

nance, cure and wages,—to which it made no reference. And we conclude that the alternative measures of relief accorded him, between which he is given an election, are merely the right under the new rule to recover compensatory damages for injuries caused by negligence and the right under the old rules to recover indemnity for injuries occasioned by unseaworthiness; and that no election is required between the right to recover compensatory damages for a tortious injury under the new rule and the contractual right to maintenance, cure and wages under the old rules—the latter being a cumulative right in no sense inconsistent with, or an alternative of, the right to recover compensatory damages.

It results that there was no error in the rulings as to the affirmative defense interposed by the defendant. And the judgment is

Affirmed.

MR. JUSTICE HOLMES concurs in the result.

UNADILLA VALLEY RAILWAY COMPANY *v.* CALDINE, ADMINISTRATOR.

CERTIORARI TO THE COURT OF APPEALS OF NEW YORK.

No. 73. Argued November 27, 1928.—Decided December 10, 1928.

A train arrived at a station where, by the express, printed rule of the railroad company, it must be held to await the passing of another train moving upon the same track in the opposite direction. The station agent had been informed by telephone that the other train was coming, and there was some evidence that he told the motorman of the first train, but he did not tell the conductor. Disobeying the rule, the conductor ordered the motorman to proceed and, the latter obeying, a collision resulted by which the conductor was killed. In an action brought by his administrator against the railroad company under the Employers' Liability Act,

held that the plaintiff could not be heard to say that the accident was due in part to the negligence of the motorman in obeying the conductor's command; nor could it be attributed in part to the station master's neglect to warn the conductor. P. 141.

246 N. Y. 365, reversed.

CERTIORARI, 277 U. S. 578, to a judgment of the Court of Appeals of New York, which reversed a contrary decision of the Supreme Court, Appellate Division, and affirmed a judgment for damages recovered at the Trial Term by the present respondent in an action under the Federal Employers' Liability Act. See 218 App. Div. 5; 217 N. Y. S. 705.

Mr. H. Prescott Gatley, with whom *Messrs. Benjamin S. Minor, Arthur P. Drury*, and *Wirt Howe* were on the brief, for petitioner.

Mr. David F. Lee, with whom *Mr. Thomas B. Kattell* was on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

Harold E. Caldine, an employee on the petitioner's railroad, was killed in a collision and his administrator brought this action. The case is within the Federal Employers' Liability Act and the only question before us is whether the death resulted in whole or in part from the negligence of any of the employees of the carrier, within the meaning of the Act. Act of April 22, 1908, c. 149, § 1; 35 Stat. 65. Code, Title 45, § 51.

Caldine was conductor of train No. 2 upon a single track that passed through Bridgewater. He had printed orders that his train was to pass train No. 15 in Bridgewater yard, and that train No. 15 was to take a siding there to allow No. 2 to pass. The order was permanent unless countermanded in writing by the superintendent. Its purpose to prevent a collision was obvious and there was no excuse for not obeying it. But this time, after

reaching Bridgewater, instead of waiting there as his orders required him to do, Caldine directed his train to go on. The consequence was that at a short distance beyond the proper stopping place his train ran into train No. 15 rightly coming the other way, and he was killed. The facts relied upon to show that the collision was due in part to the negligence of other employees are these. The conductor of No. 15 generally, or when he was a little late in arriving at a station about two miles from Bridgewater, would telephone to the station agent at Bridgewater that he was coming. He did so on the day of the collision. The station agent who received the message testified that he told the motorman of No. 2, but the motorman denied it. At all events the deceased, the conductor of No. 2, did not receive the notice. It is argued that the failure to inform the conductor, and the act of the motorman in obeying the conductor's order to start, if, as the jury might have found, he knew that train No. 15 was on the way, were negligence to which the injury was due at least in part. It is said that the motorman should have refused to obey the conductor and should have conformed to the rule, and that his act in physically starting the car was even more immediately connected with the collision than the order of the deceased.

The phrase of the statute, "resulting in whole or in part," admits of some latitude of interpretation and is likely to be given somewhat different meanings by different readers. Certainly the relation between the parties is to be taken into account. It seems to us that Caldine, or one who stands in his shoes, is not entitled as against the Railroad Company that employed him to say that the collision was due to anyone but himself. He was in command. He expected to be obeyed, and he was obeyed as mechanically as if his pulling the bell had itself started the train. In our opinion he cannot be heard to say that his subordinate ought not to have done what he ordered.

He cannot hold the Company liable for a disaster that followed disobedience of a rule intended to prevent it, when the disobedience was brought about and intended to be brought about by his own acts. See *Davis v. Kennedy*, 266 U. S. 147.

Still considering the case as between the petitioner and Caldine, it seems to us even less possible to say that the collision resulted in part from the failure to inform Caldine of the telephone from train No. 15. A failure to stop a man from doing what he knows that he ought not to do, hardly can be called a cause of his act. Caldine had a plain duty and he knew it. The message would only have given him another motive for obeying the rule that he was bound to obey. There was some intimation in the argument for the respondent that the rule had been abrogated. The Courts below assumed that it was in force and we see no reason for doubting that their assumption was correct.

We have dealt with the difficulties that led the Court of Appeals to a different conclusion and are of opinion that the judgment must be reversed.

Judgment reversed.

NORTHERN COAL & DOCK COMPANY ET AL. v.
STRAND ET AL.

CERTIORARI TO THE SUPREME COURT OF WISCONSIN.

No. 41. Argued October 23, 1928.—Decided December 10, 1928.

1. The work of a stevedore whilst engaged in unloading a vessel at dock is maritime in character, although it consume but part of his time under his employment, the remainder being devoted to work ashore. P. 144.
2. A stevedore having been killed while at work on a vessel at dock unloading cargo for the consignee, the cause of action against the