

WHITE v. MCCRACKEN.

Opinion delivered May 11, 1895.

1. *Sale—Constructive delivery.*

In a sale of personal property incapable of manual delivery, no further delivery is required to pass the title where the purchase money is paid, and a bill of sale executed, with an agreement that the vendor shall hold possession as bailee of the vendee.

2. *Place of delivery—Waiver.*

A stipulation in a contract of sale that the property sold shall be delivered at a certain place may be waived by the parties.

3. *Delivery—Bill of sale.*

To constitute a good delivery of property incapable of manual delivery, it is not necessary that the bill of sale of the property

should specifically describe it if absolute control of the property is surrendered to the buyer.

4. *Charge of court—Omissions.*

One who appeals cannot complain that the instructions of the lower court were incomplete if he made no effort to have the omissions supplied at the trial.

Appeal from White Circuit Court.

GRANT GREEN, JR., Judge.

STATEMENT BY THE COURT.

S. H. White, a constable, and W. P. Best, a town marshal of Judsonia, levied executions upon certain logs as the property of B. D. Barnum. Joseph McCracken brought this action of replevin to recover possession of the logs, claiming to have purchased the same from said Barnum before the issuance of said executions. He testified that in July, 1892, he made a contract with Barnum, by which Barnum agreed to get out and deliver to him, at the mouth of Little Red river, a certain quantity of oak, gum and ash logs for a certain price per cubic foot. A portion of the purchase price was to be advanced to Barnum as the work progressed, and the remainder was to be paid on delivery. About the 1st of January, 1893, finding that he had paid Barnum the full value of the logs, he took a bill of sale for the same. Afterwards, on the 22d of January, 1893, he went to the yard where the logs were lying in Cleburne county, and Barnum delivered to him the logs in controversy, for which he had paid him in full. He further testified that this sale and delivery took place before the issuance and levy of the executions under which White and Best claim the property; that he then hired Barnum, and agreed to pay him forty dollars per month to assist in rafting the logs to New Orleans; that afterwards Barnum had no further interest in the logs, and was only in possession of them as his agent and bailee. The testi-

mony of Barnum and other witnesses for plaintiff corroborated the testimony of McCracken.

The evidence on the part of defendants consisted mainly of certain statements made by McCracken to certain of the witnesses, and of statements contained in his answer to a garnishment proceeding. These statements of McCracken, proved by the defendant, were to a certain extent inconsistent with his testimony that the logs in question had been sold and delivered to him.

The plaintiff asked the following instructions, which were given by the court over the objections of defendants:

"1. The jury are instructed that when personal property, from its character and situation, is incapable of actual delivery, the delivery of a bill of sale for the same, or other evidence of title, is sufficient to transfer the title and the possession to the vendee."

"2. The jury are instructed that delivery of personal property may be either actual or by construction, when, from the nature or situation of the property, actual delivery is impracticable, and when there is such a delivery, the sale will be complete, and the title pass to the purchaser."

"3. The jury are instructed that if you find from the evidence that the plaintiff, McCracken, had, before the levy of the execution in this cause, paid to B. D. Barnum, the full value of the timber under the contract with him, and the said Barnum was in good faith in possession of the same as the bailee of the plaintiff, then you will find for the plaintiff."

In addition to above instructions, the court gave the following at the request of the defendants:

"2. The jury are further instructed that if they find the timber in controversy is so large, and of its nature incapable of actual delivery, then to pass the title there must be something done equivalent to it. The

donor must not only part with the possession, but with the dominion of it."

The defendants also asked the court to give four other instructions, which were refused. They also asked the court to modify instruction No. 3 by adding thereto the words: "if it is not otherwise fraudulent," which request was refused, and exceptions noted.

There was a motion for new trial, which was overruled, and the defendants appealed.

Ashley Cockrill, for appellant.

1. The delivery of a bill of sale, for a valuable consideration, with no actual or symbolical delivery of the chattel, other than is to be inferred from the bill of sale, is not sufficient against a creditor of the vendor. 127 Mass. 381; 6 Wharton (Pa.), 53; 132 Mass. 232; 4 Gray, 307; 47 Ark. 210.

2. Mere words alone cannot constitute the seller a bailee of the buyer, so as to take the contract out of the statute of frauds. 1 N. Y. 301; 22 Mo. 354; 22 Cal. 103; 49 Ga. 143; 38 N. J. 536, 551; 54 Ark. 305.

3. It was error to refuse the 1st and 4th instructions asked for defendants. 47 Ark. 210; 54 *id.* 305.

4. Appellee was estopped. Bigelow on Estoppel, p. 699; 57 Ark. 638; 33 Ark. 465; 53 *id.* 196; 45 *id.* 37; 39 *id.* 131; 38 *id.* 571; 36 *id.* 96; 3 Hill, 215; 6 Lea (Tenn.), 289; Bigelow on Estop. pp. 555, 712, 610, 710; 122 U. S. 241.

S. Brundidge, Jr., for appellee.

1. The only possession appellee could take of the logs and timber was the control and management of same, and this he did take, which is sufficient. 31 Ark. 163; *Ib.* 131. The transfer was effected by the delivery of the bill of sale, and possession taken soon afterwards, which completed the sale. 108 Mass. 351; 114 *id.* 116; 26 Am. Dec. 626; 11 *id.* 360; 56 Ark. 93.

2. There is no showing made that Henson was misled or prejudiced by anything said or done by appellee, and there is no estoppel. 54 Ark. 499; 53 *id.* 196.

3. The instructions properly declare the law. 47 Ark. 210 is not applicable to this case.

RIDDICK, J., (after stating the facts.) We find no error in the instructions given by the court. They say, in effect, that if the logs sold were so large as to be incapable of manual delivery, then, if the purchase price was paid in full, a bill of sale delivered, and the possession surrendered by the vendor, and he afterwards held them in good faith as the bailee of the purchaser, then no further delivery was required to pass the title. The law, so far as it is stated in these instructions, is not prejudicial to the rights of appellants. *Trieber v. Andrews*, 31 Ark. 163; *Puckett v. Reed*, 31 Ark. 131; *Shaul v. Harrington*, 54 Ark. 307; *Hight v. Harris*, 56 Ark. 98.

1: When constructive delivery sufficient.

Neither do we think that the court erred in refusing to give instructions asked by appellants. The first of these instructions was to the effect that if McCracken entered into a contract with Barnum, by which Barnum agreed to furnish and deliver to McCracken certain timber at the mouth of Little Red river, the title would not pass until the timber was delivered at such place. This instruction was calculated to mislead the jury, for McCracken did not rely for title upon the first contract referred to in this instruction. He claimed that Barnum had, after this contract was made, sold and delivered him the timber at a place different from that named in the first contract. When one person contracts with another to buy from him timber or other personal property to be thereafter delivered at a certain place, such property may, if it suits the convenience of the parties, be delivered and accepted at a place different from that

2: Waiver of agreement as to place of delivery.

named in the contract. The seller could not compel the buyer to receive it at such place, but if he does receive it, no one else can complain because it was not delivered at the place named in the contract.

3. Require-
ments in bill
of sale.

The fourth instruction asked by appellants was to the effect that, to constitute a delivery, the plaintiff should not only take complete and absolute control, but that the property must be specifically described in the bill of sale, etc. When the property is turned over to the buyer, and the buyer takes absolute control of it under the sale, it is not essential that there should be a bill of sale; much less that the property should be specifically described therein.

The seventh and eighth instructions asked by appellants rested upon the doctrine of estoppel, which we think does not apply in this case, and were properly refused. The statement of McCracken to one of the parties, and his answer in the garnishment proceeding, appear to a certain extent inconsistent with his claim of ownership of the timber. It was therefore proper for the jury to consider them, but the statements were not made under such circumstances or acted upon to such extent as to create an estoppel.

It was not error in the court to refuse to modify instruction number three by adding thereto the words "if not otherwise fraudulent." That instruction stated to the jury that if the timber had been fully paid for by McCracken before the levy of the execution, and Barnum held possession of same as bailee of plaintiff in good faith, then they should find for plaintiff. The modification would have added nothing to the meaning of the instruction, for if the timber had been fully paid for, and the transfer made in good faith, it could not have been "otherwise fraudulent."

If the appellants desired the court to instruct the jury that if the sale to McCracken was not in good faith, but only a sham or pretended sale made to protect the property of Barnum from his creditors, it would then be of no validity, they should have requested an instruction to that effect.

While we do not think there was any reversible error committed by the court, for fear of misapprehension we will say that we do not consider the charge of the court in this case entirely satisfactory. As applied to the facts of this case, it is not, in our opinion, erroneous or misleading, but it is to a certain extent incomplete. The defect arises from the practice which trial judges sometimes adopt of composing their charge to the jury altôgether of selections from the instructions, or requests to charge, furnished by the different counsel in the case. This practice was condemned in *Davis v. Railway*, 53 Ark. 129. It necessarily leads to a charge lacking in that completeness, clearness and uniformity calculated to assist the jury in understanding the issues that they are to determine.

