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CASES DETERMINED

IN THE

SUPREME COURT *of* ARKANSAS

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JUDGES

OF THE

SUPREME COURT

During the Period of this Volume

JOSEPH M. HILL, - - -	CHIEF JUSTICE.
BURRILL B. BATTLE, - -	ASSOCIATE JUSTICES.
CARROLL D. WOOD, - - -	
JAMES E. RIDDICK, - - -	
EDGAR A. McCULLOCH, - -	
ROBERT L. ROGERS, - -	ATTORNEY GENERAL.
P. D. ENGLISH, - - - -	CLERK.
J. H. CAMPBELL, - -	DEPUTY CLERK.

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APPENDIX

I.

IN MEMORIAM

MAJOR JOHN J. HORNOR.

On February 6, 1905, Major John J. Hornor, of Helena, Ark., a member of the bar of this court, died.

At a meeting of the court held on Saturday, April 15, 1905, the chief justice, the associate justices, and members of the bar being present, the Honorable John I. Moore, a member of the bar, delivered the following address:

May it Please the Court:

At a meeting of the bar of the city of Helena, held some days ago, called for that purpose, appropriate action was taken on the death of Major John J. Horner, for many years a distinguished member of this court, by the appointment of a committee to prepare suitable resolutions and appropriate memorials of respect to his life and memory. The report of that committee was made, and the following resolutions were adopted. As a member of that bar, I have been designated from among those who knew him longest and loved him best to present the same to this court. I now present the resolutions and move that they be spread upon the records of this court as a fitting tribute to his memory:

RESOLUTIONS.

"We, the undersigned committee, appointed at a meeting of the Helena bar, held on the morning of February 8, 1905, to draft appropriate resolutions regarding the death of Major John J. Hornor, beg leave to submit the following:

"That, whereas, death has called from our midst one of our number, distinguished as a jurist and advocate, patriotic as a citizen, courageous and loyal as a soldier, devoted and affectionate as a husband and parent, and possessed, in their highest development, of attributes that make men great and deserving of emulation,

"Therefore, be it *Resolved,* That in the death of Major John J. Hornor, the bar of Phillips County and the State of Arkansas have lost a distinguished member, whose attainments brought him easily abreast with the leaders of his chosen profession, and that his loss is keenly felt by those who were his associates, and by those who were honored with his friendship. The better part of his long and well-spent life was devoted to the prosecution of his professional duties, to which he brought the integrity of his nature, sincerity of purpose, and untiring zeal and labor, that stand out monumental for those who survive him, as an exemplar for those who succeed him. The organic law of the State bears the impress of his superior intellect, which enters into its fabric as a heritage of the present and coming generations

"Be it *Resolved,* That the city of Helena, in the death of Major Hornor, has lost a citizen whose civic pride and hopes knew no bounds nor limitations, whose every thought was for its upbuilding and progress, and who never wearied of advancing those interests which redounded to the public weal.

"Be it *Resolved,* That in his death there was taken from the deserving poor and needy a heart that throbbed with generous impulses, and a hand ever open with ready and unostentatious charity and bounty.

"Be it further *Resolved,* That we extend to his family and relatives, in their great bereavement, our sincere sympathy and condolence; and,

"Be it *Resolved,* That a copy of these resolutions be presented to the United States courts, the State Supreme Court, and the State Circuit Court and to the Chancery Court, with the request that the same be spread upon their respective records.

"Respectfully submitted,

"J. C. TAPPAN,
"GREENFIELD QUARLES,
"R. W. NICHOLLS,
"JACOB FINK."

The universal law of death itself is but the consummation of the universal law of life. To the man who works, to the man who achieves great things, as well as to him who simply cumbers the earth's surface death comes at last, and upon the lips of all softly sets its seal of everlasting silence. All human history is made up of a procession of shadows passing between the "morn of laughter and the night of tears," from birth in the comedy of existence, but the end of the drama is a sad and mournful tragedy. We cannot, if we would, escape this tragedy called death, for it is the inevitable penalty of having lived. After all, it is but the demand of the return of the talents confided to our care and keeping, and a final summons for an accounting to a most indulgent Creditor whose "justice and mercy endureth forever." The tragedy which takes the soul from this land of the living and consigns the body to mother earth cannot rob us of the loving memory we must forever cherish for the departed, for our hearts are touched and softened and we draw consolation and encouragement

from the life of the exemplar whom we shall see no more. The life and influence of Major John J. Hornor, whose demise it becomes my sad duty to announce here, will be forever associated with the judicial history of this State and his upright life, his lofty character, his civic pride and his noble, unselfish labors of love will never fade from the memory of the men amongst whom he lived.

