

ELSASS *v.* SOUTHWESTERN TRANSPORTATION COMPANY.

Opinion delivered May 9, 1932.

AUTOMOBILE—KILLING OF DOG—NEGLIGENCE.—Where a dog was killed by a motor bus at a time when the driver, in the exercise of due care, did not see the dog and could not reasonably have anticipated that it would dart suddenly ahead of the bus, the court properly directed a verdict for the defendants.

Appeal from Clay Circuit Court, Eastern District;
Neil Killough, Judge; affirmed.

Holifield & Upton, for appellant.

Carter, Jones & Turney and *Lamb & Adams*, for appellee.

HART, C. J. W. H. Elsass prosecutes this appeal to reverse a judgment on a directed verdict against him in favor of the Southwestern Transportation Company and

do. He could not see on the ground near the bus on account of the size of his motor. The dog must have darted suddenly from under the wagon as the bus passed between the wagon and the cow. The wagon was only a few feet away from the side of the road.

The law of the case is stated in *Harris v. Hicks*, 143 Ark. 613, 221 S. W. 472, where it was held that, in addition to the requirements of our statute limiting the speed of motor cars and requiring the driver to stop on approaching a frightened horse, an automobile driver need exercise only ordinary care in operating his car. In the application of this settled principle of law to the facts of the instant case, we do not think the trial court erred in directing a verdict in favor of the appellees. The undisputed evidence shows that, as the driver of the bus approached the place on the highway between where the wagon with the team of horses was on one side of the road and the cow on the other, he slowed down in order to prevent an accident from the horses becoming frightened or the cow coming into the road in front of the bus. When he saw the dog, it was under the wagon, and he could not reasonably anticipate that it would dart suddenly into the road ahead of the bus.

We are of the opinion that the undisputed evidence shows that the killing of the dog was an accident, and that there was no fault on the part of the driver of the bus or on the part of the owner of it. It follows that the judgment of the trial court is correct, and it is therefore affirmed.
