

A general averment of the negligence of the person entrusted with superintendence is enough. An averment of specific negligence is not requisite (e).

A complaint alleging injuries from a defective system is sufficiently specific without a distinct averment to shew how and in what manner this system was directly authorized by the defendant (f).

the duties discharged by the superior servant, and that he was not ordinarily engaged in manual labour. *Moore v. Ross* (1890) 17 Sc. Sess. Cas. (4th Ser.) 706.

A count framed under the provision as to injuries caused by obedience to rules, is bad unless it contains an allegation that the injury resulted from some impropriety or defect in the rules, &c. *Davies v. Dyer* (1890) 11 New So. Wales L.R. (L.) 431.

An averment is a count of a complaint in an action by a brakemen against a railroad company that he was shaken or jolted from the car and his injuries were caused by the negligence of the engineer in allowing his car and engine to be suddenly and violently shocked,—is a sufficient allegation of negligence. *Highland Ave. & B.R. Co. v. Miller* (1898) 120 Ala. 535, 24 So. 955. In the same case it was held that the complaint in such an action need not aver that the shock or jerk which caused him to fall from the car was of more than usual violence or greater than was ordinarily incident to the starting and movement of cars, where in the first count it is charged to have been caused by reason of a defect in the engine, and in the third count by the negligence of the engineer.

In an action to recover for the negligence of a person "in charge of an engine," it has been held sufficient to aver that the injuries were inflicted "by reason of the defendants' negligence," the position being taken that for the purpose of pleading, there is no distinction between the "negligence of a railway company" and the negligence of an "engineer." *Indianapolis Union Ry. Co. v. Houlihan* (Ind. 1901) 60 N.E. 943.

A complaint in an action to recover for an injury alleged to be due to an employé in "charge of a car, . . . upon a railway," is bad, if it fails to aver that such employé was in charge of the car in question, and that it was on a railway. *Central, &c., R. Co. v. Lamb* (Ala. 1899) 26 So. 969. In *Mobile & O.R. Co. v. George* (1891) 94 Ala. 199, it was held that an averment that "defendant negligently used in its business a steam engine or locomotive which was out of order, so that it could not be stopped promptly," could not be regarded as the equivalent of the statutory language. The court said: "The engine may have been negligently used in the business, and yet the defect complained of not having arisen from, or been discovered and remedied owing to the negligence of defendant, or of some person intrusted with the duty of seeing that the works and machinery were in proper condition. The adverb 'negligently,' as employed in the count, qualifies the manner in which the engine was used, and, fairly construed, does not relate to the origin of the defect, or to the failure to discover and remedy it; and even when taken in connection with the subsequent averment, that plaintiff was injured on account of 'the negligently defective condition of the engine,' is not the equivalent of an averment that the defect arose from, or was not discovered and remedied, owing to the negligence of defendant, or of any person in its employment."

To the same effect, see *Central of Georgia R. Co. v. Lamb* (Ala. 1899) 26 So. 969, where a complaint for injuries caused by being struck by a hand-car which was not "properly fixed so as to control it," was held demurrable for the omission of the same allegation.

(e) *Bessemer &c. Co. v. Campbell* (1898) 121 Ala. 50, 25 So. 793, overruling a demurrer to a complaint which averred that the death of plaintiff's intestate was caused by the negligence of a "bank-boss" in failing to take proper precautions to prevent a fire which broke out in a mine from suffocating him.

(f) *Henderson v. Watson* (1892) 19 Sc. Sess. Cas. (4th Ser.) 954.