

BLACKBURN *v.* FORD.

5-372

267 S. W. 2d 519

Opinion delivered April 19, 1954.

[Rehearing denied May 24, 1954.]

APPEAL AND ERROR—BILL OF EXCEPTIONS—CERTIFICATE OF JUDGE.—The bill of exceptions was stricken in accordance with the holding in *Bolls v. Craig*, 220 Ark. 880, 251 S. W. 2d 482.

Appeal from Johnson Chancery Court; *George O. Patterson*, Chancellor; affirmed.

Wiley W. Bean and *O. S. Blackburn*, for appellant.

W. J. Morrow and *Mark E. Woolsey*, for appellee.

ED. F. McFADDIN, Justice. This suit involves claims of rival litigants for the minerals under 120 acres of land in Johnson County; but we do not reach the main issues because of procedural defects. The appellee has moved to strike the Bill of Exceptions and affirm the case; and that motion must be granted.

The cause was heard by the Chancery Court on evidence *ore tenus* on June 9, 1953; and at the conclusion of the testimony, the Court took the cause under submission for later decision. The decree was rendered after due notice to all parties, and filed with the Chancery Clerk on October 13, 1953.¹ In the decree there was no time given for filing the Bill of Exceptions. The transcript, containing the purported Bill of Exceptions, was filed in this Court on December 3, 1953, and an appeal prayed on

¹ In *Meadows v. Costoff*, 221 Ark. 273, 252 S. W. 2d 825, we cited cases to the effect that under such circumstances as these, the decree dates from its filing.

the transcript: the appellant electing to pursue the old procedure rather than that contained in Act 555 of 1953.²

There is nothing in the transcript to show that the Bill of Exceptions was ever submitted to or approved by opposing counsel or the Trial Court, as is required by Act 139 of 1951. In *Bolls v. Craig*, 220 Ark. 880, 251 S. W. 2d 482, and in *Meadows v. Costoff*, 221 Ark. 273, 252 S. W. 2d 825, we held that Act 139 of 1951 was ruling as to all Chancery cases. In the case at bar, the time for obtaining such approval of the Bill of Exceptions has now expired, so the Motion to Strike the Bill of Exceptions is granted. There is no error apparent on the face of the record, so the decree is affirmed.

² Such election was permissible as to judgments or decrees rendered before January 10, 1954.