

ARKANSAS REPORTS

VOL. 76

CASES DETERMINED

IN THE

Supreme Court of Arkansas

FROM

JUNE TO OCTOBER, 1905

T. D. CRAWFORD
REPORTER

PUBLISHED
BY THE
STATE OF ARKANSAS
1906

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**FORT SMITH
CALVERT-McBRIDE PRINTING CO.
1918.**

MEMORANDUM.

On account of ill health Chief Justice HILL, was absent from the sittings of the court after September 30, 1905, until April 2, 1906, and did not participate in any opinions delivered in the interim between these dates.

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.

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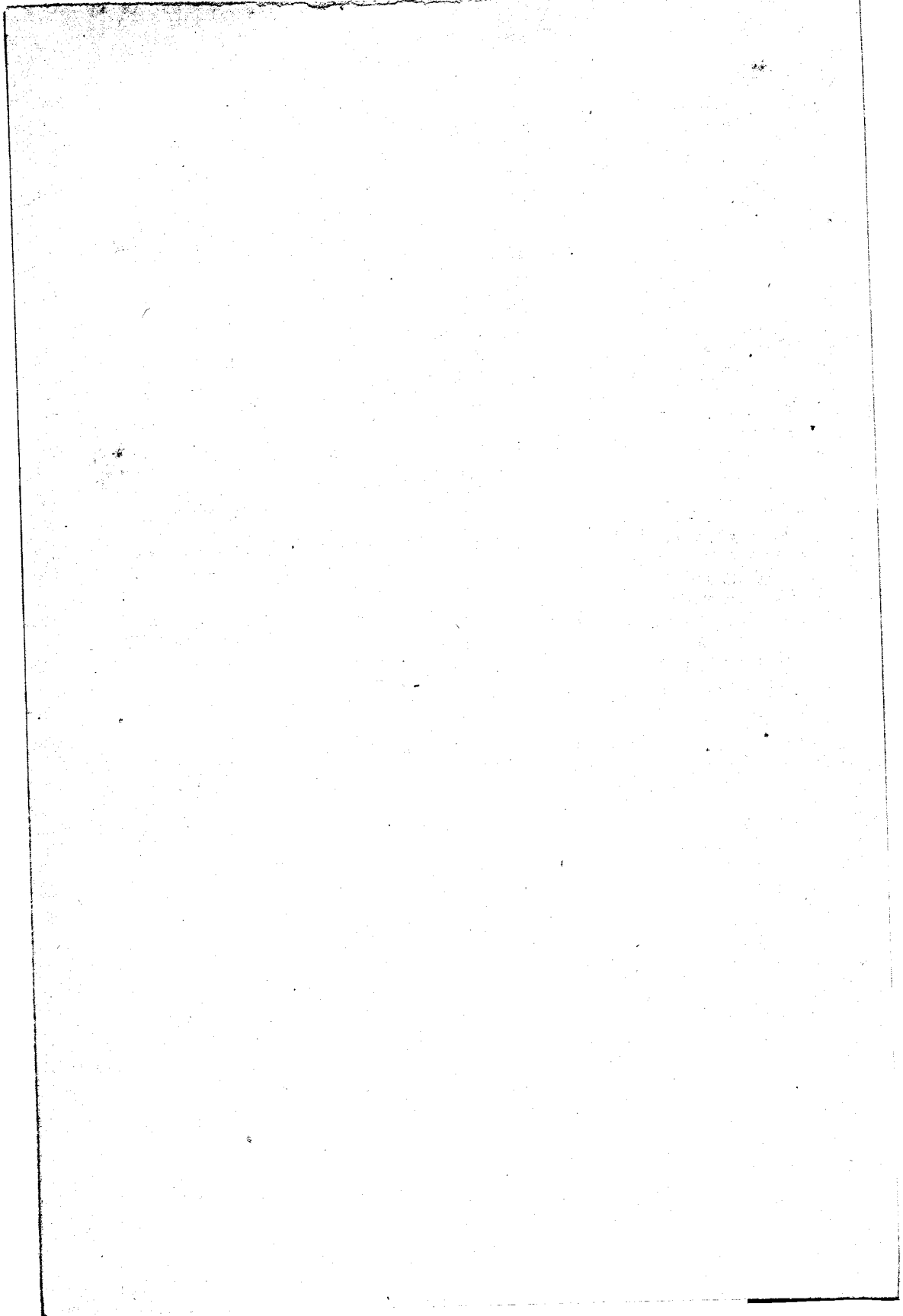
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APPENDIX I.