John J. Hornor was born at Morgantown, now West Virginia, on March 21, 1833. Coincident with the admission of this State into the Union he became a citizen of this commonwealth, and afterward made the city of Helena his home. He attended the common schools of that day and graduated at Jackson College, at Columbia, Tenn., in 1852. He studied law under the tutelage of W. K. Sebastian, who subsequently became a member of the Senate of the United States. He was admitted to the bar by Judge C. W. Adams on the day he attained the age of twenty-one years, and on the same day formed a co-partnership with General J. C. Tappan and for more than thirty years this co-partnership continued, barring the interim of the Civil War. When Arkansas seceded he enlisted as a Confederate soldier, was made inspector in Tappan's brigade with the rank of captain, from which position he was promoted to the inspectorship of General Churchill's division with the rank of major, in which rank and service he continued until mustered out at the close of the war. Returning home he laid aside his uniform, put the past behind him, and resolutely began the work of rehabilitating his fortune and reclaiming the community from the devastating effects incident to an invasion by the opposing armies. For him there was neither time for, nor logic in, repining over defeat, and the ravages of the despoiler; but, like a philosopher, he believed that the result was for the best, and accepted the conditions in that broadness of mind that is ever characteristic of the highest type of manhood. He joined in with his neighbors in "casting up a highway and gathering out the stones for the coming day," and no man contributed more to the restoration of a peaceful and prosperous condition than did he. The Southland was his home, and he made it the center of his affections and aspirations, and its progress and prosperity entered into every serious purpose of his life.

During a long, active and useful career he held only one public office—that of member of the constitutional convention of 1874. The efficiency of his work in this capacity is a part of the public ihstory of the State. Considering the times and conditions, it is doubtful whether the organic law of any State ever embodied more conservative wisdom, or if any assemblage of men ever had greater provocation or justification for submitting drastic measures to a people too recently embittered by a relentless oppression. To him political preferment had no charms. He cared nothing for the fascinations of politics, the blandishments of public office or the applause of the multitude. He rather preferred to go "forth with duty a supreme command and love the law of life," thereby making himself in a sense, a redeemer of mankind.

At all times and under all conditions, however, he took an active interest in the affairs of government in its various forms and phases, national, state, county and municipal, believing it the duty of every citizen to give of his time and means whatever was required to secure an honest and faithful administration of the laws at the hands of honest and capable men.

In a full realization of the duties and responsibilities of a husband and father, he found ample time for the society of wife and children. Descended from a long line of ancestors whose living was as plain as their thinking was high, he instilled into the minds of his children the theory that work is honorable, and that no one has the right to make of this world a play-ground. Indeed, so deeply did he implant in their minds and hearts the lessons of industry and morality that these lessons, both by precept and example, were a blessing to him in his declining years.

It is perhaps not out of place here to say but a word of my personal relations with the dead. I studied law under his tutelage, and spent many months in his office with him. Ever gentle and patient with my ignorance, always ready to help me over the rough places, and to lead me out of the dark and preplexing troubles that so often beset and bewilder the beginner, he became to me a father, and his loss can never be replaced. Others who, in like manner, accepted of his proffered help share with me the bereavement, and will forever join me in honoring his blessed memory. I have never known any man more considerate of or more helpful to his younger brothers in the profession.

During a long and active career of usefulness, the sphere of his labors covered a broader field than falls to the lot of the average professional man. In addition to a faithful discharge of duty to client he was engaged in many business enterprises, chief among which were railroading, banking and the organization and operation of manufacturing enterprises, to all of which he devoted the time and thought essential to successful and profitable investments. His capacity for work, both physical and mental, exceeded that of any man I have ever known, and as a result, he accomplished in one lifetime, more than the average man would in three. In addition to the attention devoted to his profession, business enterprises and family, he gave freely of his time to whatever was for the advancement and betterment of the community, and his unerring judgment on all public questions was more potential than that of any of his associates.

His high standing as a member of this court admonishes me that my poor effort can add nothing to the already undying reputation his name and fame have brought to this tribunal. His sphere of professional duty was here, in the circuit courts of the First and adjoining circuits and the Federal courts. His great attainments and gracious endowments are well known to the bench and bar. By all qualified to judge he was regarded as a lawyer of the highest order of ability. His word at all times stood for all it spoke and no man can say he ever violated any professional agreement with reference to any cause or proceeding in court. His thorough familiarity with every feature of his case, his boundless knowledge

