particular persons for whose fault the employer is made responsible by the statutes (*c*).

As regards the sufficiency of the complaint in respect to its statement of the breach of duty relied upon as a cause of action, the general rule is that it is good against a demurrer, when, and only when, it follows, either literally or substantially, the words of the particular provision with reference to which the allegations were framed (*d*).

(*c*) A complaint by a section hand for injuries caused by being struck by a hand car, "being operated recklessly, wantonly, and with gross negligence by defendant or its agent at that time," is bad, as being merely equivalent to a complaint that the injury was caused by a fellow-servant of the plaintiff. *Central of Georgia R. Co.* v. *Lamb* (Ala. 1899) 26 So. 969. See also next note.

(*d*) A complaint in an action to recover for an injury caused by defects in the ways, works, machinery, or plant of the defendant is demurrable, where it does not indicate by name or identify in some other way the appliance or appliances on the defective quality of which the plaintiff relies. *Louisville &c. R. Co.* v. *Jones* (1901) Ala. 30 So. 586; or where the defect to which the alleged injury was due is not specified. *Whatley* v. *Zenida Coal Co.* (1899) 122 Ala. 118, 26 So. 124.

A complaint which alleges that the injury was caused by "defects &c.," and concludes with "viz., the said hand car was out of plumb," and "was so improperly adjusted that it was likely to jump or be thrown from the track," has been held sufficiently specific, as against a demurrer, in its description of the defects. *Southern R. Co.* v. *Guyton* (1898) 122 Ala. 231, 25 So. 54.

A complaint is sufficient to take the case to the jury, when it alleges in substance that the injury was caused by the negligence of the defendants, or of their foreman, specially averred to be a person to whose orders the injured servant was bound to conform, in causing such servant to work in a drain from seven to ten feet in depth without sufficiently propping the sides, the result being that the sides collapsed and fell upon him. *McColl* v. *Eadie* (1891) 18 Sc. Sess. Cas (4th Ser.) 507.

An allegation that the injury occurred on the defendant's road on which it was at the time operating hand cars, and on one of defendant's hand cars, on which intestate, as an employé of defendant, was at the time engaged in the duties of his employment, and that one H. was the foreman in charge of said car, are sufficient to shew that H. was at the time the foreman of the defendant *Highland Ave. & B. R. R. Co.* v. *Dusenberry* (1891) 98 Ala. 240.

A complaint is not demurrable which shews that the negligent servant managed the defendant's estates while he was absent, although it does not aver in terms that he was not ordinarily engaged in manual labour. *McLeod* v. *Pirie* (1893) 20 Sc. Sess. Cas. (4th Ser.) 381.

It is error to sustain a demurrer to a complaint the averments of which substantially follow the language of the statute, but it is error without injury, if an amendment which specifies the particular facts relied upon as indicative of negligence, but which imposes no additional burden on the plaintiff, is filed and a demurrer to it overruled. *Loughran* v. *Brewer* (1896) 113 Ala. 509.

Averments that a person named was in the employment of the defendant, that he had superintendence entrusted to him, that he was negligent while in the exercise of such superintendence, and that he was the defendant's superintendent, clearly shew that the superintendence which he had was entrusted to him by the defendant. *Bessemer &c. Co.* v. *Campbell* (1898) 121 Ala. 50, 25 So. 793.

A count in an action for injuries caused by "defects" is bad, unless it contains an allegation of negligence either in the employer or someone entrusted, &c. *Davies* v. *Dyer* (1897) 11 New So. Wales L.R. (L.) 431.

The complaint in an action for injuries caused by the negligence of an employé exercising superintendence must contain a distinct averment shewing