IN MEMORIAM

ARTHUR NEILL

On May 3, 1905, Arthur Neill, a member of the bar of this court, died.

At a meeting of the court held on Saturday, July 15, 1905, present the judges and members of the bar, the Hon. Daniel W. Jones, with appropriate remarks, presented the following resolutions:

Mr. Chairman:

Acting under the mandate of the bar to prepare a suitable memorial touching the character of our late associate and brother, Arthur Neill, we submit the following:

Arthur Neill was born in Batesville, Arkansas, March 19, 1870, and died at the home of his parents in that city on May 3, 1905.

He was the eldest son of General and Mrs. Robert Neill, his father being a distinguished and highly respected citizen of Arkansas, who achieved renown in the Confederate army, and after the war was a member of Congress from the Second district of this State.

Arthur Neill was a graduate of the public schools of the city of Batesville, and of Arkansas College. He took a literary course in Vanderbilt University. He was a graduate from the law school of the University of Arkansas, and further pursued his studies in his father's office. In 1891 he was admitted to the bar, and began his active practice as partner of his father. He continued in the active practice of his profession in Batesville until 1896, when he accepted the position of private secretary to Governor Dan W. Jones, and became a resident of Little Rock. He soon became well known and respected in Little Rock. At the outbreak of the Spanish war he was adjutant general of the State guard, and to him fell much of the labor of organizing the State Militia for service in the United States Army. His painstaking work and fine executive ability won for him reputation and friends throughout the State. At the close of Governor Jones' second term he was one of the best known and most respected men in the State.

At this time he resumed the practice of his profession in partnership with Governor Jones. His fine ability as a lawyer and sterling traits of character soon brought to him a choice practice that was growing rapidly until the failure of his health. He was a slave to duty and his studies, but his physical strength was not equal to his zeal, and in July, 1904, he was stricken with nervous prostration, which culminated in his death.

At the time of his death he was secretary of the Arkansas Bar Association.

These terse sentences recite the conspicuous milestones in the life of a true and noble man taken from us in the vigor of his young manhood, but to how many of us who knew him well do the simple words outline the life of a beautiful character, a staunch friend and an able lawyer. How many of us, his friends and acquaintances, thinking of the life of Arthur Neill, recall those incidents of his career which go to make a man's reputation. We call to mind that he was possessed of natural gifts for the law of a rare order. His love for the broad principles of justice and equity placed his reasoning above a mere calculation of technicalities. Added to this was an unusual power of discrimination and appreciation of the analogy of principle as applied to various facts. In addition to these endowments, he was possessed of extraordinary industry in his studies and great ambition in his profession. But his zeal for his profession did not prevent much study of general literature, history and the sciences. His was one of those happy intellects that are interested in everything that offers opportunity for study and deduction. His cultured mind found equal recreation in the ways of nature and in the ways of men.

In conversation he was charming, and many well remember his refined ideas and felicity of expression, and added to these was a humor and charity of thought that ever made his companion loath to part with him.

Great as the intellectual gifts and culture of any man may be, however, an estimate of his real worth is made upon analysis of his character.

Arthur Neill was a character strong and pure. Aggressive and independent in thought and action, he had a contempt for trickery and smallness, and was outspoken in his denunciation of those who merited his contempt. No ideas of policy or selfishness ever dismayed his moral courage or interfered with his independent action. Frank and truthful, there was no place in his make-up for deceit or artifice. No end of incidents in his life proclaim this as one of the predominating traits of his character. But this trait was softened by his charity of thought and generosity. Democratic in his ideas, he had the faculty of estimating people at their true worth, and the great and humble were shorn of their habiliments in his estimate of the man.

Simple in his tastes, modest, courteous, unselfish, we recall the elements of his character so well mixed that they blended into a beautiful harmony. Truly, he was a man of many parts.

In view of the matters here stated, we respectfully recommend that the meeting adopt the following resolutions:

1. *Resolved*, That the meeting fully approve the report of the committee just made as expressive of the character and virtues of Mr. Neill and of the great loss that the bar and the community have sustained by his death.

2. That to the family of the deceased we respectfully tender our most sincere sympathy and condolence.

3. That Dan W. Jones, Esq., be requested to present the proceedings of this meeting to the Supreme Court of this State; that Ashley Cockrill, Esq., be requested to present them to the Circuit Court for the Sixth Judicial Circuit; that George B. Rose, Esq., be requested to present them to the Circuit Court of the United States holding its sessions in this city.

