

4. What instrumentalities are covered by the terms "ways," etc.—

The words used to designate the instrumentalities for the defects of which the master is made responsible are not precisely the same in the statutes now under discussion. In all of them the terms "ways, works, and machinery" are found. But the expression "plant," which occurs in the English Act, as well as in those of the various British Colonies and of Alabama, is omitted in the statutes of Massachusetts and Colorado. The list of instrumentalities enumerated in the English Act is enlarged in the Ontario Act by the addition of the words "buildings and premises" and in the Indiana Act by the addition of the word "tools." That these variations of phraseology imply corresponding differences in the total extent of the master's liability cannot be affirmed in view of the decisions as they stand, though possibly some case may hereafter arise in which they may be found material.

(a) *Two or more descriptive terms used in combination.*—In the cases where the court in affirming or denying the defendant's liability has coupled together two or more of the instrumentalities specified in the statute under review, it is impossible to say with certainty to which designation it was intended to refer the instrumentality which caused the injury (a).

(a) A defect in the "ways, works, machinery or plant," enumerated in the Alabama statute, have been held to exist where the supply-pipe of a water-tank extended over a railroad track so as to knock a brakeman off the top of a freight car. *East Tennessee V. & G.R. Co. v. Thompson* (1891) 94 Ala. 636, 10 So. 280. In an Alabama case it has been held that a rope used for lowering timber in the construction of a trestle along a railroad track, by means of which heavy timbers are put into their places, is, in no sense, a part of the ways, works, machinery, or plant of a railroad company. *Southern Ry. Co. v. Moore* (1901) 29 So. 659. The court seems to have assumed that the authority of the two cases cited in sub-s. (d), *infra*, declaring such an appliance not to be "machinery," was conclusive against the right of the servant to maintain the action. But there is no apparent reason why the rope in question should not be regarded as a part of the "plant." The shorter formula "ways, works and machinery," which occurs in the Massachusetts statute, has been construed in several cases. It includes a truck used by a railroad company as a part of the appliances of the repair shop, consisting of axles, wheels and a frame, all fastened together and fitted to the tracks. *Gunn v. New York N. H. & H. R. Co.* (1898) 171 Mass. 417; 50 N.E. 1031. A temporary staging erected by the side of a woodpile, to enable the workmen to place wood thereon and pile it higher, and which is taken down and put up from time to time in different places and intended to be used from four days to a week at a time in each place, is a part of the owner's ways, works and machinery while in use at a particular place. *Prendible v. Connecticut River Mfg. Co.* (1893) 160 Mass. 131; 35 N.E. 675. [Held to be competent for the jury to find this]. A temporary derrick at a stone yard, erected to move stones from cars to where stonecutters, who had nothing to do with setting it up, could use them, is a part of the "ways, works and machinery" connected with the yard. *McMahon v. McHale* (1899) 54 N.E. 854, 174 Mass. 320. [Considered to be a part of the fitting of the stone yard rather than an appliance to be put together and set up and moved from place to place by the workmen who were