therein, injuring and crushing the same, and rendering it necessary to have his left arm amputated. The following are the questions submitted to the jury, with their answers:—

"Q. 1. Did the accident to the plaintiff happen by reason of any defects in the works, ways, and plant of the defendant? A. Yes. If so, what? A. By not having the cogs sufficiently guarded.

"Q. 2. Did the accident happen by reason of any negligence on the part of the defendant? A. Yes. If so, what? A. Owing to the negligence of the engineer in not giving sufficient warning.

"Q. 3. Was the accident occasioned or contributed to by any negligence on the part of the plaintiff; if so, what? A. No.

"Damages, $1,500."

Upon these findings judgment was entered for the plaintiff for $1,500 and costs; against which the defendant appeals.

Upon the argument, the plaintiff's counsel conceded that there was no evidence to support the finding in respect of the cogs not being sufficiently guarded, but submitted that the plaintiff was entitled to retain the judgment upon the other findings.

There is sufficient evidence to support the finding as to the negligence of the engineer in not giving sufficient warning. The only question that remains is as to whether or not the case falls within sec. 3, sub-sec. 5, of the Workmen's Compensation for Injuries Act, R.S.O. 1897 ch. 160, the argument being that the engineer was not a person who had "charge or control of a locomotive, engine, machine, or train upon a railway."

In Murphy v. Wilson (1883), 52 L.J. Q.B. 524, it was held that "a steam crane fixed on a trolley and propelled by steam along a set of rails, when it is desired to move it, is not a "locomotive engine" within the Employers' Liability Act (1880), sec. 1, sub-sec. 5."

Sub-section 5 varies from the corresponding section in the English Act, as the word "machine" is not found in the English Act; and in the latter Act there is no comma between the words "locomotive" and "engine," as in the Ontario Act. As to the effect of the punctuation, see Barrow v. Wadkin, 24 Beav. 327. The question of punctuation may not be material here, owing to the introduction of the word "machine" in the Ontario Act.

As pointed out in McLaughlin v. Ontario Iron and Steel Co., 20 O.L.R. 335, the introduction of the word "machine"