of human nature, the belief he forced upon the minds of others of his conviction in the righteousness of his cause, his lucid exposition of law and facts, his fascinating manner and engaging personality all combined to render him a most dangerous antagonist. Making no effort at oratorical display in flowing rhetoric and rounded periods, the simplicity and earnestness of his speech evolved the logic of his contention in such lucid and luminous splendor as to render him irresistible. It has been said that the skill of a lawyer is like that of a painter; it shows in his workmanship; that a simple painting like "Washington" or the "Russian Wedding Feast," may outlast many trials, in public memory, but a single trial and every trial will stamp its impress on the community. If this be true, the professional name of our departed brother ought never to perish from the memory of the bench and bar, and jurisprudence of this State. But public spirited citizen, lawyer and soldier are as nothing when we come to consider the exalted character of the man. He had the basis, the indispensable basis, of all high character, and that was unspotted integrity, unimpeachable honor and character. If he had aspirations, they were high and honorable and noble. There was nothing groveling or low or meanly selfish that came from his head or heart. Firm in his purpose, perfectly patriotic and honest in his principles he espoused or defended, I do not believe he had a selfish motive or a selfish feeling. He was a true, genuine Christian from early manhood. The simplicity of his faith, the becoming modesty of his professions and cheerful fortitude of his brave heart were known to all men. He had his hours of desolation and darkness. He suffered bereavement after bereavement, but, of the world asking no sympathy, he bowed in humble submission to the will of his Maker.

He has lived long enough, he has done well enough, and he has done it so well, so successfully, so honorably, as to connect himself for all time with the records of his country. Those of us who have known him will find that he has left upon our minds and upon our hearts, a strong and lasting impression of his character, his personality, and his professional performances, which, while we live, will never be obliterated. We shall hereafter indulge in it as a grateful recollection that we have lived in his age, that we have been his contemporaries, that we have seen him and known him. We shall delight to speak of him to those who shall come to fill our places. And when the time shall come that we ourselves must answer the final summons, one after another, in succession, to an accounting for the talents intrusted to our care and keeping, we will carry with us a deep sense of his genius and character, his honor and integrity, his amiable deportment in private life, and the purity of his exalted patriotism.

The sad duty imposed upon me by my fellows has been performed. I have, in my feeble way, made official announcement to this court of the death of one of its oldest and most distinguished members. I will detain Your Honors no longer by this faint and feeble tribute to the memory of my beloved friend and brother. Even in other hands, adequate justice could not be done him within the limits of this occasion. The highest, the best praise, is the deep conviction of those who knew of his merits,

and their affectionate gratitude for his friendship and favors. As the years go by, and only the large outlines of his lofty character and career remain, the coming generations will confess the benediction of a life like this, and gladly acknowledge that the inspiration to better things and nobler ends must come from moral courge, spotless integrity, unselfish devotion of endowments and an all-embracing love for humanity. Such a life does seem to give to each of us courage, and energy and strength to dedicate ourselves and our work to that service, to that mission—whatever it may be—which life has revealed to us as best, and highest and most real.

The chief justice responded, and ordered the resolutions spread upon the record, and that the court do adjourn for the day out of respect to the memory of the departed.

APPENDIX

II.

OPINIONS NOT REPORTED.

Matthews v. DeWerff; appeal from Arkansas Chancery Court; John M. Elliott, chancellor; affirmed November 5, 1904; *per* McCulloch, J.

Adcock v. State; appeal from Drew Circuit Court; Zachariah T. Wood, judge; affirmed November 19, 1904; *per* Wood, J.

Collins v. State; appeal from Arkansas Circuit Court; George M. Chapline, judge; reversed December 3, 1904; *per* Hill, C. J.

Leaptrot v. State; appeal from Cross Circuit Court; Allen Hughes, judge; affirmed December 3, 1904; *per* Hill, C. J.

Goad v. State; appeal from White Circuit Court; Hance N. Hutton, judge; affirmed December 3, 1904; *per* Wood, J.

White v. State; appeal from Lincoln Circuit Court, Star City District; Antonio B. Grace, judge; affirmed December 10, 1904; *per* Battle, J.

Gill v. State; appeal from Jefferson Circuit Court; Antonio B. Grace, judge; affirmed December 10, 1904; *per* Riddick, J.

Jones-Pope Produce Company v. Breedlove; appeal from Sebastian Circuit Court, Fort Smith District; Styles T. Rowe, judge; affirmed December 3, 1904; *per* McCulloch, J.

Goldsby v. State; appeal from Pulaski Circuit Court; Robert J. Lea, judge; affirmed December 17, 1904; *per* Riddick, J.

Flinn v. State; appeal from Prairie Circuit Court; George M. Chapline, judge; affirmed December 24, 1904; *per* Battle, J.

Quinn v. State; appeal from Sebastian Circuit Court, Fort Smith District; Styles T. Rowe, judge; reversed January 7, 1905; *per* McCulloch, J.

Texarkana & Ft. S. Ry. Co. v. Nichols; appeal from Miller Circuit Court; Joel D. Conway, judge; affirmed January 21, 1905; *per* Riddick, J.

Woman's Christian Nat. Library Assoc. v. Fordyce; appeal from Garland Circuit Court; Alexander M. Duffie, judge; reversed December 10, 1904; *per* Hill, C. J.

