that, at the time the injury was received, he was not, as a matter of fact, in control of the train in question. It cannot be said, as a matter of law, that a conductor is not in charge of a train during a temporary absence therefrom (*g*). Nor can any cessation of his controlling functions be predicated from the mere fact that the portion of the train which caused the injury had been detached from the engine and the other cars at the time when the plaintiff was hurt (*h*).

The conductor of a switch engine which is drawing several cars under his direction may be properly found to be, for the time being, in charge of a train consisting of the engine and cars (*i*). But such a conductor is not deemed to be in charge of a train which he merely has to make up. His duties are ended as soon as the cars are connected so as to compose a train, and he never has charge of those cars as a train (*j*).

(*g*) *Donahue* v. *Old Colony R. Co.* (1891) 153 Mass. 356, 26 N.E. 868. There the conductor left his train at a certain station and allowed it to proceed to the next station without him. A brakeman had occasion to make a coupling while the conductor was still absent from his post, and was injured by a defective draw-bar, of the condition of which the conductor had failed to notify him. It was held that the jury was justified in finding that the conductor was in charge of the train when the injury was received, since nothing was done that was contrary to his orders, or not reasonably to be expected. It was also contended without success that the omission of the conductor to warn the plaintiff with regard to the defective draw-bar was not negligent for the reason that the movements of the train and the coupling and uncoupling of cars were wholly under his direction, and that a brakeman was not expected to uncouple cars without his orders. The court said, that when the conducter left the train and permitted it to proceed without him, it might properly be inferred by a jury that he expected and permitted such things to be done as were necessary in the management of the train until he should rejoin it, without a specific order from himself for each particular act; and, if so, the omission in question might properly be found to have been negligence on his part.

(*h*) *Devine* v. *Boston & A.R. Co.* (1893) 159 Mass. 348, 34 N.E. 539. There two cars which had been "kicked" ran against a post at the end of a stub switch. It was held that, on the evidence, the jury might properly find that the conductor was the person who gave the stop motion for the cars, and that, taking into account the speed at which they were moving, he was negligent in not giving the motion sooner than he did.

(*i*) *Ducey* v. *Old Colony R. Co.* (1891) 153 Mass. 112, 26 N.E. 437. There it was held that, in view of the use to which a freight yard is put in making up trains and receiving cars from incoming trains, and the dangers attendant on moving cars and making up trains in the night-time, when a car is standing so near the point where tracks come together, that the space between it and the adjoining track is unusually narrow, a court cannot say, as a matter of law, that it was not a negligent act to leave the car in such a position.

(*j*) *Thyng* v. *Fitchburg R. Co.* (1892) 156 Mass. 13, 30 N.E. 169. The court said: "The statute, in referring to a 'signal, switch, locomotive engine, or train,' seems chiefly to contemplate the danger from a locomotive engine or train as a moving body, and to provide against the negligence of those who,