4. As to omissions in court's charge.

A charge to a jury should rarely begin with a statement of an abstract principle of law. The first paragraph of the charge should state the nature of the case, and define, as clearly as possible, to the jury the issues which they are called upon to determine. While, under our laws, a judge cannot charge the jury as to the facts or weight of evidence, he yet may, and it is his duty to, define to them the issues which they are to determine. And it will be found that a clear statement of the issues of fact which the jury are to decide will frequently obviate the necessity of long instructions regarding the law of the case. But if the instructions were somewhat incomplete, none of the instructions asked by appellants tended to remedy this defect, and it was said by this court, in *Fordyce v. Jackson*, that "it is the settled practice in

this State that a party cannot avail himself of an omission which he made no effort to have supplied in the trial court." 56 Ark. 602.

The instructions given, so far as they went, were not erroneous or misleading, and the evidence is sufficient to support the verdict of the jury. The judgment is therefore affirmed.

cle, that books, wide as is their province, would afford an inadequate solace for the ills and sorrows of life, and that before the flight of many days uninvited gloom and despondency would assume their station by the lonely hearth.

To Judge Turner the course thus prescribed would have been impossible; for he lived always and perpetually in very close touch with the world. With the ancient poet, he might well have said that there was nothing that concerned humanity that did not concern him also. Down to the very last hour of his long life his love of rational social pleasures, his interest in everything that was going on in the world around him, were active and undiminished. Old age, while it circumscribed, hardly lessened his interest; and at no time would he consent to be a mere helpless victim bound to the chariot of the flying years.

But a few months before he died, it was my good fortune to spend the better part of an afternoon in his company. He told me how, when fast approaching 90 years of age, he had visited the World's Fair at Chicago; and it was evident while he talked that he had gazed on the many beautiful and curious productions of art and nature gathered from every clime, not with the vacant eyes of decrepitude; but that, responsive to every sight and sound, he beheld the display with much of the animation and enthusiasm of youth. His mind was still clear and bright, the physical man was still sound, his hearing was acute, his sight but little dimmed; and the evening of his life was still suffused with the tints of the morning. He told me that while there he was invited to attend a meeting of very old men from New England, and that when he got there, and each veteran told the number of the years of his life's pilgrimage, he out-topped them all, a competitive success that seemed to have afforded him as much pleasure as others derived from more substantial awards. He gave me, also, many glimpses of the early practice of the law when this State was still a territory, separated only by a line from Mexico, lying on the margin of the mysterious and unexplored West, and told how, in long rides through the primeval wilderness, he and his professional comrades were wont to beguile the time with jest and song; thus bringing, at the call of memory, from the distant past lawyers whose names had ceased to be anything but an echo, whose lives are now but a dim and fading tradition, soon to be merged in oblivion.

As in the modern methods of warfare the skillful use of highly artificial instruments of destruction have gone far to supply the place of that athletic vigor upon which the fate of battle once depended, so in our profession the immense complexity of modern authorities, sometimes conflicting, and often difficult of classification, gives an advantage to the mere student that was formerly only acquired and retained by the robust thinker. No doubt the lawyer of other days often longed for an increase of books; and now, when we are oppressed by the mul-

titude of volumes, we are embarrassed and encumbered by the extent of our riches.

The increased facilities of travel, making easy of access places that are remote, have had a result the contrary of what might have been expected. The lawyers of to-day, who rarely meet save in the court room, or when engaged in the uncongenial task of taking depositions, or of stating an account, are far less near to each other than were the lawyers of the old time, who rode together over circuits comprising a large part of the State, whose sympathy with each other was heightened by a more intimate acquaintance. A complex civilization tends in some degree to restore the isolation of savage life.

With Judge Turner the habits of close personal intercourse that grew up when books were scarce, when the daily press did not exist, and when instruction and entertainment were largely derived from spoken words, accompanied him through life, and down to the last hour when his wayfaring ceased. It was but natural that, as the years went by, memory should take the place of hope; but Judge Turner was not like many old men whose reminiscences exclude other subjects of thought, and who live alone in the inaccessible years that are gone. With his strong vitality it was only when he spoke of periods of long past, quite beyond the memory of his hearers, that one could realize that he was talking to a very old man. In life's ultimate December, he was keenly alive to the present, and nothing could more strikingly illustrate the unflinching interest that he felt in passing events than the fact that death found him at last in a public hall, whither he had gone to hear a popular lecture on some of the events of American history. Those who knew him know full well that if he had lived for an hour or so longer the speaker would have had no more appreciative listener in his audience. The years came to him, almost four score and ten, and, by a rare exemption, he had no occasion to say that he had no pleasure in them. For almost three score years and ten he had been in active practice, save during the period that he was on the bench.

I am conscious of the fact that what I shall say of the friend whose death we are called on to mourn will be approved by all who hear me, though it may fall far short of what ought to be said. Though a man of undeviating firmness in all things involving a moral principle, a man of strong convictions, and of approved courage in their application, he was tolerant and charitable towards those who differed with him in matters of opinion, compassionate and helpful to all that were in need. In his manners he was plain, simple and unostentatious, and yet there was about him much of that old-fashioned courtesy, indicative of self-restraint and consideration for the feelings of others, that has almost disappeared in our busy and restless age. All through life he exhibited that calmness, self-control, consistency and perseverance that give evidence of inward strength. He was earnest in his search

for truth, much inclined to friendly intercourse, and averse to needless disputation. Not endowed with that brilliancy that dazzles, and sometimes misleads, he possessed a strong, sound, sane, healthy and well-balanced mind, which he improved by observation, reading and reflection. He had read extensively in the law, and in many departments of knowledge, so that he conversed intelligently, entertainingly and instructively on a great variety of subjects. He had an instinctive sense of what was right and wrong, and he earnestly longed to behold the triumph of the one, and the defeat of the other. Rectitude and integrity were not with him mere rules of conduct; they were inborn principles that pervaded all his thoughts and acts. Methodical in all his processes, he relied for success on labor and patient investigation, rather than on the uncertain inspiration of the moment. Conservative in his views of men and things, he never hung as a weight on the wheels of progress, but favored all plans that looked to social or moral improvement. He was a man that was sincere in word and thought, and was singularly free from all taint of malice or uncharitableness. It is therefore not surprising that he should have attracted to him and retained many who were bound to him by the strongest ties of friendship.

Perhaps no lawyer was better known personally or by reputation throughout the State. For us who knew him, his character is outlined as plainly and as clearly as the rocks and hills of a familiar landscape. Yet we should fall far short of making others see him as he appeared to us. All his traits were strongly and distinctly marked; but he was not a mere bundle of qualities that can be catalogued and labeled; and no man is. This is the reason that all the characters described for us in history are mere lifeless masks, which dispel the truth that they were intended to reveal. If we could see and know the illustrious dead who figure in story or chronicle, we could never perceive more than a faint and fugitive likeness in the pictures that have been drawn. The expression, the air, the tones, the accent, the varying and blended play of the faculties, the exquisite stamp of individuality, the changing and indescribable manifestations of life, the nameless things that go most intimately to make up the man himself; these are the inviolable secrets that Nature will entrust to no meaner hands, even for the purposes of imitation. These are the things that sculptors and painters essay in vain. Lovingly the artist may linger over his labors; but not the highest inspiration of the divinest master can recall the perfume to the flower, or awaken the voice of the lute that is silent. And when we lament the death of our friends, as, alas, we are often called upon to do, the keenest sense of our calamity comes with the thought that, though borne on a seraph's wings, we might wander eternally through the universe, we should never look upon their like again, since nature, with her inexhaustible resources, creates but never reproduces.

It is then that we feel that we cannot grasp, much less explain, the extent of a loss for which no symbols exist. It is then that we stand mute, or with ineffectual utterance, in the presence of the mighty and inexorable past that gathers to its capacious bosom, one by one, all the treasures of earth.

"Heart's brother, hast thou ever known
What meaneth that 'no more?'
Hast thou the bitterness outdrawn
Close hidden at its core?"

"Oh, no—draw from it worlds of pain,
And thou art doomed to find
That in that world there doth remain
A bitterer drop behind."

The extreme age to which Judge Turner lived has made his departure peculiarly impressive. A sturdy oak that has long cast its deepening shadows over the forest, that has drunk the rain and dews of many summers, and that has withstood the lightnings and storms of many winters, becomes an object of veneration; and when at last it falls, the awe-inspiring sound long vibrates in the memory.

By the death of Judge Turner a most important link that connected us with the past has been removed. Of the vast and entertaining knowledge possessed by him of the first lawyers and judges that held the courts here at an early day, which was unforgotten by him down to the hour of his death, few memorials are left. To hear him talk in the last years was like reading some rare and absorbing volume, but newly discovered, that has never been perused by any contemporary reader. But now the book is closed, and shall be read no more. Let us hope that his death was but the beginning of a happier life.

The summons that he received was sudden, but, as all his allotted years had been free from illness, so his last hour was free from pain. He was like a reaper that, at the close of a long, bright summer day, ceases from his labors when all the fields are still. Friendly regard and kindly solicitude waited upon his last steps; and he enjoyed until the final hour

"that which should accompany old age,
As honor, love, obedience, troops of friends."

