

KANSAS CITY SOUTHERN RAILWAY COMPANY *v.* BUCKNER.

Opinion delivered November 5, 1906.

RAILROAD—STOCK CASE—NEGLIGENCE.—A verdict finding a railroad negligent in killing an animal will be sustained by evidence tending to prove negligence on the part of the trainmen, though one of them testified to the effect that the killing was unavoidable.

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

*Read & McDonough*, for appellant.

*McGill & Lindsey*, for appellee.

BATTLE, J. J. H. Buckner brought this action against the Kansas City Southern Railway Company to recover damages for the loss of a cow killed by a train of the defendant. He recovered a judgment against the defendant for thirty dollars.

Lee Guinn, the fireman on the engine that struck the cow, testified on behalf of the defendant that "on rounding" a curve in the railroad of defendant "he saw the cow, when they were within one hundred feet of her, standing at an apparently safe distance from the railroad, perfectly still; that he could not see her before that time; that she then started to walk across, but turned and walked down the edge of a path down the side of the track, but when the train got closer to her she stopped and turned her head, evidently to look at the engine, and the end of the pilot struck her and knocked her down, and evidently rolled her into the ditch," which was near the railroad track.

The testimony of other witnesses in the case tended to prove that the cow was in dangerous proximity to the railroad when she could have been first seen; that she was so near that the train struck her on the side of her head and body, breaking one leg and killing her; that the train first came in sight three hundred or four hundred yards away; and that the trainmen gave no signals of alarm, and made no effort to avoid injuring her.

The evidence and the presumption of negligence arising from the killing sustain the verdict of the jury and judgment of the court.

Judgment affirmed.