements. The charge or control is of that whose characteristic is rapid and forceful motion. It relates to the train or locomotive engine as a whole, and not to the individual parts which make up the train or engine. The statute might have been made to include those who have charge of the construction of the engine or the cars or who inspect them. Neglect of their duties would be likely to cause an accident to the train while in motion. But the legislature in this part of the statute has gone no further than to include those whose duties relate to the charge of a locomotive engine or the train when complete." In another case it was doubted whether a switching foreman who merely designated the track on which it is to be shunted a part of the cars of a train which is controlled by a conductor could be said to have had "charge or control" of the train. *Caron v. Boston & A. R. Co.* (1895) 164 Mass. 523, 42 N.E. 112. In view of the earlier decision, it is hard to see why the court should have felt any doubt on this point.

(k) *Caron v. Boston & A. R. Co.* (1895) 164 Mass. 523, 42 N.E. 112.

(l) *Shea v. New York, N.H. & H. R. Co.* (1899) 173 Mass. 177, 53 N.E. 390, holding it warrantable to find negligence, where the evidence was that the engine with a car attached was pushed, while the plaintiff was in the car, and a brakeman was standing on the front platform, against other cars with such force as to break the platforms of the cars and throw the employé from his seat.

The engineer of a railroad train must be regarded as the person in charge, for the purpose of giving signals or slackening speed at the approach of danger, although for most purposes the conductor has control of the train. *Davis v. New York, N.H. & H. R. Co.* (1893) 159 Mass. 532, 34 N.E. 1070, followed in *Fairman v. Boston & A. R. Co.* (1897) 169 Mass. 170, 47 N.E. 613.

See also *Baltimore & O. R. Co. v. Peterson* (1901) 59 N.E. 1044, 156 Ind. 364, where it was held proper to refuse an instruction that, if the persons in charge of a train were fellow-servants of the injured person, or track-repairer, he could not recover.

(m) *Caron v. Boston & A. R. Co.* (1895) 164 Mass. 523, 42 N.E. 112, where it was denied that the statute was applicable to a brakeman whose duty it was to take charge of a train of cars which was being shunted on to a siding under the supervision of the conductor. The court said: "If 'control' is one thing and 'charge' is another, then, inasmuch as to some extent every brakeman upon a train would have 'control' of it, every employé injured by an accident resulting from the carelessness of a brakeman would have a right of action against the corporation which employed him, and the defence of common employment as to brakemen would be done away with, even though the brakeman might be acting under an immediate superior. The statute is to be fairly construed, and, while