4. That a copy of the proceedings of this meeting be sent to the family of the deceased.

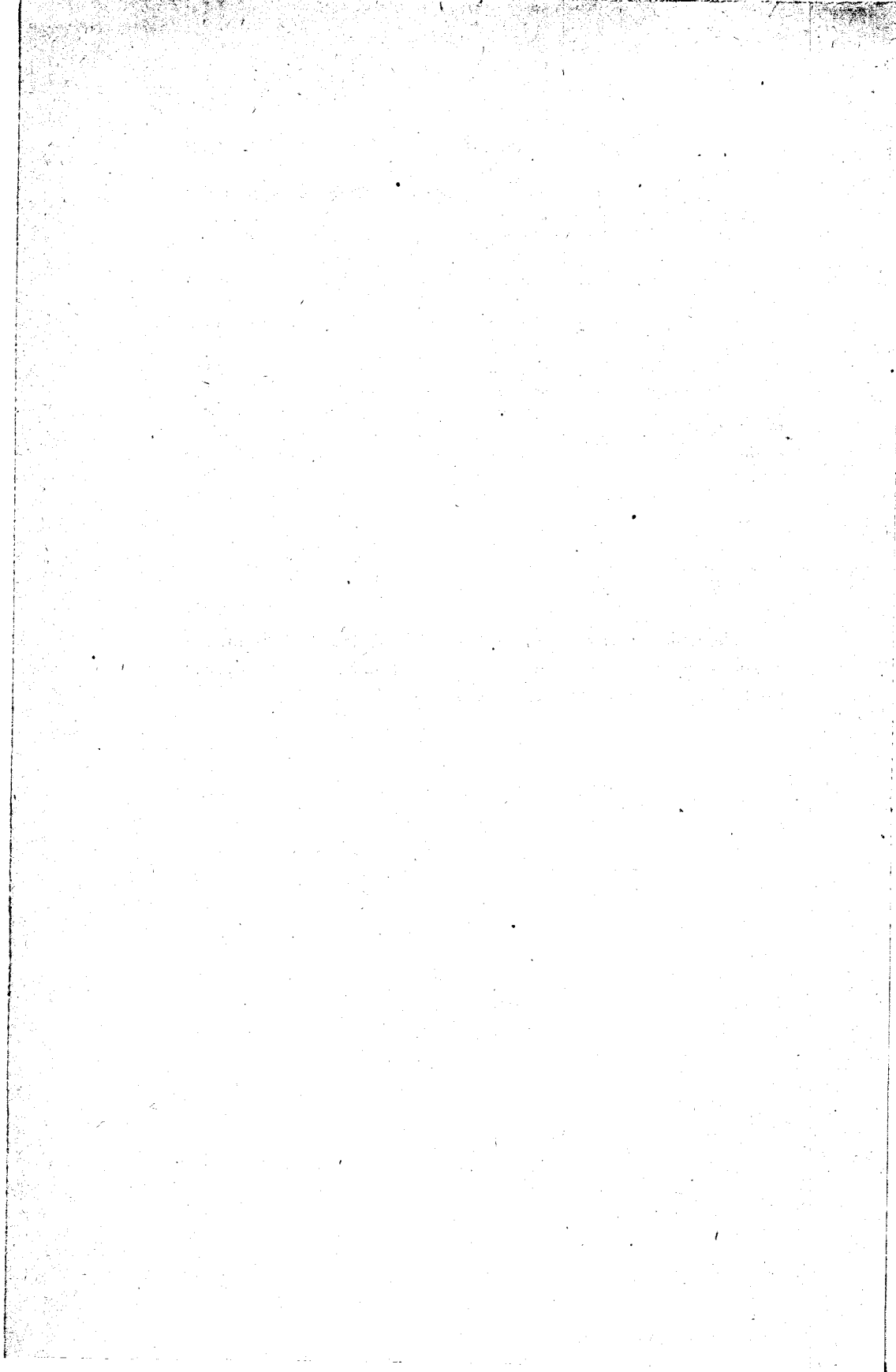
J. F. LOUGHBOROUGH,

J. M. MOORE,

G. B. PUGH,

Committee.

The Chief Justice responded, and ordered that the resolutions be spread upon the record of the court, and that the court adjourn for the day out of respect to the memory of deceased.



APPENDIX

II.

OPINIONS NOT REPORTED.

Ince *v.* State; appeal from Yell Circuit Court, Danville District; William L. Moose, judge; reversed June 17, 1905; *per curiam*.

Martin *v.* State; appeal from Lee Circuit Court; Hance N. Hutton, judge; affirmed July 8, 1905; *per* Wood, J.

Moore *v.* State; appeal from Union Circuit Court; Charles W. Smith, judge; affirmed July 8, 1905; *per* Battle, J.

