

KANSAS CITY SOUTHERN RAILWAY COMPANY v. BLAIR.

Opinion delivered October 29, 1906.

RAILROAD—STOCK CASE—NEGLIGENCE.—A verdict against a railroad company for negligence in killing a hog will not be set aside, notwithstanding the engineer and fireman testified that the injury was unavoidable, if their testimony was contradicted by testimony tending to show negligence on their part.

Appeal from Benton Circuit Court; *John N. Tillman*, Judge; affirmed.

Read & McDonough, for appellant.

McGill & Lindsey, for appellee.

RIDDICK, J. This is an appeal by the Kansas City Southern Railway Company from a judgment against it in favor of J. W. Blair for \$20 damages on account of the killing of a male Duroc

Jersey hog. The engineer and fireman testified that they were keeping a lookout, that the hog jumped out of high weeds near the railway and ran upon the track so close ahead of a backing engine that it was impossible to avoid the injury. This testimony was contradicted by witnesses for plaintiff, who testified that there were no weeds near the track high enough to conceal a hog; that the railway embankment at the place where the accident happened was six to ten feet high and very steep, so that it would be difficult for a hog to run rapidly from the right of way up to the railway track, and that there was nothing to prevent the employees in charge of the engine from seeing the hog some distance away, had they been keeping a lookout.

This evidence was sufficient, taken with other facts in proof, to justify the instruction given by the court and to sustain the judgment.

Affirmed.