The great mystery that has always perplexed mankind, that which casts its shadow over the lightest heart, and which broods over every landscape, however fair, with him is solved; as it must soon be solved with us also. And now that he is dead, and beyond all the vicissitudes of life and time, now that—

"nor steel, nor poison,
Malice domestic, foreign levy, nothing
Can touch him further,"

surely we may pronounce him happy. He, too, after life's fitful fever, "sleeps well."

Beloved in his family circle, and by many friends, esteemed by the public, and respected by all who knew him, he died full of years, and full of honors. He was an honest, an upright and a useful man ; he stood as a type of what was true and just, and therefore it is meet that his death shall be mourned, and that his memory shall be cherished by the State which he faithfully served, and by the bar which he adorned.

Judge Rose then read the resolutions of the bar of the supreme court, as follows :

Though the advanced age of Judge Turner had long admonished us that his career was drawing to a close, the announcement of his sudden death made a profound impression on the bar and on the public.

For many years he had been the only survivor of the pioneers of the bar, who lent their labor and their influence to the establishment of law and order in a territory that was then remote from all the centers of progress ; and he was always ready to lend a helping hand to promote that higher civilization which must always form the brightest ideal of the true lover of his race and of his country.

We are apt to underrate the labors of which we perceive only the result, having but slight knowledge of the dangers encountered, or of the difficulties overcome. Of the early settlers who first invaded the unbroken forest within the wide boundaries of our State, but little record is left ; and of the lawyers and the courts that, amid many privations and discomforts, first planted the standard of justice among the fearless and enterprising, but scattered, members of a frontier community, we have no authentic history. But these are the men whose labors we have inherited. If the deceased had possessed no other merit than that he was a willing and efficient co-worker with them in helping to build up the institutions which we most cherish, and which we hope to perpetuate, he would still have had a large and a valid claim to our affection and our gratitude. But over and above such considerations he united many qualities that must ever appeal to the approving judgment of those whom he left behind. Trusted and beloved by the community in which he lived, revered by all for his virtues, venerated for a long and consistent life worthily spent, his death has severed many ties of love and friendship, and has left a vacancy that no one else can ever fill. The rectitude of his life, his profound sense of justice, his unflinching sympathy with all his fellow men, gave weight to his counsels, and rendered his example impressive. Devoted to his profession, in which he perceived the most important agency for the support and preservation of the best interests of society, he was, as a lawyer and as a judge, a faithful minister in the temple of justice down to the last day of his life. His reverence for the law as the final and impartial arbiter between contending passions and conflicting claims was abiding and profound. To the discharge of his professional and judicial

duties he carried that scrupulous integrity that adorned his private life. To him a victory improperly gained would have been far more humiliating than an undeserved defeat. Fond of the innocent pleasures of social life, he attached to himself by the strongest ties a wide and ever-increasing circle of friends; and, as his charity and good-will were not circumscribed by artificial bounds, he died at last, after a long and varied intercourse with all sorts and conditions of men, without an enemy. While his death awakens many sorrowful thoughts, it also evokes many pleasant memories of the man who was the light of his domestic circle, was most cherished by those who knew him best, and who tempered the conscientious discharge of every duty with that charity that forbids offense.

Considering the life and the long services of the deceased to the bar, to the courts, to the public, and to the State, your committee would recommend the adoption of the following resolutions, as an imperfect and inadequate expression of our sense of the loss that we have sustained:

1. *Be it resolved*, That we mourn the death of Judge Turner as an affliction that is only mitigated by the memory of his long and illustrious career of usefulness and honor. His period at the bar, extending over sixty-nine years, has had among us no parallel for its length. His life was crowned by many honors, and death has left his name without reproach. The same affection and respect that waited on him in private life was felt by the bar, with which he was so long and so intimately associated; and we join in the general and public expression of sorrow for the loss of one whose character as a man, a citizen, a lawyer, and as a judge was worthy of the highest commendation, and of lasting remembrance.

2. That a copy of these resolutions be sent to the family of the deceased, to whom we tender our respectful sympathy in their present affliction.

3. That, as a slight token of our sorrow and regret, the bar wear the usual badge of mourning for thirty days.

U. M. ROSE,
B. J. BROWN,
W. G. WHIPPLE,
B. S. JOHNSON.
JOHN FLETCHER.

The Hon. Ben T. DuVal spoke as follows:

May it please the Court: My colleagues and myself have been honored by being selected to present to this august tribunal the resolutions of the bar of Crawford circuit court upon the death of Hon. Jesse Turner.

The resolutions are the expression of the deep respect and great reverence which his professional brethren entertained for him, and,

eloquent as they are, they but poorly express the sentiments of love and admiration felt for our deceased brother. To consecrate the ashes of the dead and to remember what was good and generous in their lives is the most acceptable service we can render to those separated from the living and become the partakers of a divine life. Let this be the tribute we pay to the memory of our departed brother, whom death has transported to immortality.

Judge Turner was born upon the 31st day of October, A. D. 1805, in Orange county, North Carolina, and was admitted to the bar in 1825, when he was about 20 years of age. In 1829 he came to the territory of Arkansas, and located at old Crawford county court house, on the south bank of the Arkansas river, about twenty miles east of Fort Smith. At that time the present counties of Johnson, Yell, Logan, Franklin, Scott and Sebastian were embraced in the limits of Crawford county. The county seat was moved from there to a point on Little Mulberry, where the old stage road crosses that stream, and was called Crittenden, in honor of Robert Crittenden, who was a distinguished citizen of the territory. The county seat, a short time afterwards, was again removed to Big Mulberry, and called Whitsun, in honor of the first settler there. From thence it was removed in 1837 to Van Buren, which has been ever since the seat of justice of that county. Judge Turner followed the county seat in all its removals, and continued up to his death, on the 22d day of November, 1894, to reside in Van Buren.

He was for many years regarded as a long link uniting the present to the historic past. In his early life he was the friend and associate of Crittenden, Ashley, Cummins, Pike, Benjamin Johnson, Andrew Scott, James Woodson Bates, David Walker, Archibald Yell, the Conways, the Rectors, W. S. Oldham, Leeper, Edward Cross, the second representative in Congress from the State, and many other distinguished men of the earlier times who with him made history by establishing a civilized community in the wilderness. They planted law and order, and laid the foundation of this great State, under difficulties and privations which those of the present cannot comprehend and appreciate. His immediate associates in the county were John Drennen and David Thompson, the founders of the town of Van Buren, George C. Pickett, the second clerk of the county, Alexander McLean, who succeeded Pickett in 1833 and held the office until 1856, a period of twenty-three years, John Gregg, David McClellan, John Shannon, Washington DuVal, Andrew Morton, William C. James, A. Edward, Charles G. Scott, of Van Buren, Major John Henry, Capt. John Rogers, my father, William DuVal, Anderson Quesenbury, at Fort Smith. All of those mentioned have passed away except Ed Scott, who still lingers. Their names and lives will be ever remembered as a part of the history of the State and county.

It would be impossible to speak of the early life of our friend in Arkansas without recalling the memory of those mentioned, and many other gallant and patriotic men who subdued the wilderness, and planted civilization in the then distant land.

Judge Turner was a follower and admirer of the great commoner, Henry Clay, and, until the absorption of the northern Whigs with the Republicans, he was an earnest, zealous and fearless defender and advocate of the doctrines of that party. He then affiliated with the Democratic party, and was a loyal and earnest Democrat up to his death.

His first public service was as representative from Crawford County in the second session of the State legislature in 1838. He was a member of the convention in 1861, with the late Judge Hugh F. Thomasson as his colleague. They were both opposed to secession, but at the second meeting of that body they voted for it, as the war had already begun.

In 1866 he was elected to the State senate, and again in 1874. In 1878 he was appointed Associate Justice of this court by Gov. W. R. Miller, to serve the unexpired term of Judge David Walker, who had resigned on account of his failing health. He was appointed United States attorney by President Filmore upon the establishment of the United States court for the western district of Arkansas in 1851, and held that office until succeeded by Hon. Alfred M. Wilson, of Fayetteville, who was appointed by President Pierce. Hon. Daniel Ringo, who was the first chief justice of this court, presided as judge of the United States court for the western district of Arkansas. He was one of the first settlers of the territory, and a fast friend of Judge Turner. He was a firm and upright judge.

Those who are familiar with the first settlement of the territory of Arkansas can appreciate the undaunted courage and strong purpose which characterized the leaders of that time. We enjoy the benefit of their labors and sufferings. It is impossible for the lawyer of to-day, whose duties are performed in spacious and comfortable court rooms and law offices surrounded with large libraries, and whose practice is confined to the city, to appreciate or even comprehend the labors of those who traveled on horseback hundreds of miles through unbroken forest, from court to court, and whose libraries were carried in their saddle bags, with their necessary change of apparel.