III.

CASES DISPOSED OF ORALLY.

Bond v. Jones; appeal from Jackson Circuit Court; Hance N. Hutton, judge; affirmed November 7, 1904; *per curiam.*

Dodson v. State; appeal from Clark Circuit Court; Joel D. Conway, judge; reversed on confession of error, November 7, 1904; *per curiam.*

Gates v. Solomon; appeal from Lonoke Circuit Court; George M. Chapline, judge; appeal dismissed November 7, 1904; *per curiam.*

St. Louis & San Francisco Ry. Co. v. Crabtree; appeal from Crawford Circuit Court; Jeptha H. Evans, judge; affirmed orally, November 12, 1904; *per* Wood, J.

Bates v. Verity; appeal from Benton Circuit Court in Chancery; John N. Tillman, judge; appeal dismissed by consent, November 12, 1904; *per curiam.*

Black v. Verity; appeal from Benton Circuit Court; John N. Tillman, judge; appeal dismissed November 12, 1904; *per curiam.*

Dunlap v. Verity; appeal from Benton Circuit Court; John N. Tillman, judge; appeal dismissed, November 12, 1904; *per curiam.*

Adcock v. State; appeal from Drew Circuit Court; Zachariah T. Wood, judge; affirmed November 19, 1904; *per* Wood, J.

McDowell v. State; appeal from Sebastian Circuit Court; Styles T. Rowe, judge; affirmed for non-compliance with rule 9, November 28, 1904, *per curiam.*

Larue v. State; appeal from Crawford Circuit Court; Jeptha H. Evans, judge; affirmed November 28, 1904; *per curiam.*

Westmoreland v. State; appeal from Lafayette Circuit Court; Charles W. Smith, judge; affirmed for non-compliance with rule 9, November 28, 1904;*per curiam.*

St. Louis So. W. Ry. Co. v. Frank Tomlinson; appeal from Monroe Circuit Court; George M. Chapline, judge; reversed on confession of error November 28, 1904; *per curiam.*

Clendenin v. Knox, appeal from Searcy Circuit Court in Chancery; Elbridge G. Mitchell, judge; appeal dismissed for want of prosecution, December 10, 1904; *per curiam.*

Morris v. Heyward (two cases); appeals from Benton Circuit Court in Chancery; John N. Tillman, judge; settled and appeals dismissed December 17, 1904; *per curiam.*

K. C. & So. Lbr. Co. v. K. C. So. Ry. Co.; appeal from Lawrence Circuit Court; Frederick D. Fulkerson, judge; settled and appeal dismissed by consent December 17, 1904; *per curiam.*

Sisk v. Brooks; Independence Circuit Court; Frederick D. Fulkerson, judge; affirmed as a delay case, December 24, 1904; *per curiam.*

Dixon v. Suggs; appeal from Mississippi Chancery Court; Edward D. Roberson, chancellor; affirmed for non-compliance with rule 9, January 2, 1905; *per curiam.*

Williams v. Armistead; appeal from Hot Springs Circuit Court; Alexander M. Duffie, judge; affirmed as a delay case January 7, 1905, *per* Riddick, J.

City of Arkadelphia v. Carpenter; appeal from Clark Circuit Court; Joel D. Conway, judge; appeal dismissed by consent, January 7, 1905; *per curiam.*

City of Arkadelphia v. Carpenter, *et al.;* appeal from Clark Circuit Court; Joel D. Conway, judge; appeal dismissed by consent January 7, 1905; *per curiam.*

Schloss v. Grossman-Michaelson & Co.; appeal from Jefferson Circuit Court; John M. Elliott,chancellor ; settled and appeal dismissed by consent, January 7, 1905; *per curiam.*

Austin v. Imp. Dist.; appeal from Pulaski Chancery Court; Thos. B. Martin, chancellor; appeal dismissed by consent, January 9, 1905; *per curiam.*

Phillips v. State; appeal from Clay Circuit Court; Allen Hughes, judge; dismissed by consent, January 9, 1905; *per curiam.*

Mayor v. Williams; appeal from Sebastian Circuit Court; Styles T. Rowe, judge; dismissed by consent January 9, 1905; *per curiam.*

Union Mortgage & Secy. Co. v. Kiser; appeal from Cross Chancery Court; Edward D. Robertson, chancellor; dismissed for non-compliance with rule 9, January 16, 1905; *per curiam.*

Wilkins v. Whitton; appeal from Logan Circuit Court; Jeptha H. Evans, judge; appeal dismissed for non-compliance with rule 9, January 16, 1905; *per curiam.*

Beems v. McGaughey; appeal from Washington Circuit Court; John N. Tillman, judge; affirmed on motion of appellee, January 17, 1905; *per curiam.*