

HARDNICKE, GUARDIAN, v. CHERRY.

4-7857

190 S. W. 2d 521

Opinion delivered January 21, 1946.

Appeal from Logan Chancery Court, Northern District; *J. E. Chambers*, Chancellor.

*J. H. Carmichael*, for appellant.

*Luke Arnett*, for appellee.

**BILLS OF EXCEPTIONS.**—The requirement that oral testimony be brought into the record by bill of exceptions was not modified by Act 196 of 1945.

**PER CURIAM:** The requirement that oral testimony be brought into the record by bill of exceptions, except where depositions are used, was not modified by Act 196 of 1945.

The testimony complained of in the pending motion to strike does not appear to have been brought into the record by bill of exceptions or depositions; therefore it was not properly preserved, and appellee's motion to strike should be sustained. But that does not necessarily dispose of the case and the motion to dismiss the appeal is overruled, with leave to the respondent to apply to the trial court for an order, *nunc pro tunc*, to make the record speak the truth if, as a matter of fact, the questioned testimony was properly preserved.

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