When our deceased brother had found a resting place, and located at old Crawford court house, Benjamin Johnson, whose life is a large part of the history of those times, was the judge of the court. Judge Johnson was then one of the judges of the superior court of the territory, and on the admission of the State he was appointed the first United States judge for the district of Arkansas. He belonged to a

family distinguished for their courage and patriotism, and his long career as a judge was marked with great ability, with stern integrity, softened by gentleness and mercy. His contemporaries loved and revered in him the upright judge, and his services upon the bench in those trying days contributed very largely in planting the standard of justice and laying the foundation of law and order. His descendants still are with us, and worthy of their illustrious ancestors.

The lawyers whom our deceased brother first met at the bar were David Walker and Matthew Leeper, from Fayetteville, Fowler, Crittenden, Oden, Ashley and Sevier, from Little Rock, and Grandison D. Royston, who first located at Fayetteville, and afterwards permanently settled in Washington, Hempstead county. Later on the gifted and courtly Fred. Trapnall, who united to his profound learning the graces of a Chesterfield; the genial and large-hearted John Watkins Cocke, whose splendid eloquence was worthy of a native of the grand old commonwealth of Kentucky, which has given to the field and forum so many soldiers, statesmen and orators. And also that soldier, poet and lawyer, the splendid Pike, between whom and our friend existed for a longer space of time than many of you have lived, a friendship inspired by mutual love and respect. In this brilliant galaxy of men our friend, then a young man still upon the threshold of life, bore himself as an equal. He was well equipped for the trying conflicts which one could expect from such competitors. His learning was equal to theirs. He was not in one sense an orator, but he was a man of convictions, was honest and high-toned. The man who stands before the world, beaming all over with the honest convictions of his heart, is more than a match for oratory and logic combined; he reaches the heart, and the heart carries the head captive. Such a man was Jesse Turner. He won his victories by his honesty and the sincerity of his purpose, and he made men come to him because they believed him to be honest; not only because he was one of Nature's noblemen, but because they felt the impulse of that sincerity of conviction in his heart which flowed from his tongue.

There is no one in the world, save wife and son, to whom his death will cause more sorrow, will evoke more memories, than to me. Our association reaches over more than half a century, and was the closest and tenderest, the most loving and reverential on my part, that can exist between men.

My first recollection of him was in 1840. The case of *Nicks' Heirs v. Rector*, reported in Fourth Arkansas Reports, was on trial in the circuit court of Crawford county before Hon. R. C. S. Brown, one of the prominent men of that day, and who held many offices in the Territory and State. The litigation involved part of the land upon which the city of Fort Smith now stands. Pike, Trapnall and Cocke and Jesse Turner were the attorneys and solicitors of the defendant, and

David Walker was one of the attorneys for the plaintiff. All of them participated in the trial. Elias Rector, the defendant, was my brother-in-law, and the land in controversy was settled by my father in 1825. This was the first court I ever attended. The local bar of Van Buren then consisted of Turner, Paschal, Wm. Walker and R. P. Pryor. Those who attended the court regularly from a distance were John Linton, of Pope county; McLain, of Johnson county; Walker and Oldham, of Fayetteville; Pike, Trapnall and Cocke from Little Rock. Mr. Turner survived all of them. Oldham and Paschal, after serving a brief period upon the bench of this court, removed to Texas. Linton was for many years a leader at the bar in the western circuits. Rough in manner and dress, but gifted with an intellect as keen as a Damascus blade, he was a formidable opponent. Paschal lived many years in Washington City, and acquired a national reputation as a profound constitutional lawyer and author. Pike's distinguished career is too well known to require more than a bare mention. During the war he was a member of this court, and the opinions rendered by him were adopted by the court at its reorganization, when peace was restored, and are monuments of his great learning and his judicial mind. Mr. William Walker, after the war, moved to Fort Smith, where he died at an advanced age in 1893. He was a leading lawyer in Western Arkansas. He was noted for his skill in pleading and technicalities. Mr. Turner once remarked that Walker would split a hair, and hang his case upon the hook. He was energetic, industrious and resourceful, and a dangerous antagonist at the bar. Later on, other attorneys located at Van Buren, then the most prominent legal and commercial point in the West. The late Judge Thomason, after his election as prosecuting attorney, removed thither from Fayetteville, and made it his home until his decease in summer, 1893, when he was stricken with paralysis upon the bench while holding the circuit court of his county, over which he presided for several years.

John T. Humphreys, a young lawyer from Virginia, made his home there until the war; after peace was restored, he located at Fort Smith, whence he removed in 1875 to California. He is now a prominent lawyer and politician in San Francisco. He was a brilliant orator, a good practitioner, and successful at the bar.

Hon. J. J. Green, who died in 1860 while judge of the circuit court, was one of the many able lawyers who were contemporaries of Judge Turner. Hon. B. J. Brown, of this city, was one of the youngest members of the bar there before the war. He has been more fortunate than many of us. He accumulated a fortune, and, after holding many judicial and legislative positions, has retired from the practice, and is now living in the capital city in elegant and luxurious style, where he enjoys the society of a large circle of congenial friends.

It would be pleasant to recall the names and characters of others, but your patience would be exhausted.

We are here to commemorate the dead, and to speak of his virtues as an incentive to others to follow in his footsteps, to perpetuate his memory upon the records of this court, and to attest our appreciation, not only of his high character, but of the great privilege we have enjoyed in being his friends and associates.

The life of our deceased friend was most happy; he lived in one county for the long period of over sixty years, and died without ever having had an enemy. His life embraced the rudest part of the early settlement of this country, and also the great war between the States. He was actively engaged in the practice; and nearly all that time was employed in all important criminal and civil cases, not only in his own, but in neighboring counties. He was bold and fearless in the expression of his convictions, and yet whatever conflicts he had passed without leaving a trace of enmity. He was not ambitious for office. The offices he filled were unsought, and were conferred as the reward of merit, or because of the need his fellow citizens felt for his services.

He was an ardent and zealous partisan. There was no temporizing of his political principles. He was elected to the convention of 1861 as a Union man, but when the war commenced, and until it closed, the South had no more loyal son than he, and through the dismal days of reconstruction he did his part in wresting the government from usurpers, and restoring it to the people.

As a member of this court, he has left upon its record enduring evidence of his learning and ability.

In our long and intimate friendship we never had an unfriendly feeling or dispute. I began the study of law with him in the little frame office in Van Buren, which he occupied for more than fifty years. In my youth I learned to love and revere him for his noble qualities, and up to the last he was ever my friend, my guide and counselor, and in some of the darkest hours of my life he supported me by kind and substantial assistance. And I prize this continued friendship higher than any earthly honors I have ever reached or aspired to.

He was the very soul of honor; his ethics, private and professional, were of the highest order. There was no pretentious parade of lofty honor and honesty, such as is too often aped by pretenders. His character was the sum of his actions, and not of words. He was brave and courageous to the highest degree. In the community in which he lived and served three generations, no breath of scandal ever tarnished his fair escutcheon. He was gentle and kind, brave and daring.

He was the administrator of a great number of estates, and guardian of many orphans, and during his long life a very large portion of

the wealth of his county passed through his hands. His settlements were never questioned. In this important and responsible branch of his profession, his exact honesty is demonstrated, and many an orphan and widow have called upon his head heaven's choicest blessings for the preservation of their fortunes.

His life, and even his manhood, preceded the use of steam and electricity. Although far removed from the center of progress, he was an interested inquirer and active worker in promoting the building of railroads in our State. For many years he was the president of the Little Rock & Fort Smith Railway, and to his earnest and untiring efforts its final construction is in a large measure due.

He was a student, not only of the law, but of the classics and sciences, and deeply interested in the modern miracles of the railroad, telegraph, telephone, and the various practical uses of steam and electricity.

The last time I conversed with him he spoke with profound satisfaction and gratitude that he had seen the wonders of the great Columbian Fair. He saw there more than the realization of his dreams, far more wonderful than he believed could exist.

His life, although prolonged far beyond the allotted period, was one of continued usefulness to his country, and comfort to his friends and family. He was never formally connected with any church, nor with any of the numerous beneficial and charitable orders; but his life and conversation attested that his soul was in full accord with true religion. His sturdy independence, stimulated and strengthened by his early life on the frontier, taught him self-reliance; he never felt the need of the supporting aid of obligated brothers. The people, the whole human race, were his friends, and in their love and confidence he found an unflinching support.

His domestic life was happy. For nearly forty years he lived with and enjoyed the love of a wife whose tastes and thoughts were congenial. Their course was as unruffled as the summer sea; no storms or misfortune came to disturb their harmony; and he was blessed with a son whose devotion has not been affected by the formation of new ties, and whose habits and abilities were the pleasure and pride of his parents.

He lived "till, like ripe fruit, he dropped into his mother's lap." Without pain, without death-bed parting from those he loved (more painful than death itself), possessing all of his faculties, in full vigor, rich in honor, and glorious with praise, he passed in an instant from the known to the unknown, from earth to the hereafter of hope and faith. And if it was ordered that the scene of mortal life must end that moment, who can say that the manner of its close was not also ordered in mercy by that God who doeth all things well?

