

SIMPSON *v.* LA PLATA MINING & SMELTING
CO.

Circuit Court, D. Colorado.

July 2, 1883.

NEGLIGENCE—PERSONAL INJURY TO MINER.

A complaint in an action to recover damages for personal injuries caused by the negligence of an employer to an employe, should clearly slate facts sufficient to make it appear to the court what the act of negligence that caused the injury was.

At Law.

D. J. Haynes, for plaintiff.

Markham, Patterson & Thomas, for defendant.

HALLETT, J., (*orally.*) In the case of William Simpson against the La Plata Mining & Smelting Company, an action to recover damages for injuries received while in the service of the company, the plaintiff avers that the defendant, through its superintendent, brought into the smelting-house certain tanks or jackets, and stacked them up, or placed them on end, near where the plaintiff was required to pass, in the performance of his usual duties, in wheeling out slag, and that while he was passing these tanks some one of them fell upon him and injured him. He has not described with particularity the position of the tanks, and what neglect there was in the superintendent in placing them where they were. He states briefly that the tanks were placed there, and that one of them fell upon him. I think that he should give in detail the position of the tanks, so that it may be seen what the act of negligence was on the part of the superintendent; how the tanks were placed, as evincing carelessness in the superintendent; and in what way they were left so as to be a source of danger to those who should pass by them. Certainly it is not

enough to aver that the tanks were put there, and that one of them fell down. It may have been some extraordinary circumstance that caused the falling. If they were so placed that it might be reasonably expected they would topple over, he ought to state that fact—describe the position so clearly that we may see from the complaint that the superintendent was careless in leaving them in the way in which they were left.

Demurrer to complaint sustained, with leave to plaintiff to amend in 30 days.

This volume of American Law was transcribed for use
on the Internet
through a contribution from [Steven Altman](#).