

In a treatise of high authority it is said to be necessary, under the English rules of practice, that, in every case, except where the negligence relied on is the employer's personal negligence alone, the particulars of the claim should give both the name and the description of the persons in the employer's service who are alleged to have been negligent (g). And, although the authorities are somewhat conflicting, this seems to be the accepted doctrine of the American courts also (h).

22. Sufficiency of the plea.—A plea stating that, if there was any fault, it was that of a fellow-servant has been held sufficiently specific to go to trial upon (a).

23. Burden of proof.—(a) *Generally.*—The authorities cited in the earlier articles of this series all proceed upon the assumption that the plaintiff has the onus of proving (1) that there was a breach of duty in the premises as regards himself; (2) that such breach of duty was committed by some person for whose acts and omissions the master is made responsible by the statutes, and (3) that such breach of duty was the efficient cause of his injury. A few cases are cited in the subjoined note in which there has been an explicit affirmation of one or other of these propositions; but

(g) Ruegg on Empl. Liab. p. 122. In the appendix of this work, the learned author gives a number of Forms of Particulars of Demand which have been actually used in statutory suits.

(h) In one Alabama case it was held that a complaint was not demurrable for the reason that it does not designate the name or position of the person so intrusted. *McNamara v. Logan* (1893) 100 Ala. 187, 14 So. 175. Defendant's counsel cited *Mobile &c. v. George* (1891) 94 Ala. 199, where it was suggested, *arguendo*, but not expressly determined that good pleading required the name of the person to whose orders the employé is bound to conform, to be stated, so as to give the defendant notice thereof, and present an issuable fact whether such person was in the service or employment of defendant, or whether plaintiff was bound to conform to his orders. This case was distinguished by the court on the ground that, even supposing that the suggestion embodied the proper rule as to pleading under the subsection dealt with, viz. that relating to conformity to orders, it did not follow that the same strictness should be required in a declaration alleging an injury from defects.

But in a later case, it was laid down, on the authority of the very decision so distinguished, that the name of the person "intrusted with the duty, &c." must be averred, or the plaintiff must allege that he was ignorant thereof. *Louisville &c. R. Co. v. Bouldin* (1895) 110 Ala. 185. To the same effect is *Central of Georgia &c. R. Co. v. Lamb* (Ala. 1899), 26 So. 969.

The ruling in *McNamara v. Logan*, supra, was, strangely enough, not referred to in either of these later cases.

A railroad employé cannot recover from the company, under a count of the complaint alleging that the name of the person guilty of the alleged negligence was unknown to him, where such allegation is disproved by the undisputed evidence. *Alabama G.S.R. Co. v. Davis* (1898) 24 So. 862, 119 Ala. 572.

(a) *McNeil v. Kinneil, &c. Co.* (1898) 25 Sc. Sess. Cas. (4th Ser.) 962.