The present writer ventures to express the opinion that all the cases cited in the last two sub-sections, except *Brannigan* v. *Robinson*, are based upon a narrow and technical construction of the statutes, and that the circumstances under which the right of recovery was denied were fairly within the spirit, if not the letter, of the language used by the legislatures.

6. What constitutes a "defect."—Wherever an instrumentality is "not in a proper condition for the purpose for which it was applied," there is a "defect" in its condition within the meaning of the Act (*a*). If the whole arrangement of a machine is defective for the purpose for which it is applied there is a defect so as to bring it within the Act, although each part may be sufficient (*b*). It follows, therefore, that, whenever there is such unsuitableness for the work intended to be done and actually done, the liability contemplated by the statute arises, although the appliance is perfect of its kind and in good repair and suitable for other kinds of work. In such a case the employer is in fault because he has furnished appliances for a use for which they are unsuitable, and in effect is so ordering and carrying on his work that, without fault of the ordinary workman, the natural consequences will be

(*a*) Lord Coleridge, in *Heske* v. *Samuelson* (1883) 12 Q.B.D. 30. [Approved in *Cripps* v. *Judge* (C.A. 1884) 13 Q.B.D. 583]. Lindley, L.J., in *Yarmouth* v. *France* (1887) 19 Q.B.D. 647. "I take defect to include anything which renders the plant etc. unfit for the use for which it is intended, when used in a reasonable way and with reasonable care." The word "defect" implies an inherent defect, a deficiency in something essential to the proper use of the apparatus for the purpose for which it is to be used. *Hamilton* v. *Gresbeck* (1890) 19 Ont. R. 76. Compare also the passage from the majority opinion in *Walsh* v. *Whitely*, as quoted infra "A defect in the condition of the way, or works, or machinery, or plant means, I should be inclined to say, such a state of things that the power and quality of the subject to which the word 'condition' is applied are for the time being altered in such a manner as to interfere with their use. For instance, if the way is made to be muddy by water, or if it is made slippery by ice, in either of these cases, I should say that the way itself is not defective, but the condition of the way, by reason of the water which is incorporated with it, or from its being in a freezing state, is affected." Per Stephen, J., in *McGiffen* v. *Palmers &c. Co.* (1882) 10 Q.B.D. 5.

(*b*) *Cripps* v. *Judge* (C.A. 1884) 13 Q.B.D. 583, per Brett, M.R. The words "defect in the arrangement," used only in the Acts of Ontario and British Columbia, means the element of danger arising from the position, and collocation of machinery in itself perfectly sound and well fitted for the purpose for which it is to be used. *McCloghertv* v. *Gale Mfg. Co.* (1892) 19 Ont. App. 117, per Osler, J.A. (p. 121).