Bendy *v.* Mudford; appeal from Miller Chancery Court; James D. Shaver, chancellor; affirmed July 29, 1905; *per* Hill, C. J.

Fayetteville Wagon, Wood & Lumber Co. *v.* Kenefick Construction Co.; appeal from Washington Circuit Court; John N. Tillman, judge; affirmed July 29, 1905; *per* Hill, C. J.

Carter *v.* Reeves; appeal from Yell Circuit Court in Chancery; William L. Moose, judge; affirmed July 29, 1905; *per* Hill C. J.

Crosby *v.* Henry; appeal from Miller Chancery Court; James D. Shaver, chancellor; affirmed July 22, 1905; *per* McCulloch, J.

Castell *v.* State; appeal from St. Francis Circuit Court; Hance N. Hutton, judge; affirmed July 22, 1905; *per* Wood, J.

St. Louis, I. M. & S. Ry. Co. *v.* Rowland; appeal from St. Francis Circuit Court; Hance N. Hutton, judge; reversed July 22, 1905; *per* Hill, C. J.

Hot Springs St. Rd. Co. *v.* Charlton; appeal from Garland Circuit Court; Alexander M. Duffie, judge; affirmed July 22, 1905; *per* Hill, C. J.

McGaha *v.* State; appeal from St. Francis Circuit Court; Hance N. Hutton, judge; affirmed July 22, 1905; *per* McCulloch, J.

Henslee *v.* Brewster; appeal from Boone Circuit Court; Elbridge G. Mitchell, judge; affirmed July 29, 1905; *per* Wood, J.

St. Louis, I. M. & S. Ry. Co. *v.* Shaver; appeal from Green Circuit Court; Allen Hughes, judge; affirmed July 29, 1905; *per* Wood, J.

Henry *v.* Beal & Doyle D. G. Co.; appeal from Howard Circuit Court; James S. Steel, judge; affirmed July 22, 1905; *per* McCulloch, J.

Goley *v.* State; appeal from Union Circuit Court; Charles W. Smith, judge; affirmed July 22, 1905; *per* McCulloch, J.

Thomas *v.* Dowdle; appeal from Conway Circuit Court in Chancery; William L. Moose, judge; reversed October 14, 1905; *per* McCulloch, J.

Garrett *v.* Garner; appeal from Monroe Chancery Court; John M. Elliott, chancellor; affirmed October 21, 1905; *per* Battle, J.

III.

CASES DISPOSED OF ON MOTION.

St. Louis, Memphis & Southeastern Railway Company *v.* Smith; appeal from Clay Circuit Court; Allen Hughes, judge; appeal dismissed June 10, 1905; *per curiam*.

Schneider *v.* Deitrich; appeal from Pope Chancery Court; William L. Moose, chancellor; dismissed for non-compliance with rule nine, June 12, 1905; *per curiam*.

Brown *et al.* *v.* Stuck & Sons; appeal from Mississippi Circuit Court; Allen Hughes, judge; dismissed for non-compliance with rule nine, June 12, 1905; *per curiam*.

Citizens Light & Transit Company *v.* Albert Harrington, Admr.; appeal from Jefferson Circuit Court; Antonio B. Grace, judge; appeal dismissed for non-compliance with rule nine, June 12, 1905; *per curiam*.

Jacks *et al.* *v.* McDonald; appeal from Lee Chancery Court; Edward D. Robertson, chancellor; appeal dismissed for non-compliance with rule nine, June 12, 1905; *per curiam*.

Incorporated Town of Yellville *v.* J. N. Lowry; appeal from Marion Circuit Court; Elbridge G. Mitchell, judge; appeal dismissed for non-compliance with rule nine, June 12, 1905; *per curiam*.

St. Louis, Iron Mountain & Southern Railway Company *v.* Gibson; appeal from Saline Circuit Court; Alexander M. Duffie, judge; settled and appeal dismissed, June 19, 1905; *per curiam*.

Equitable Manufacturing Company *v.* R. A. Robins; appeal from Fulton Circuit Court; John W. Meeks, judge; appeal dismissed for non-compliance with rule nine, June 19, 1905; *per curiam*.

Brown *v.* Richmond Cotton Oil Company *et al.*; appeal from Crittenden Chancery Court; Edward D. Robertson, chancellor; settled and affirmed, June 19, 1905; *per curiam*.

Fort Smith Light & Traction Company *v.* Winchester; appeal from Sebastian Circuit Court; Styles T. Rowe, judge; affirmed as a delay case, June 24, 1905; *per* Wood, J.

