

KANSAS CITY SOUTHERN RAILWAY COMPANY v. EDWARDS.  
5-495 271 S. W. 2d 935

Opinion delivered October 25, 1954.

APPEAL AND ERROR—REVIEW ON APPEAL—DIRECTED VERDICT, REQUEST FOR.  
—Suit involving a night time truck-train collision wherein plaintiff testified that he slowed down and looked, offered further proof that the light on the train was not burning and that the whistle was not blown for the required distance immediately preceding the crossing. *Held*: The railroad company was not entitled to a directed verdict.

Appeal from Little River Circuit Court; *George E. Steel*, Judge; affirmed.

*Hardin, Barton, Hardin & Garner*, for appellant.

*Shaver, Tackett & Jones*, for appellee.

GEORGE ROSE SMITH, J. The appellee recovered a judgment for \$950 as property damage sustained by him in a collision between his pick-up truck and a freight train operated by the appellant. For reversal it is contended that the defendant below was entitled to a directed verdict.

This accident occurred before daylight on the morning of November 4, 1953, at the crossing in the town of Wilton. The plaintiff and his passenger testified that in approaching the tracks they slowed down, looked to see if a train was coming, and saw none. A third witness corroborates their statement that the headlight on the train which struck the truck was not burning. The defendant's engineer and fireman assert that this light was on, but they admit that the whistle was not blown continuously for a distance of eighty rods immediately preceding the crossing. Ark. Stats. 1947, § 73-716. In fact, the engineer says that he did not blow the whistle until he saw the plaintiff's truck, the train then being fifty feet from the crossing and traveling at eight or ten miles an hour. Upon this proof a jury question was presented. *St. Louis & S. F. Ry. Co. v. Stewart*, 137 Ark. 6, 207 S. W. 440; *Mo. Pac. R. Co. v. Riley*, 198 Ark. 372, 128 S. W. 2d 1005; *Mo. Pac. R. Co. v. Yandell*, 209 Ark. 569, 191 S. W. 2d 592.

Affirmed.