the cause of the injury amounted to a breach of a duty imposed on the person answering this description (*d*).

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duties imposed by his employment, when the injury was inflicted. *Woodward Iron Co.* v. *Herndon* (1896) 114 Ala. 191, 21 So. 430. A complaint is good, where it states that the engineer, while in the service of the company in charge of a locomotive negligently injured the plaintiff, at a time when both were acting in the line of duty as employés of the company. *Pittsburgh, C.C. & St. L.R. Co.* v. *Montgomery* (1898) 152 Ind. 1, 49 N.E. 582.

(*d*) Evidence that a trackman was run down by a train and that the engineer did not whistle, as the rules required him to do when passing trackmen, is sufficient to require the submission of the question of the master's negligence to the jury. *Barker* v. *London &c. R. Co.* (1891) 8 Times L.R. 31. The blowing of a whistle by the engineer of a railroad train 50 yards or more before reaching a place where the track is obscured by dense smoke for 250 or 300 yards is not, as matter of law, a sufficient exercise of care as to other employés who may be coming on the track in a hand-car from the opposite direction. *Woodward Iron Co.* v. *Herndon* (1896) 114 Ala. 191, 21 So. 430. For an engineer to run a railway train at a rapid rate of speed at a place where the statute does not regulate and prescribe the rate is not negligence per se. Whether or not such running is negligence, so as to render the company liable for the death of a brakeman who fell from the top of the train, depends upon the particular conditions and circumstances. *Perdue* v. *Louisville & N.R. Co.* (1893) 100 Ala. 535, 14 So. 366. Evidence that the plaintiff, a switchman, was struck, while walking close to a track, by an engine which was moving at an excessive rate of speed and without sounding the bell, will justify a verdict against the company. *Canada Southern R. Co.* v. *Jackson* (1890) 17 Can. S.C 316. It is not error to admit in evidence a rule from a railroad company's book of rules providing that "a lamp swung across the track is the signal to stop," where the issue involved is whether the engineer was negligent in failing to perceive upon the track an emyloyé who had fallen down and became unconscious by reason of sickness. *Helton* v. *Alabama Midland R. Co.* (1893) 97 Ala. 275, 12 So. 276. In an action brought in Kentucky for injuries received in Alabama, recovery may be had for the killing of a railroad employé by the negligence of those in charge of a locomotive, although the negligence was neither "gross" nor "wilful," as it must be to make the action sustainable in the former State. *Louisville & N.R. Co.* v. *Graham* (1896) 98 Ky. 688, 34 S.W. 229. A railroad engineer is not negligent towards a switchman on a switch engine, so as to charge the company with liability for injuries to the latter, in running by an oil box, near the track, but far enough away to permit the engine to pass safely, unless he knows or has reason to believe that the switchman is in such a position that he may be injured in passing such box. *Louisville & N.R. Co.* v. *Bouldin* (1895) 110 Ala. 185, 20 So. 325. An engineer who propels a train with such force and violence against standing cars as to injure a brakeman attempting to make a coupling between such cars and another car on the other side thereof is guilty of negligence, although he may not have known that the brakeman was between the cars. *Alabama Midland R. Co.* v. *McDonald* (1895) 112 Ala. 216, 20 So. 472. Whether a "running" or "flying" switch is or is not to be regarded as negligence per se, a railway company cannot successfully assail the propriety of a verdict which finds that it is not negligence to switch cars at a speed of eight or ten miles an hour on to a repair track. *Louisville & N.R. Co.* v. *Davis* (1890) 91 Ala. 487, 8 So. 552. Compare *Devine* v. *Boston & A.R. Co.* (1893) 159 Mass. 348, 34 N.E. 539, where one of the alternative theories suggested by the evidence was that cars had been "kicked" at too great a speed by the engineer, and the case was held to be one for the jury. The conduct of an engineer in applying the airbrake and bringing the train to a sudden stop without giving any signal or warning does not necessarily constitute actionable negligence on the part of the company as to an employé injured by being thrown off from a flat car by such stoppage. *Cooper* v. *Wabash R. Co.* (1894) 11 Ind. App. 211, 38 N.E. 823. No recovery can be had for the death of a fireman caused by an explosion due to the want of