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CASES DETERMINED

IN THE

Supreme Court of Arkansas

FROM

DECEMBER, 1907, to APRIL, 1908

T. D. CRAWFORD
REPORTER

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JUDGES
OF THE
SUPREME COURT
DURING THE PERIOD OF THIS VOLUME

JOSEPH M. HILL, - - - CHIEF JUSTICE.
BURRILL B. BATTLE, - - -
CARROLL D. WOOD, - - -
EDGAR A. McCULLOCH, - - -
JESSE C. HART, - - -) ASSOCIATE JUSTICES.
WILLIAM F. KIRBY, - - - ATTORNEY GENERAL.
P. D. ENGLISH, - - - - CLERK.

MEMORANDUM

Chief Justice HILL was absent on account of ill health from January 20, 1908, until April 6, following, and took no part in cases decided between those dates.

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APPENDIX

I.

IN MEMORIAM

HAMILTON P. SMEAD

On June 1, 1908, Hon. Thomas J. Gaughan, a member of the bar of this court, appeared in open court and offered the following proceedings and resolutions of the bar of Ouachita County, which were read to the court and by it ordered spread on the record, towit:

"In response to a call signed by Hon. E. O. Mahoney, Chancellor of the Seventh Chancery District of Arkansas, and Hon. George W. Hays, Judge of the Thirteenth Judicial Circuit of said State, and by T. J. Gaughan, of the bar of Camden, in said circuit, acting as secretary, the members of the bar of said chancery district of said circuit, at 2 o'clock, P. M., on Tuesday, the eleventh day of February, 1908, met at the court house of the county of Ouachita, in the city of Camden, where also many others, not of the profession of the bar, were present.

"On the meeting being called to order, Hon. H. G. Bunn was selected chairman, and Hon. T. J. Gaughan, as secretary.

"The chair announced the death of Hon. H. P. Smead, and stated that the meeting was called for the purpose of showing the respect to his memory and, in an appropriate way, to transmit to those who shall come after us, a testimonial on the records of our courts of the appreciation and impression of the deceased by his brethren of the Bar.

"The chair then appointed G. W. Hays, of Ouachita, E. O. Mahoney, of Union, T. B. Parks, of LaFayette, C. W. McKay, of Columbia, J. S. McKnight, of Calhoun, and T. B. Morton, of Dallas County, as a committee to draft resolutions, which committee afterwards, through Hon. G. W. Hays, its chairman, presented to the meeting the following:

"Hamilton P. Smead, known everywhere by his friends and acquaintances as 'Hamp Smead,' the subject of the following resolutions, departed this life at his home in Camden, Arkansas, on the 28th day of January, 1908, in the midst of his family, relatives and many of his friends, yielding to a distressing illness lasting for twenty-one days. He was in his fifty-fifth year, having been born November 28, 1853. His father was Dr. Hamilton P. Smead, and the maiden name of his mother was Priscilla Hurt. In 1881 he married Anna Chester, of Mt. Holly, who, together with their children and his four sisters, survive him.

"Probably few men have died in private life, not immortalized by some special act of heroism in a popular war, who numbered a wider circle of close and loyal friends and admirers. He 'bound them to him with hoops of steel.' The very embodiment of strength and force, charged with a magnetism ever at his command, a master in the knowledge of human nature, broad of mind, generous, loyal to his friends and to any cause which he espoused, few men could resist the power of his presence, and none could willingly forfeit his esteem.

"Until he reached early manhood, his life was spent on a farm in Union County, under severe burdens, inherited as a result of the Civil War. The chief protector and support, to whom the women and children of a large family looked, he nobly responded to those duties, and, until the day of his death, while others had grown up to take his place, he would never entirely relinquish them and never had laid them down. Among his many virtues, his devotion to his family and relatives will, without dissent, be accorded the most beautiful, and by which he may be said to have been especially distinguished.

"He began his legal studies while on the farm, and as occasion offered 'recited' to the older members of the bar at the neighboring county seat. His remarkable vigor, both of body and mind, enabled him to secure a license to practice law, when, with his young wife, he moved to Magnolia, in Columbia County, Arkansas, where he lived for eleven years removing to Camden in the year 1890, where he resided until his death.