Although death came to him suddenly, unannounced by any premonition of its approach, it found our friend fully equipped for the dread journey; his wife and son whom he loved so well were there to sustain him in that trying moment. And his eyes, as the mist of eternity dimmed their vision, gazed upon their loving and sorrowing faces. His last conscious feeling was the gentle touch of their hands upon his brow. He also was sustained by the genuine sympathy and grief of many of his fellow citizens, who had assembled to listen to a lecture upon the life of that grand pioneer, David Crockett, by his grandson, R. H. Crockett, a friend who loved and honored our brother.

His life work was ended, he had performed his duty, and no feeling of unfinished labor disturbed his serenity in death. His lamps were trimmed and ready to meet the bridegroom.

His family and friends have the consolation of knowing that there had been no decay of his mental and physical strength. He died as he lived, ready and prepared. And there is consolation, too, in the belief that the mind never dies, that its powers are only transferred to a broader and higher sphere of action, that—

“There is no death

To the living soul, nor loss, nor harm.”

And this was the faith of our deceased brother. He looked upon death as the passage from one sphere to another. For him death had no terror. Life must have been sweet to him, because of his happy surroundings, domestic, social and professional. Although he had so many friends who preceded him to the grave, he had not outlived friendship; for each succeeding generation brought to him a new crop of friends, a little more reverential, but still as warm and loving as those who had earlier in life striven with him at the bar.

The record of a noble life is that life's best eulogy; the history of the deeds of worthy men their most lasting epitaph. The memorial service is for the living, not for the dead. If we, the living actors, profit not by the study and example of such a life as his, this service is worse than useless. The memory of the words and deeds of such men will outlast the bronze and marble fashioned to make their names immortal. It is the impress of great and noble thoughts upon minds and hearts of men that keeps green the memory of those that gave them to the world. There is a lesson in the life just closed, an inspiration in its example.

Judge Turner dignified and honored many offices in the State. His fame was not enhanced by the glamor of high official position. He did not belong to that class whose patriotism is bounded by the salary and emoluments of office. In private life he made for himself a name and character which are not confined to county and State. His great worth is graven upon the hearts of his countrymen, whether dwelling in stately hall or lowly cabin, upon the hills and in the valleys of the land he loved so well.

He was the associate and friend of Judge English, so long the presiding justice of this court, who preceded him many years to the grave, and who contributed so much by his careful labor to make and mold into form and measure the administration of law in this State. And also of Judge Harrison, who still lives, enjoying the love, confidence and respect of his fellow citizens.

The resolutions express truthfully the great worth and honorable labors of the deceased and of our appreciation of them. There is nothing to add—nothing can be added to make them more worthy of being inscribed upon a memorial page of the records of this court.

Our friend, Hon. Sam W. Williams, the author of the resolutions, was a devoted friend and admirer of Judge Turner. His acquaintance began in his boyhood; he learned to love and admire the kindness of his genial nature, and afterwards when the boy had become a man, and taken his place among the leading lawyers of Arkansas, they frequently met at the bar and in the halls of legislation.

In an address delivered before the State Historical Society in 1882, in speaking of the pioneers, I said:

“Jesse Turner is also one of the notable men of those times who still live—honored and beloved. He came from North Carolina to Crawford county in 1829, and settled in old Crawford court-house, and has followed the county seat in its various changes until it finally rested at Van Buren. He now occupies the same office he built in 1840, where for more than forty years he has day by day studied and given counsel to his numerous clients. His culture in legal lore, his stern integrity and his indomitable courage have placed him always in the front rank of the profession. His career has been eminently successful. Although a Whig of the sturdiest sect, he was often elected, in those days of Democratic majorities, to represent his county in the legislature.

“As a judge of the Supreme Court he has settled some of the most intricate questions of law. His opinions are recognized as authority, and during his brief term on the bench has enriched our legal literature by the soundness of his legal opinions and the clearness of his style.

“No man has a stronger hold upon the affection and confidence of his fellows, and he is one of the few living men that one may, without fear of contradiction or criticism, speak of with unrestricted praise. He has no enemies among the brave and good.”

Friendships consecrated by time and cemented by repetitions of kindness are not frequent in this life, and the loss of such a friend makes life more desolate. The common experience of all is that our friends are fewer every year.

His long life almost spans the nineteenth century, and he had witnessed the beginning of the wonderful inventions which mark it as

the age of progress. His early life was spent amid the privations of the frontier when the only mode of travel was upon horseback. He had seen the advent of the steamboat upon our rivers, and rejoiced at the increase of the speed and comfort of travel. He had lived to see the steamboat superseded by the railroads, which now make a trip across the continent easier and quicker than a journey from Van Buren to Little Rock in his early days. With the advent of the railroad and the telegraph disappeared the easy life of the pioneer. New life began, and eager, active workers in the fields of industry came, and superseded the indolent who were left in the rear.

Judge Turner acquired by his large practice a fortune, and had surrounded himself in his home with the comforts and luxuries of modern life. He was the same genial, hospitable host there as when he shared the discomforts of the cabin life. Under all circumstances he was ever the same self-reliant and independent man. He was true to himself, and therefore incapable of being false to anyone.

When the improvement spoken of came, no one rejoiced more than he, and no one marched more earnestly to the front and kept time to the music of progress than our friend.

His death was the close of a well-spent life, and, as I gazed into his open grave, and saw the earth forever hide him from my eyes, I could not but feel a pride that his life and death blended so harmoniously. The pang of severed ties is soothed by the consoling thought that his long and useful life had thus ended, leaving no duty unperformed, and in all things equipped to render an account for his deeds done on earth. And, when grieving for the loved and lost for a brief time, we are consoled by the blessed promise held out to us by revelation, and we can say :

"There is no death—what seems so, is transition;
This life of mortal breath
Is but a suburb of the life elysian,
Whose portal we call death."

The Chief Justice responded, and ordered that the resolutions be spread at large upon the records, and that the court adjourn, out of respect to the memory of Judge Turner.

II.

OPINIONS NOT REPORTED.

Wilson *v.* State; appeal from Baxter circuit court; Brice B. Hudgins, judge; affirmed December 8, 1894; per Bunn, C. J.

Lewis *v.* Looper; appeal from Scott circuit court; Archibald S. McKennon, special judge; reversed February 2, 1895; per Riddick, J.

Mo. Pac. Ry. Co. and L. R. & Ft. S. Ry. Co. *v.* Renfroe; appeal from Crawford circuit court; Hugh F. Thomason, judge; reversed February 9, 1895; per Battle, J.

Pelt *v.* Payne; appeal from Lafayette circuit court in chancery; C. W. Smith, judge; reversed March 30, 1895; per Riddick, J.

St. Louis & San Francisco Ry. Co. *v.* Marrs; appeal from Washington circuit court; Edward S. McDaniel, judge; reversed May 4, 1895; per Wood, J.

St. Louis & San Francisco Ry. Co. *v.* Bloyd; appeal from Carroll circuit court, Western district; Edward S. McDaniel, judge; reversed June 1, 1895; per Bunn, C. J.

III.

CASES DISPOSED OF ORALLY.

Sumpter *v.* Hill; appeal from Crawford circuit court; Jephtha H. Evans, judge; affirmed December 1, 1894; *per curiam*.

Hippolite *v.* Building Ass'n; appeal from Prairie circuit court in chancery; Grant Green, Jr., judge; affirmed December 1, 1894; per Bunn, C. J.

Orr Shoe Co. *v.* Hanes; appeal from Sebastian circuit court, Greenwood district; Edgar E. Bryant, judge; affirmed December 1, 1894; per Hughes, J.

Oppenheimer *v.* Martin; appeal from Logan circuit court; Hugh F. Thomason, judge; reversed December 1, 1894; per Wood, J.

Keith *v.* McHenry; appeal from Hot Spring circuit court; Alexander M. Duffie, judge; affirmed December 1, 1894; per Riddick, J.

Keith *v.* McHenry; appeal from Hot Spring circuit court in chancery; Alexander M. Duffie, judge; affirmed December 1, 1894; per Riddick, J.

Miller *v.* Bank; appeal from Miller circuit court; Rufus D. Hearn, judge; affirmed December 8, 1894; per Bunn, C. J.

Southard *v.* Owens; appeal from Independence circuit court in chancery; James W. Butler, judge; affirmed December 8, 1894; per Hughes, J.

Tucker *v.* Railway Co. ; appeal from Cleveland circuit court ; Carroll D. Wood, judge ; affirmed December 8, 1894 ; per Hughes, J.

Hargadine etc. Dry Goods Co. *v.* Belt ; appeal from Sebastian circuit court, Fort Smith district ; Edgar E. Bryant, judge ; affirmed December 8, 1894 ; per Wood, J.

Bryan & Plunkett *v.* Owen ; appeal from Prairie circuit court in chancery ; Grant Green, Jr., judge ; affirmed December 8, 1894 ; per Wood, J.

Dowdle *v.* Hervey ; appeal from Pulaski circuit court ; Robert J. Lea, judge ; affirmed December 15, 1894 ; per Bunn, C. J.

Davis *v.* Cody ; appeal from Jefferson circuit court in chancery ; John M. Elliott, judge ; affirmed December 15, 1894 ; per Bunn, C. J.

