

Opinion of the Court.

ANDERSON, ADMINISTRATRIX, v. ATCHISON,  
TOPEKA & SANTA FE RAILWAY CO.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF CALIFORNIA.

No. 620. Decided April 26, 1948.

In a suit against a railroad in a state court under the Federal Employers' Liability Act to recover damages for the wrongful death of a conductor, a complaint alleging that he disappeared from a moving train in very cold weather at a time when his duty required his presence on the rear vestibule, that his absence was discovered by other trainmen, that they negligently failed to make prompt efforts to have him rescued, and that he died from the resulting exposure, *held* sufficient to support a judgment for plaintiff, if a jury should find under appropriate instructions that the death resulted "in whole or in part" from failure of the railroad's agents to do what "a reasonable and prudent man would ordinarily have done under the circumstances." Pp. 821-823.

31 Cal. 2d 117, 187 P. 2d 729, reversed.

In a suit against a railroad under the Federal Employers' Liability Act to recover damages for the alleged wrongful death of an employee, a state court held that the allegations of the complaint, even if true, were insufficient to support a judgment for plaintiff, and entered judgment for defendant. The state supreme court affirmed. 31 Cal. 2d 117, 187 P. 2d 729. *Certiorari granted, judgment reversed, and cause remanded*, p. 823.

*Clifton Hildebrand* filed a brief for petitioner.

*Frank B. Belcher* filed a brief for respondent.

PER CURIAM.

Petitioner, as administratrix, filed a complaint in a California state court under the Federal Employers' Liability Act, 45 U. S. C. § 51, to recover damages for the alleged

wrongful death of one L. C. Bristow. The trial court held that the allegations of the complaint, even if true, were totally insufficient to support a judgment for plaintiff, and entered judgment for the defendant. The State Supreme Court, two judges dissenting, affirmed on the same ground. 31 Cal. 2d 117, 187 P. 2d 729.<sup>1</sup>

The complaint's allegations and the inferences fairly drawn from them in summary are as follows: November 24, 1942, the deceased was a conductor on respondent's passenger train westbound from Amarillo, Texas, to Belen, New Mexico. At about 5:30 a. m., while the train was moving approximately opposite defendant's station at Gallaher, New Mexico, decedent fell from the train's rear vestibule where it was necessary for him to be in order properly to perform the duty in which he was then engaged, "checking a certain train order signal at said station" of Gallaher. Decedent's fall resulted in injuries which made it impossible for him to secure help by his own efforts. At the next station where the train stopped, St. Vrain, respondent's employees "made note of the absence of decedent," but passed by it and three other station stops, Melrose, Taiban, and Fort Sumner, without taking any steps of any kind to ascertain the whereabouts of decedent or what had happened to him. Finally, however, at Yeso, New Mexico, the regular train conductor directed respondent's employees there to wire other employees along the route the train had traversed to ascertain decedent's whereabouts. The Yeso employees "carelessly and negligently" failed to transmit any message "for an unnecessarily long period of time," and

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<sup>1</sup> The sufficiency of the complaint to state a cause of action was raised under California procedure by an objection of respondent to hearing evidence. Such a procedure, the State Supreme Court held, is in the nature of a general demurrer under which allegations of the complaint are deemed true.

when the message was finally received by other of respondent's employees at Clovis, New Mexico, they "carelessly and negligently failed to institute and pursue a search for decedent within a reasonable period of time." When search was ultimately made decedent was found lying alongside the track adjacent to the point where he had fallen while performing his duties on the rear vestibule opposite the station at Gallaher. Three days later decedent died, due to exposure to the very cold weather from the time he fell until he was finally rescued.

It thus appears that we have a complaint which charges that a conductor disappears from a moving train in bitter cold weather at a time when his duty requires him to be on the rear vestibule, his absence is discovered, and efforts of any kind to ascertain and save him from his probable peril are not promptly made by other train employees, the only persons likely to know of his disappearance and the probable dangers incident to it. We are unable to agree that had petitioner been permitted to introduce all evidence relevant under her allegations, the facts would have revealed a situation as to which a jury under appropriate instructions could not have found that decedent's exposure and consequent death were due "in whole or in part" to failure of respondent's agents to do what "a reasonable and prudent man would ordinarily have done under the circumstances of the situation." *Tiller v. Atlantic Coast Line R. Co.*, 318 U. S. 54, 67. See also *Jamison v. Encarnacion*, 281 U. S. 635, 640, 641; *Bailey v. Central Vermont R. Co.*, 319 U. S. 350, 353; *Blair v. Baltimore & O. R. Co.*, 323 U. S. 600, 604; *Lillie v. Thompson*, 332 U. S. 459, 461-462.

Certiorari is granted, the judgment is reversed, and the cause is remanded to the State Supreme Court for proceedings not inconsistent with this opinion.

*Reversed.*

The first part of the history of the United States of America is the history of the thirteen original states. These states were the result of the British colonial system in North America. The British colonies were established in the seventeenth century, and they grew in number and size until the American Revolution in 1776. The thirteen original states were: New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. These states were the foundation of the United States of America.

The second part of the history of the United States of America is the history of the expansion of the United States. The United States expanded westward from the Atlantic coast to the Pacific coast. This expansion was the result of the Louisiana Purchase in 1803, the Texas Annexation in 1845, and the Oregon Territory in 1846. The United States also expanded southward into the Gulf of Mexico and the Caribbean Sea. The expansion of the United States was the result of the American Revolution, the Louisiana Purchase, the Texas Annexation, and the Oregon Territory.

The third part of the history of the United States of America is the history of the American Civil War. The American Civil War was fought between the Union and the Confederacy from 1861 to 1865. The Union was the United States of America, and the Confederacy was the Confederate States of America. The American Civil War was the result of the American Revolution, the Louisiana Purchase, the Texas Annexation, and the Oregon Territory. The American Civil War was the most important event in the history of the United States of America.

The fourth part of the history of the United States of America is the history of the Reconstruction era. The Reconstruction era was the period of time from 1865 to 1877, after the American Civil War. The Reconstruction era was the result of the American Civil War. The Reconstruction era was the most important event in the history of the United States of America.

The fifth part of the history of the United States of America is the history of the Progressive era. The Progressive era was the period of time from 1890 to 1920. The Progressive era was the result of the Reconstruction era. The Progressive era was the most important event in the history of the United States of America.

The sixth part of the history of the United States of America is the history of the World War era. The World War era was the period of time from 1914 to 1945. The World War era was the result of the Progressive era. The World War era was the most important event in the history of the United States of America.

The seventh part of the history of the United States of America is the history of the Cold War era. The Cold War era was the period of time from 1945 to 1991. The Cold War era was the result of the World War era. The Cold War era was the most important event in the history of the United States of America.

The eighth part of the history of the United States of America is the history of the present era. The present era is the period of time from 1991 to the present. The present era is the result of the Cold War era. The present era is the most important event in the history of the United States of America.