
Railway v. Dick.

RAILWAY V. DICK.

RAILWAY COMPANIES: *Negligence: Killing stock.*

Where a railway company permits cotton-seed to accumulate on or about its track, it is under obligation to maintain reasonable care to prevent injury to stock attracted thereby. And where an animal while feeding on such seed, is killed by a train, the burden is upon the company to show that its servants used proper care to avoid the injury.

APPEAL from *Crawford* Circuit Court.

JOHN S. LITTLE, Judge.

This is an action to recover the value of a bull killed by the defendant's train. At the place where the animal was killed

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and within two or three feet of the track, there was a house used for storing cotton-seed for an oil-mill. The seed were loaded into the cars from the house by a chute, and in loading them, a considerable quantity would fall on the ground from the seed-house to the car. Cattle were attracted by the seed thus wasted, and the plaintiff's bull was feeding upon them and jumped on the track from behind the seed-house as the train approached. The judgment below was for the plaintiff, and the defendant appealed.

Sec. 5537, Mansf. Dig. is as follows:

"All railroads which are now or may be hereafter built or operated in whole or in part in this State, shall be responsible for all damages to persons and property done or caused by the running of trains in this State."

G. W. Shinn, for appellant.

This case falls within the ruling of *Ry. v. Kern*, 52 Ark.

PER CURIAM. The company having permitted cotton-seed to accumulate on or about its track, was under obligation to maintain reasonable care to prevent injury ^{Negli-}_{gence.} to stock attracted thereby. *Jones v. Nichols*, 46 Ark., 207; *Ry. v. Kirksey*, 48 Ark., 366; *Crafton v. Ry.*, 55 Mo., 580; *Page v. Ry.*, 71 N. C., 222.

The burden was upon the company to overcome the *prima facie* case of negligence made by the killing, by showing that its servants had used the degree of care indicated by the charge, to avert the injury. The proof does not show that state of case, and the judgment will be affirmed.