Fowler *v.* Dismang ; appeal from Randolph circuit court in chancery ; John B. McCaleb, judge ; affirmed December 15, 1894 ; per Battle, J.

S. W. Ark. & Ind. Ter. Railway Co. *v.* Trickett ; appeal from Miller circuit court ; Rufus D. Hearn, judge ; affirmed December 15, 1894 ; per Riddick, J.

City El. Street Railway Co. *v.* Riley ; appeal from Pulaski circuit court ; Robert J. Lea, judge ; affirmed December 15, 1894 ; per Riddick, J.

Winn *v.* Dard. & Russellville Railway Co. ; appeal from Pope circuit court ; Jeremiah G. Wallace, judge ; dismissed for non-compliance with rule nine, December 17, 1894 ; *per curiam*.

Arkansas County *v.* Smith ; appeal from Arkansas circuit court ; John M. Elliott, judge ; affirmed on motion of appellee for non-compliance with rule nine, December 17, 1894 ; *per curiam*.

Turner *v.* McGehee ; appeal from Desha chancery court ; James F. Robinson, chancellor ; affirmed December 22, 1894 ; per Bunn, C. J.

Oliphint *v.* Armstrong ; appeal from White chancery court ; David W. Carroll, chancellor ; affirmed December 22, 1894 ; per Wood, J.

Doty *v.* Tullis ; appeal from Hempstead circuit court in chancery ; Rufus D. Hearn, judge ; dismissed on motion of appellants, December 22, 1894 ; *per curiam*.

S. W. Arks. & Ind. Ter. Railroad Co. *v.* Hardin ; appeal from Miller circuit court ; Rufus D. Hearn, judge ; affirmed by consent, December 31, 1894 ; *per curiam*.

Henry *v.* State ; error to Crawford circuit court ; Jephtha H. Evans, judge ; affirmed January 5, 1895 ; per Bunn, C. J.

Halliday *v.* Smith ; appeal from Chicot circuit court ; Carroll D. Wood, judge ; affirmed January 5, 1895 ; per Battle, J.

Conn *v.* Martin ; appeal from Independence circuit court ; James W. Butler, judge ; dismissed for non-compliance with rule nine, January 7, 1895 ; *per curiam*.

Lanham *v.* James; appeal from Crittenden circuit court in chancery; James E. Riddick, judge; dismissed for non-compliance with rule nine, January 7, 1895; *per curiam*.

Henderson *v.* Primm; appeal from Union circuit court; Charles W. Smith, judge; affirmed January 12, 1895; per Battle, J.

Fordyce, Receiver *v.* Mason; appeal from Jefferson circuit court; John M. Elliott, judge; affirmed January 12, 1895; per Battle, J.

Hagen *v.* Gahagen; appeal from Garland circuit court in chancery; Alexander M. Duffie, judge; affirmed January 12, 1895; per Wood, J.

Gunter *v.* City of Fayetteville; appeal from Washington circuit court; Edward S. McDaniel, judge; affirmed January 12, 1895; per Wood, J.

Guerrant *v.* Hall's Safe Lock Co.; appeal from Crittenden circuit court; James E. Riddick, judge; dismissed for non-compliance with rule nine, January 14, 1895; *per curiam*.

Hatch *v.* State; appeal from Franklin circuit court, Ozark district; Jephtha H. Evans, judge; affirmed January 19, 1895; per Bunn, C. J.

Coleman *v.* Jones; appeal from Howard circuit court in chancery; William P. Feazel, judge; reversed January 19, 1895; per Hughes, J.

Dean & Alford *v.* Stroup; appeal from Pike circuit court in chancery; William P. Feazel, judge; affirmed January 19, 1895; per Hughes, J.

Gwaltney *v.* Brooks, Neely & Co.; appeal from Logan circuit court in chancery; Hugh F. Thomason, judge; affirmed January 19, 1895; per Wood, J.

Texarkana Gas & El. Light Co. *v.* Gazzola; appeal from Miller circuit court; Rufus D. Hearn, judge; affirmed January 19, 1895; per Riddick, J.

McCulloch et al. *v.* State; appeal from Cleveland circuit court; Carroll D. Wood, judge; dismissed for non-compliance with rule nine, January 21, 1895; *per curiam*.

City El. Street Railway Co. *v.* Holcombe; appeal from Lonoke circuit court; Robert J. Lea, judge; affirmed January 21, 1895; *per curiam*.

Stevens *v.* State; appeal from Lincoln circuit court; John M. Elliott, judge; affirmed January 26, 1895; per Bunn, C. J.

Brunson *v.* Brunson; appeal from Pulaski chancery court; David W. Carroll, chancellor; affirmed January 26, 1895; per Bunn, C. J.

Bertig Bros. *v.* Voorhes, Miller & Co.; error to Green circuit court; James E. Riddick, judge; affirmed January 26, 1895; per Bunn, C. J.

Wiggins *v.* Fewell; appeal from Lee circuit court in chancery; Grant Green, Jr., judge; affirmed January 26, 1895; per Bunn, C. J.

McClanahan *v.* Moran; appeal from Arkansas circuit court; John M. Elliott, judge; affirmed January 31, 1895; per Battle, J.

Rothschilds Bros. *v.* Phillips; appeal from Boone circuit court; M. N. Dyer, special judge; affirmed January 31, 1895; per Battle, J.

Dietzgen *v.* Prothman ; appeal from Pulaski circuit court ; Robert J. Lea, judge ; affirmed January 31, 1895 ; *per curiam*.

Woodruff *v.* Jabine ; appeal from Pulaski chancery court ; David W. Carroll, chancellor ; affirmed January 31, 1895 ; per Hughes, J.

Minty *v.* Fellner Bros. ; appeal from Faulkner circuit court ; Robert J. Lea, judge ; affirmed January 31, 1895 ; per Riddick, J.

Quertermous *v.* Anthony ; appeal from Jefferson circuit court in chancery ; John M. Elliott, judge ; affirmed January 31, 1895 ; per Riddick, J.

Goodbar *v.* Moore ; appeal from Independence circuit court ; James W. Butler, judge ; dismissed on motion of appellant, January 31, 1895 ; *per curiam*.

McKneely *v.* McKneely ; appeal from Miller circuit court in chancery ; Rufus D. Hearn, judge ; affirmed February 2, 1895 ; per Bunn, C. J.

Wood *v.* Arnold ; appeal from Pulaski chancery court ; David W. Carroll, chancellor ; affirmed February 2, 1895 ; per Battle, J.

Forrest Hardwood Mfg. Co. *v.* Freeman ; appeal from Pulaski circuit court ; Robert J. Lea, judge ; affirmed February 2, 1895 ; per Wood, J.

Mo. Pacific Railway Co. *v.* Cochrane and 135 other cases ; appeals from Crawford circuit court ; Hugh F. Thomason, judge ; reversed February 9, 1895 ; *per curiam*.

Church *v.* State ; appeal from Franklin circuit court ; Jephtha H. Evans, judge ; affirmed February 16, 1895 ; per Bunn, C. J.

Lynch *v.* State ; error to Crawford circuit court ; Jephtha H. Evans, judge ; affirmed February 16, 1895 ; per Battle, J.

Werth *v.* State ; appeal from Saline circuit court ; Alexander M. Duffie, judge ; affirmed February 16, 1895 ; per Hughes, J.

St. Louis & San Fr. Railway Co. *v.* Whittaker ; appeal from Crawford circuit court ; Hugh F. Thomason, judge ; affirmed February 16, 1895 ; per Hughes, J.

Jones *v.* Cain ; appeal from Woodruff circuit court ; Grant Green, Jr., judge ; affirmed February 16, 1895 ; per Wood, J.

Russell *v.* Le May ; appeal from Lafayette circuit court ; Charles W. Smith, judge ; affirmed February 16, 1895 ; per Riddick, J.

McCarny *v.* Wasson ; appeal from Benton circuit court ; Edward S. McDaniel, judge ; dismissed for non-compliance with rule nine, February 18, 1895 ; *per curiam*.

St. Louis, So. Western Railway Co. *v.* Furgerson ; appeal from Columbia circuit court ; Charles W. Smith, judge ; dismissed on motion of appellant, February 18, 1895 ; *per curiam*.

Smith *v.* Deaver ; appeal from Woodruff circuit court ; Grant Green, Jr., judge ; dismissed by consent of parties, February 18, 1895 ; *per curiam*.

