

PINE BLUFF WATER & LIGHT CO. v. DERRISSEAUX.

Opinion delivered April 30, 1892.

*Negligence—Excavation in street.*

Under a special finding that defendant opened a ditch in a public street and negligently left it unguarded, and that plaintiff's cow fell into it in the night-time and was killed, plaintiff is entitled to judgment.

Appeal from Jefferson Circuit Court.

JOHN M. ELLIOTT, Judge.

*Bell & Bridges* for appellant.

The work was let to an independent contractor for whose negligence the appellant was not liable. 53 Ark. 503; 16 S. W. Rep. 9.

*N. T. White* for appellee.

The bill of exceptions does not purport to set forth all the evidence, and the presumption is that every material fact was proved. 44 Ark. 74; 54 *id.* 162. The instructions were correct. 54 Ark. 131.

COCKRILL, C. J. The court found specially that the appellant company through its employees opened a ditch in the public street, that they negligently left it unguarded, and that the appellee's cow fell into it in the night-time and was killed; and judgment was rendered for its value. As the bill of exceptions does not profess to set forth all the testimony, the only question presented by the record is, does the judgment follow from the special findings? We answer in the affirmative.

Affirm.