

RESPONSIBILITY OF CORPORATION FOR MALICIOUS ACTS OF EMPLOYEES.

The Supreme Court of North Carolina has lately considered the question of the liability of a railroad company for an employee shooting another under circumstances that appeared purely wanton and malicious and when no purpose in the interest of the company seemed to be subserved. These were the facts. Plaintiff attempted to climb upon the company's box car attached to a moving freight train so as to steal a ride. A flagman on top of the car told plaintiff to come up to him, but plaintiff started to run away and he had not gotten more than eight feet away when the flagman shot him twice. The jury found in answer to special interrogatory that the flagman was not acting within the scope of his employment, but their general verdict was for plaintiff. The majority of the court held that this issue was properly submitted to the court and judgment was ordered entered for defendant. *Jones v. Seaboard A. L. H. Co.*, 64 S.E. 266. The dissent by Clark, C.J., takes the position that the undisputed facts shew there was no basis for this finding by the jury. He says: "The flagman was in the discharge of his duty in discovering the plaintiff, and could not put off that character and without change of position assume another while the plaintiff was running eight feet, which a calculation shews was less than half a second. He could not be an employee of the railroad when he frightened the man and ceased to be an employee within the one hundred and twentieth part of a minute while the frightened man was running eight feet. As the flagman fired and struck the fleeing man twice before he could run eight feet, the pistol must have been drawn and presented before the plaintiff turned to fly." We do not know if this argumentation presents such a shewing of physical impossibility as to take the matter away from the jury upon the question as to whether the flagman was acting within the scope of his duty. The dissent is more nearly based, as we view the matter on the course of judicial decision, instanced and dis-