"After serving one term in the Legislature from Columbia County, he was, in 1884, elected prosecuting attorney and held the office for ten years. After retiring from that responsible position, he entered into partnership with the Hon. J. R. Thornton, which later was dissolved, and in 1893, his nephew, H. S. Powell, was admitted to the bar, and the firm of Smead & Powell was established.

"During his professional career, he and the different firms of which he was a member commanded an extensive clientage, appearing in nearly all of the important litigations, both criminal and civil, which arose in the courts accessible to them. His truly wonderful success before the jury gave him a reputation as a lawyer so pronounced that it overshadowed his attainments as a student of the law and as a

counsellor, but to the members of the bar who knew him best it is well known that his judgment on any practical question of jurisprudence, after reasonable investigation, was remarkably clear and accurate.

"We can not yet realize that the presence and voice of Hamp Smead will not again be heard or seen in the courts of our State, that the places which have known him will know him no more forever, but, in after ages, when the handiwork left by most men will be dissolved, the musty records of the courts of this country will reveal to the curious searcher the gigantic labor and superb genius of H. P. Smead.

"From what has been said of him, one who has studied men would know that he must love, and must have, some diversion. This thought presents his picture, so familiar to us all, as with gun and horn he rode to the chase, followed by a generous pack of trusty, faithful hounds. In yielding to the call of the wild, his friends and acquaintances were ever welcome, and the greater the number the more complete was his pleasure.

"Though he made no special pretense to piety, he was a firm believer in the fundamental truths of Christianity, and with the simplicity and faith of a child stood in awe and reverence before the name of our Heavenly Father. He became a member of the Presbyterian Church in 1891, and so remained until the time of his death.

"RESOLVED: That our bar has lost one of its most prominent members, a strong, loyal, masterful lawyer, devoted and true to his profession and clientage; that our people have lost one of their leading citizens, always ready to espouse openly and effectively the cause which appealed to him to be right; one who hated shams and who delighted in the democratic life of the fathers; that his friends have lost a generous companion mindful ever of them and their pleasure; that his family and relatives have suffered a loss, which our pen is unable to describe, and to them, especially, as also to his friends and acquaintances, we extend our heartfelt sympathy.

"That these Resolutions be tendered to the Supreme Court of Arkansas and to the courts of this circuit for record and a copy be, by the secretary, transmitted to the family of the deceased.

"G. W. HAYS,

"T. B. PARKS,

"E. O. MAHONEY,

"C. W. MCKAY,

"J. S. MCKNIGHT,

"T. B. MORTON,

"Committee."

II.

OPINIONS NOT REPORTED.

Sharum *v.* McLain; appeal from Lawrence Chancery Court; George T. Humphries, chancellor; affirmed January 6, 1908; per WOOD, J.

Spargo *v.* Shirey; appeal from Lawrence Circuit Court; Frederick D. Fulkerson, judge; affirmed January 20, 1908; per BATTLE, J.

III.

CASES DISPOSED OF ON MOTION.

St. Louis, Iron Mountain & Southern Railway Company *v.* Tobe Brown; Independence Circuit Court; Frederick D. Fulkerson, judge; settled and appeal dismissed, March 16, 1908; *per curiam*.

Missouri & North Arkansas Railway Company *v.* S. J. and W. W. Wilson; Boone Circuit Court; Brice B. Hudgins, judge; dismissed on appellant's motion, March 23, 1908; *per curiam*.

W. T. Dunbar *v.* W. H. Rushing; Crawford Circuit Court; Jephtha H. Evans, judge; settled and appeal dismissed March 30, 1908; *per curiam*.

Southwestern Telegraph & Telephone Company *v.* James A. Walls; Monroe Circuit Court; Eugene Lankford, judge; settled and appeal dismissed April 6, 1908; *per curiam*.

Nashville Lumber Company *v.* J. W. Corbell, *et ux.*; Howard Chancery Court; James D. Shaver, chancellor; settled and appeal dismissed, April 6, 1908; *per curiam*.