Southern Pine Lumber Co. *v.* Gate City National Bank; error to Miller circuit court; Rufus D. Hearn, judge; affirmed February 23, 1895; *per Bunn, C. J.*

Kirk *v.* Gatewood; appeal from Prairie circuit court; Grant Green, Jr., judge; affirmed February 23, 1895; *per Battle, J.*

Quinn & Gray Dry Goods Co. *v.* Ellinger; appeal from Pulaski circuit court; Robert J. Lea, judge; affirmed for non-compliance with rule nine, February 25, 1895; *per curiam.*

Sanders *v.* Thomas; appeal from Perry circuit court; Alexander M. Duffie, judge; dismissed for non-compliance with rule nine, February 23, 1895; *per curiam.*

U. S. Mut. Accident Ass'n *v.* McAdams; appeal from Jefferson circuit court; John M. Elliott, judge; dismissed on motion of appellant, February 27, 1895; *per curiam.*

State *v.* Youngblood; appeal from Boone circuit court; dismissed February 27, 1895; *per curiam.*

Conner *v.* State, use Mitchell; appeal from Woodruff circuit court; Grant Green, Jr., judge; dismissed on motion of appellant, March 2, 1895; *per curiam.*

Kansas City, Fort Scott & M. Railroad Co. *v.* Taylor; appeal from Craighead circuit court; James E. Riddick, judge; affirmed for non-compliance with rule nine, March 4, 1895; *per curiam.*

Edwards *v.* Edgar; appeal from Independence circuit court; James W. Butler, judge; affirmed for non-compliance with rule nine, March 4, 1895; *per curiam.*

Webb *v.* Steward; appeal from Crawford circuit court; Hugh F. Thomason, judge; affirmed for non-compliance with rule nine, March 4, 1895; *per curiam.*

Webb *v.* Jarvis-Conklin Mortgage Co.; appeal from Crawford circuit court in chancery; Hugh F. Thomason, judge; affirmed for non-compliance with rule nine, March 4, 1895 *per curiam.*

Nelson Lumber Co. *v.* Lock, Moore & Co.; appeal from Drew circuit court; Carroll D. Wood, judge; affirmed for non-compliance with rule nine, March 4, 1895; *per curiam.*

Wilson *v.* Ruby; appeal from Benton circuit court in chancery; Edward S. McDaniel, judge; affirmed for non-compliance with rule nine, March 4, 1895; *per curiam.*

Knoxville Fire Ins. Co. *v.* Dreyfus; appeal from Lafayette circuit court; Charles W. Smith, judge; affirmed for non-compliance with rule nine, March 4, 1895; *per curiam.*

Carter *v.* State; appeal from Baxter circuit court; Brice B. Hudgins, judge; dismissed March 4, 1895; *per curiam.*

State *v.* Sutton; appeal from Sevier circuit court; Will P. Feazel, judge; dismissed March 4, 1895; *per curiam.*

Hanger *v.* Worthen; appeal from Pulaski chancery court; David W. Carroll, chancellor; dismissed by consent March 4, 1895; *per curiam*.

Hunter *v.* State; appeal from Franklin circuit court; Jephtha H. Evans, judge; affirmed March 9, 1895; per Bunn, C. J.

Holloway *v.* Security Bank; appeal from Lonoke chancery court; David W. Carroll, chancellor; affirmed in part, reversed in part, March 9, 1895; per Battle, J.

Fudge *v.* Taylor, Duffie & Co.; appeal from Desha chancery court; James F. Robinson, judge; affirmed March 9, 1895; per Hughes, J.

Corner *v.* McLemore; appeal from Woodruff circuit court; Grant Green, Jr., judge; dismissed by consent of parties, March 9, 1895; *per curiam*.

Black *v.* First Nat. Bank of Owatonna; appeal from Monroe circuit court; James S. Thomas, judge; dismissed for non-compliance with rule nine, March 11, 1895; *per curiam*.

Holloway *v.* Jackson: appeal from Lawrence circuit court; James W. Butler, judge; affirmed for non-compliance with rule nine, March 11, 1895; *per curiam*.

Little Rock & Memphis Railroad Co. *v.* Shoecraft; appeal from Monroe circuit court; Grant Green, Jr., judge; dismissed for non-compliance with rule nine, March 11, 1895; *per curiam*.

Holloway *v.* White Sewing Machine Co.; appeal from Pulaski circuit court; Thomas J. Oliphint, special judge; affirmed March 16, 1895, per Bunn, C. J.

Sunny Side Co. *v.* State, use; appeal from Chicot circuit court; Carroll D. Wood, judge; affirmed March 16, 1895, or remittitur being entered; per Battle, J.

Western Union Telegraph Co. *v.* Le May; appeal from Lafayette circuit court; Charles W. Smith, judge; affirmed on remittitur being entered, March 18, 1895; per Hughes, J.

Blanchard *v.* Hefington; appeal from Faulkner chancery court; David W. Carroll, chancellor; affirmed March 23, 1895; per Bunn, C. J.

McLaughlin *v.* Irwin; appeal from Sebastian circuit court; Edgar E. Bryant, judge; affirmed March 23, 1895; per Bunn, C. J.

Epps *v.* State; appeal from Crawford circuit court; Jephtha H. Evans, judge; affirmed March 23, 1895; per Battle, J.

Topeka Investment & Loan Co. *v.* Wright; appeal from Franklin circuit court in chancery; Jephtha H. Evans, judge; reversed March 23, 1895; per Battle, J.

Crane *v.* White; appeal from Franklin circuit court in chancery; Jephtha H. Evans, judge; reversed March 23, 1895; per Battle, J.

Topeka Investment & Loan Co. *v.* Bennett; appeal from Franklin circuit court; Jephtha H. Evans, judge; reversed March 23, 1895; per Battle, J.

London *v.* Wright; appeal from Crawford circuit court; Jephtha H. Evans, judge; affirmed March 23, 1895; *per curiam*.

Stephens *v.* Ledwidge; appeal from Hot Spring circuit court, Alexander M. Duffie, judge; affirmed March 23, 1895; per Hughes, J.

Chipman *v.* Haley; appeal from Faulkner chancery court; David W. Carroll, chancellor; affirmed March 23, 1895; per Wood, J.

St. Louis, I. M. & So. Railway Co. *v.* Johnson, adm'r; appeal from Green circuit court; James E. Riddick, judge; affirmed on remittitur being entered, March 23, 1895; per Wood, J.

Willis *v.* Magness; appeal from Independence circuit court; Elisha Baxter, special judge; affirmed March 23, 1895; per Wood, J.

Guthrie *v.* Baer, Seasongood & Co.; error to Sharp circuit court; John B. McCaleb, judge; modified March 23, 1895; per Wood, J.

Peters *v.* Ford; appeal from Chicot chancery court; James F. Robinson, chancellor; dismissed for non-compliance with rule nine, March 25, 1895; *per curiam*.

James *v.* Teague; appeal from Crawford circuit court; Hugh F. Thomason, judge; affirmed March 30, 1895; per Bunn, C. J.

Thalheimer *v.* Smith; appeal from Saline circuit court; Alexander M. Duffie, judge; affirmed March 30, 1895; per Hughes, J.

Forrester *v.* Turman; appeal from Scott circuit court in chancery; A. G. Leming, special judge; affirmed March 30, 1895; per Hughes, J.

Ackers *v.* Childs; appeal from Garland circuit court in chancery; Alexander M. Duffie, judge; affirmed March 30, 1895; per Hughes, J.

Little Rock & Fort Smith Railway Co. *v.* Timmons; appeal from Conway circuit court; affirmed March 30, 1895; per Wood, J.

Lewis *v.* Compton, judge; appeal from Pulaski chancery court; David W. Carroll, chancellor; dismissed for non-compliance with rule nine, April 1, 1895; *per curiam*.

Wolf & Bro. *v.* Gantt; appeal from Pulaski circuit court; Robert J. Lea, judge; dismissed for non-compliance with rule nine, April 1, 1895; *per curiam*.

McWalters *v.* Porter; appeal from Washington circuit court; Edward S. McDaniel, judge; dismissed for non-compliance with rule nine, April 1, 1895; *per curiam*.

Hayne *v.* Goodlander; appeal from Lawrence circuit court in chancery; James W. Butler, judge; affirmed April 6, 1895; per Battle, J.

Matthews Hardware Co. *v.* Giddens & Brown; appeal from Lee circuit court; Grant Green, Jr., judge; affirmed April 6, 1895; per Battle, J.

St. L. I. M. & So. Railway Co. *v.* Hanks; appeal from Phillips circuit court; Grant Green, Jr., judge; affirmed April 6, 1895; per Battle, J.

St. L. I. M. & So. Railway Co. *v.* Lohman; appeal from Phillips circuit court; Grant Green, Jr., judge; affirmed April 6, 1895; per Battle, J.

St. L. I. M. & So. Railway Co. *v.* Straub; appeal from Phillips circuit court; Grant Green, Jr., judge; affirmed April 6, 1895; per Battle, J.

St. Louis Southwestern Railway Co. *v.* State; appeal from Miller circuit court; Rufus D. Hearn, judge; affirmed April 6, 1895; per Hughes, J.

Maledon *v.* First Nat. Bank; appeal from Sebastian circuit court; Edgar E. Bryant, judge; affirmed April 6, 1895; per Hughes, J.

Pindall *v.* Parrish; appeal from Desha chancery court; James F. Robinson, chancellor; affirmed April 6, 1895; per Riddick, J.

Smith *v.* Empire Lumber Co.; appeal from Ouachita circuit court in chancery; Charles W. Smith, judge; reversed April 13, 1895; per Battle, J.

