

Robert M. RUSSELL *v.* Tom F. DIGBY, Sixth District
Circuit Judge, Third Division, Pulaski County, and
WORTHEN BANK & TRUST CO., N.A.

81-228

627 S.W. 2d 25

Supreme Court of Arkansas
Opinion delivered February 1, 1982

Motion to Dismiss granted February 1, 1982.

Henry & Duckett, by: *David P. Henry*, for appellant.

Thomas P. Thrash, for appellee.

PER CURIAM. Motion to Dismiss is granted.

JOHN I. PURTLE, Justice, dissenting. I feel the majority
has inflicted an unnecessary and serious injury upon this
particular petitioner and upon untold numbers who will

stand in his place in the future. The petition to dismiss the appeal should not be allowed under the circumstances presented by the respondents. By refusing to consider this case on its merits the majority is, in effect, telling the respondents that it was all right to use an obviously outdated law to deprive a citizen of his rights as guaranteed by the constitution and as pronounced by the local courts.

The respondents never filed a pleading in this court. They paid the judgment after the petitioner filed his brief in this court. This indicates that they intended merely to delay paying a just claim. I would hear the case on its merits; and, further, it is my tentative feeling after a careful review of the record that an opinion should issue declaring Ark. Stat. Ann. § 30-301 (Repl. 1979) to be null and void. I would further award all costs of the action, appeal and brief to the petitioner.

ADKISSON, C.J., and HICKMAN, J., join in this dissent.
