

matters. The decision that no jurisdiction remains comes from this Court, and it is proper that it should carry out its decision without unnecessary circuity by directing it to be enforced.

Decree reversed.

Bill to be dismissed for want of jurisdiction.

ATLANTIC COAST LINE RAILROAD COMPANY *v.*
SOUTHWELL, ADMINISTRATRIX.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF
NORTH CAROLINA.

No. 41. Argued October 18, 1927.—Decided October 31, 1927.

Assuming that a railroad company could be held liable under the Federal Employers Liability Act for the wilful killing of one of its employees by another, if it resulted from the negligent failure of their superior officer to foresee the danger and prevent it, the charge of such negligence is not borne out by the evidence in this case. P. 65.

191 N. C. 153, reversed.

CERTIORARI, 271 U. S. 654, to a judgment of the Supreme Court of North Carolina sustaining a recovery by the widow and administratrix of a deceased employee from the Railroad in an action based on the Federal Employers Liability Act.

Mr. Thomas W. Davis, with whom *Messrs. J. O. Carr* and *V. E. Phelps* were on the brief, for petitioner.

Mr. J. Bayard Clark, with whom *Messrs. Robert H. Dye, L. Clayton Grant*, and *C. D. Weeks* were on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action brought against the petitioner by the administratrix and widow of one of the petitioner's em-

ployees, for the death of her husband by a murder which it is alleged that the petitioner "with gross negligence wilfully and wantonly caused, permitted and allowed." In view of the decision in *Davis v. Green*, 260 U. S. 349, the plaintiff did not attempt to hold the petitioner liable as principal in the act, but relied upon its failure to prevent the death. The Supreme Court of North Carolina upheld a judgment for the plaintiff. 191 N. C. 153. It is admitted that the action is based upon the Federal Employers Liability Act of April 22, 1908, c. 149, § 2; 35 Stat. 65, and the question is whether there was any evidence that the death resulted in whole or in part from the negligence of any officer of the petitioning road, under the law as applied by this Court. *New Orleans & Northeastern R. R. Co. v. Harris*, 247 U. S. 367, 371.

It would be straining the language of the act somewhat to say in any case that a wilful homicide "resulted" from the failure of some superior officer to foresee the danger and to prevent it. In this case at all events we are of opinion that there was no evidence that warrants such a judgment. It is not necessary to state the facts in detail. Those mainly relied upon are that Fonvielle, the general yard master, knew that Southwell, the man who was killed, on previous occasions had used threatening language to Dallas, who shot Southwell; that Fonvielle knew or ought to have known that they were likely to meet when they did; that Fonvielle was with Dallas, his subordinate, just before that moment and that Dallas said to him "Cap, all I want to do is to ask Southwell to lay off of me and let me alone," and that Fonville said that he must not see Southwell, that if he saw him and talked to him it might bring about unpleasant consequences; that Fonvielle left Dallas and after having gone a short distance saw him and Southwell approaching each other and had taken a few steps towards them with a view to separate them in case of an altercation, but that before he had

time to reach them the shot was fired. Fonvielle knew that Dallas had a pistol, but there was a strike at the time; Dallas was a special policeman and had a right to carry it, and not unnaturally did. The only sinister designs, of which there is any evidence, were of Southwell against Dallas, unless Dallas' remark just before the shooting be taken to foreshadow the event, which it certainly did not seem to until after the event had happened. It appears to us extravagant to hold the petitioner liable in a case like this. See *St. Louis-San Francisco Ry. Co. v. Mills*, 271 U. S. 344.

Judgment reversed.

BALTIMORE & OHIO RAILROAD COMPANY *v.*
GOODMAN, ADMINISTRATRIX.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

No. 58. Argued October 20, 1927.—Decided October 31, 1927.

1. One who drives upon a railroad track relying upon not having heard a train or any signal and taking no further precaution, does so at his own risk. If he can not otherwise be sure whether a train is dangerously near, the driver must stop and get out of his vehicle before attempting to cross. P. 69.
2. In an action for negligence the question of due care is not left to the jury when resolved by a clear standard of conduct which should be laid down by the courts. P. 70.

10 F. (2d) 58, reversed.

CERTIORARI, 271 U. S. 658, to a judgment of the Circuit Court of Appeals sustaining a recovery for death caused by alleged negligence of the Railroad, in an action by the widow and administratrix of the deceased. The action was removed from an Ohio state court on the ground of diversity of citizenship.