Brown *v.* Miller, Admr.; appeal from Johnson Circuit Court; William L. Moose, judge; dismissed for non-compliance with rule nine, July 3, 1905; *per curiam*.

Hickson *v.* Woolum; appeal from Garland Chancery Court; Leland Leatherman, chancellor; appeal dismissed for non-compliance with rule nine, July 3, 1905; *per curiam*.

S. A. Downs *v.* Edward Thompson Company; appeal from Polk Circuit Court; Joel D. Conway, judge, on exchange of circuits; appeal dismissed July 29, 1905, by consent; *per curiam*.

John Short, Administrator, &c., *v.* A. R. Lankford; appeal from Sebastian Circuit Court, Greenwood District; Styles T. Rowe, judge; settled and appeal dismissed September 30, 1905; *per curiam*.

R. O. Herbert, guardian, *et al. v.* R. J. Hill *et al.*; appeal from Sebastian Chancery Court; J. V. Bourland, chancellor; settled and appeal dismissed, September 30, 1905; *per curiam*.

St. Louis, Iron Mountain & Southern Railway Company *v.* Mrs. E. B. Umphrey; appeal from Desha Circuit Court; Antonio B. Grace, judge; settled and appeal dismissed, September 30, 1905; *per curiam*.

Joseph Brown *v.* Matilda Mathews *et al.*; appeal from Grant Chancery Court; L. Leatherman, chancellor; appeal dismissed on motion, October 2, 1905; *per curiam*.

Joseph Brown *v.* J. H. Hamlen *et al.*; appeal from Grant Chancery Court; L. Leatherman, chancellor; appeal dismissed on motion, October 2, 1905; *per curiam*.

Joseph Brown *v.* Muskegon Lumber Company; appeal from Grant Chancery Court; L. Leatherman, chancellor; appeal dismissed on motion, October 2, 1905; *per curiam*.

C. S. Williamson *v.* Fannie G. Williamson; appeal from Garland Chancery Court; Alphonso Curl, chancellor; dismissed by consent, October 7, 1905; *per curiam*.

E. J. Rhodes *v.* Mrs. Bettie Estes, Admx. of estate of K. L. Estes, deceased; appeal from Marion Chancery Court; T. H. Humphreys, chancellor; affirmed for non-compliance with rule nine, October 7, 1905; *per curiam*.

E. J. Rhodes *v.* Mrs. Bettie Estes, Admx. of estate of K. L. Estes, deceased; appeal from Marion Circuit Court; Elbridge G. Mitchell, judge; affirmed for non-compliance with rule nine, October 7, 1905; *per curiam*.

H. O. Bell *v.* Miss Florence Lenore; appeal from Sebastian Circuit Court, Greenwood District; Styles T. Rowe, judge; affirmed under rule seven, October 7, 1905; *per curiam*.

Truman B. Mills *et al. v.* H. M. Armstead; appeal from Pulaski Circuit Court, second division; E. W. Winfield, judge; appeal dismissed, October 14, 1905; *per curiam*.

Arkansas Mutual Fire Insurance Company *v.* J. M. Anderson *et al.* under firm name of H. B. McCarroll & Sons; appeal from Yell Circuit Court, Danville District; E. W. Winfield, judge, on exchange; settled and appeal dismissed, October 16, 1905; *per curiam*.

Ed. Cornish, admr. of estate of Joseph Johns, deceased, *v.* W. H. Johns *et al.*; appeal from Drew Circuit Court; Zachariah T. Wood, judge; settled and dismissed, October 21, 1905; *per curiam*.

The Three States Lumber Company *v.* James Harper; appeal from Mississippi Circuit Court; Allen Hughes, special judge; appeal dismissed, October 23, 1905, for non-compliance with rule nine; *per curiam*.

St. Louis Southwestern Railway Company *v.* Russell Bros.; appeal from Lafayette Circuit Court; Charles W. Smith, judge; affirmed, October 30, 1905, for non-compliance with rule nine; *per curiam*.

H. C. Deal *v.* W. H. Fairchild; appeal from Arkansas Chancery Court; John M. Elliott, chancellor; appeal dismissed, October 30, 1905, for non-compliance with rule nine; *per curiam*.

W. H. Fairchild *v.* H. C. Deal; appeal from Arkansas Chancery Court; John M. Elliott, chancellor; appeal dismissed for non-compliance with rule nine, October 30, 1905; *per curiam*.

Martha Patton *v.* A. F. Ford et al.; appeal from Benton Circuit Court in Chancery; John N. Tillman, judge; appeal dismissed for non-compliance with rule nine, October 30, 1905; *per curiam*.