

## RAILWAY COMPANY v. SPARKMAN.

Opinion delivered December 8, 1894.

*Action by trustee—Evidence of title.*

In an action against a railway company for the negligent killing of a mule, plaintiff's case is not established by proof that he is trustee in a mortgage conveying the mule, where there is no proof that the mortgagor owned the mule.

Appeal from Saint Francis Circuit Court.

GRANT GREEN, JR., Judge.

*Rose, Hemingway & Rose* for appellant.

1. There is no proof of the ownership of the mule. The title was denied.

2. There is no evidence of negligence, but the proof is conclusive that the trainmen did all they could to avoid the accident. 36 Ark. 607; 37 *id.* 593; 39 *id.* 413; 40 *id.* 336; 41 *id.* 161; 48 *id.* 367; 52 *id.* 162.

*N. W. Norton* for appellee.

BATTLE, J. This action was instituted by R. H. Sparkman against the Little Rock & Memphis Railway Company to recover damages caused by the killing of a mule. The plaintiff, claiming the mule under a deed of trust executed to him by W. A. Pope to secure the payment of certain debts, alleged that a train of the defendant, through the carelessness of its servants who were employed in operating it, ran over and killed the mule. The railway company denied the negligence, and that the mule was the property of the plaintiff. Sparkman recovered judgment, and the defendant appealed.

At the trial, plaintiff introduced in evidence the deed of trust under which he claimed, and also adduced evidence to show that the mule killed was one of the two mules described in the deed; but there was no evidence

to show that Pope had any property or interest in the mule, or had possession of or exercised any ownership over it, at the time the deed of trust was executed, or at any time thereafter. In this respect the verdict of the jury was not sustained by evidence.

For the error indicated, the judgment of the circuit court is reversed, and the cause is remanded for a new trial.

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