Nelson *v.* Sikks; appeal from Benton circuit court in chancery; Edward S. McDaniel, judge; affirmed April 13, 1895; per Wood, J.

Am. Fire Ins. Co. *v.* Draughan; appeal from Miller circuit court; Rufus D. Hearn, judge; dismissed for non-compliance with rule nine, April 15, 1895; *per curiam*.

Ward *v.* McCauley; appeal from Jackson circuit court in chancery; Richard H. Powell, judge; affirmed April 20, 1895; per Bunn, C. J.

Bank of Little Rock *v.* Gardner; appeal from Lonoke chancery court; David W. Carroll, chancellor; reversed April 20, 1895; Battle, J.

Little Rock & Memphis Railroad Co. *v.* Ross; appeal from Lonoke circuit court; James S. Thomas, judge; affirmed April 20, 1895; per Battle, J.

Salinger *v.* Hampton, Reed & Co.; appeal from Monroe circuit court in chancery; N. W. Norton, special judge; affirmed April 20, 1895; per Hughes, J.

St. Louis & San Fr. Railway Co. *v.* Brashears; appeal from Washington circuit court; Edward S. McDaniel, judge; reversed and dismissed, April 20, 1895; per Wood, J.

Wooley *v.* Bank of Little Rock; appeal from Lonoke circuit court; James S. Thomas, judge; affirmed for non-compliance with rule nine, April 22, 1895; *per curiam*.

Graphic Mercantile Ass'n *v.* Townsly-Myrick Dry Goods Co.; appeal from Crawford circuit court; Nimrod Turman, special judge; dismissed for non-compliance with rule nine, April 22, 1895; *per curiam*.

Burch *v.* Raulston; appeal from Garland circuit court; Alexander M. Duffie, judge; dismissed for non-compliance with rule nine, April 22, 1895; *per curiam*.

Collins Drug Co. *v.* Holman; appeal from Pulaski chancery court; David W. Carroll, chancellor; affirmed April 27, 1895; per Bunn, C. J.

St. L. Southwestern Railway Co. *v.* Stewart; appeal from Miller circuit court; Rufus D. Hearn, judge; affirmed April 27, 1895; per Bunn, C. J.

Crossen *v.* Echols; appeal from Crawford circuit court; Nimrod Turman, special judge; affirmed April 27, 1895; Battle, J.

St. L. Southwestern Railway Co. *v.* Dobbins; appeal from Miller circuit court; Rufus D. Hearn, judge; affirmed April 27, 1895; per Battle, J.

Little Rock Mill & Elevator Co. *v.* Texarkana Grain etc. Co.; appeal from Miller circuit court; Rufus D. Hearn, judge; affirmed April 27, 1895; per Riddick, J.

Southwest. Ark. & Ind. T. Railway Co. *v.* Hare; appeal from Clark circuit court; Rufus D. Hearn, judge; dismissed for non-compliance with rule nine, April 29, 1895; *per curiam*.

Epstein *v.* Lowenstein; appeal from Conway circuit court; Jeremiah G. Wallace, judge; affirmed May 4, 1895; per Bunn, C. J.

Stevens *v.* Walton; appeal from Franklin circuit court; Jephtha H. Evans, Judge; reversed May 4, 1895; per Bunn, C. J.

Epps (Tode) *v.* State; appeal from Crawford circuit court; Jephtha H. Evans, judge; affirmed May 4, 1895; per Bunn, C. J.

Cooper *v.* Smith, Caldwell & Co.; appeal from Monroe circuit court in chancery; James S. Thomas, judge; affirmed May 4, 1895; per Bunn, C. J.

Jefferson *v.* Jones; appeal from Phillips circuit court; Grant Green, Jr., judge; affirmed May 4, 1895; per Wood, J.

St. L. I. M. & So. Railway Co. *v.* Gilliam; appeal from Jackson circuit court; James W. Butler, judge; affirmed May 4, 1895; per Riddick, J.

Toney *v.* Robertson; appeal from Benton circuit court; Edward S. McDaniel, judge; affirmed for non-compliance with rule nine, May 6, 1895; *per curiam*.

Emmerson *v.* Carson; appeal from Cleveland circuit court; Carroll D. Wood, judge; affirmed May 11, 1895; per Hughes, J.

Little Rock & Fort Smith Railroad Co. *v.* Clark; appeal from Crawford circuit court; Hugh F. Thomason, judge; reversed May 11, 1895; per Wood, J.

Strayhorn *v.* Sadler; appeal from Logan circuit court; Oscar L. Miles, special judge; affirmed May 18, 1895; per Bunn, C. J.

Cage *v.* Stone; appeal from Phillips circuit court; Grant Green, Jr., judge; affirmed May 18, 1895; per Bunn, C. J.

Blakey *v.* Miser; appeal from Baxter circuit court in chancery; Brice B. Hudgins, judge; affirmed May 18, 1895; per Bunn, C. J.

Wilson *v.* Wilson; appeal from Cleveland circuit court in chancery; Carroll D. Wood, judge; affirmed May 18, 1895; per Battle, J.

Farrabee *v.* Mitchell; appeal from Saline circuit court; Alexander M. Duffie, judge; affirmed May 18, 1895; per Hughes, J.

Payne *v.* White; appeal from Sebastian circuit court; Edgar E. Bryant, judge; reversed May 18, 1895; per Wood, J.

St. Louis, I. M. & So. Railway Co. *v.* Hicks ; appeal from Cross circuit court ; James E. Riddick, judge ; affirmed May 18, 1895 ; per Wood, J.

Cox *v.* Orr ; appeal from Miller circuit court ; Charles E. Mitchell, judge ; affirmed May 18, 1895 ; per Riddick, J.

Hindman *v.* O'Connor ; appeal from Phillips circuit court in chancery ; Grant Green, Jr., judge ; affirmed May 18, 1895 ; per Riddick, J.

St. Louis, I. M. & So. Railway Co. *v.* Lord ; appeal from Pulaski circuit court ; Robert J. Lea, judge ; reversed May 25, 1895 ; per Battle, J.

Vaughan *v.* St. Louis, Southwestern Railway Co. ; appeal from Jefferson circuit court ; John M. Elliott, judge ; affirmed May 25, 1895 ; per Hughes, J.

Bartlett *v.* Hinkle & Wolf ; appeal from Independence circuit court ; James W. Butler, judge ; affirmed May 25, 1895 ; per Wood, J.

St. Louis, I. M. & So. Railway Co. *v.* Paup ; appeal from Nevada circuit court ; Rufus D. Hearn, judge ; affirmed May 25, 1895 ; per Riddick, J.

Incorporated Town of Russellville *v.* Fowler ; appeal from Pope circuit court ; Jeremiah G. Wallace, judge ; dismissed for non-compliance with rule nine, May 27, 1895 ; *per curiam.*

Brady *v.* State, use Jonesboro ; appeal from Craighead circuit court ; William H. Cate, judge ; affirmed for non-compliance with rule nine, May 27, 1895 ; *per curiam.*

Feeback *v.* State ; appeal from Boone circuit court ; Brice B. Hudgins, judge ; affirmed for non-compliance with rule nine, May 27, 1895 ; *per curiam.*

Hays *v.* State ; appeal from Benton circuit court ; Edward S. McDaniel, judge ; affirmed for non-compliance with rule nine, May 27, 1895 ; *per curiam.*

Rushing *v.* State ; appeal from Boone circuit court ; Brice B. Hudgins, judge ; affirmed June 1, 1895 ; per Hughes, J.

Garrett *v.* Forrest ; appeal from Lincoln circuit court ; John M. Elliott, judge ; affirmed June 1, 1895 ; per Hughes, J.

Harrod & Hunt *v.* McKelvy ; appeal from Miller circuit court ; Rufus D. Hearn, judge ; reversed June 1, 1895 ; per Wood, J.

Wagner *v.* Blass ; appeal from Jefferson circuit court ; John M. Elliott, judge ; affirmed June 1, 1895 ; per Riddick, J.

Waring *v.* City of Little Rock ; appeal from Pulaski chancery court ; David W. Carroll, chancellor ; affirmed June 1, 1895 ; per Riddick, J.

Parham & Dudley *v.* State ; appeal from Columbia circuit court ; Charles W. Smith, judge ; dismissed June 8, 1895 ; per Bunn, C. J.

Martin & Harton *v.* Steakley ; appeal from Faulkner chancery court ; David W. Carroll, chancellor ; affirmed June 8, 1895 ; per Wood, J.

St. Louis & San Francisco Railway Co. *v.* Laurent; certiorari to Crawford circuit court; Hugh F. Thomason, judge; dismissed June 8, 1895; *per curiam*.

St. Louis & San Francisco Railway Co. *v.* Winford; certiorari to Crawford circuit court; Hugh F. Thomason, judge; dismissed June 8, 1895; *per curiam*.

State *v.* Earnheart; three cases; error to Independence circuit court; James W. Butler, judge; dismissed June 15, 1895; *per curiam*.

Roberts *v.* State; appeal from Conway circuit court; Jeremiah G. Wallace, judge; affirmed June 8, 1895; per Riddick, J.