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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 Juctices.

WILLIAM F. KIRBY, - - Attorney General.

P. D. ENGLISH, - - - - Clerk.

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I.

IN MEMORIAM

THOMAS BOLLING MARTIN

On 30th day of November, 1908, at a meeting of the Court appeared Hon. George B. Rose, a member of the Bar of this Court, and presented the following:

RESOLUTIONS OF THE PULASKI COUNTY BAR.

Thomas Bolling Martin, who was for twenty-five years a member of this bar, and for eight years the chancellor of the Pulaski Chancery Court, died on the evening of January 19, 1908, after a protracted illness of several weeks. He was born on the first day of March, 1852, and, consequently, was in the very prime of his usefulness as a lawyer when he was taken away. He was a man of wonderful force of character. He was well grounded in the principles of law. He was firm, fearless and determined in the discharge of his duties. As a judge he knew neither friend nor foe, but did what he believed to be right. He was so constituted that no question of expediency could induce him to depart from the strict line of right, justice and equity. He was a model judge, a conscientious, upright man and a splendid citizen.

Therefore, in consideration of our acknowledgment of such qualifications, so rare and to be treasured, we, the members of the Pulaski County Bar, do resolve:

1. That in the death of Judge Martin we have sustained a great loss to our profession.

2. That the State has sustained a great loss by the death of a citizen who was always true to her interests, and whose heart and conscience were ever alive to the demands of justice and right, and who had the courage and firmness to do his duty as he saw it.

3. That we tender to his bereaved family our tenderest sympathies.

4. That these resolutions be presented to the Supreme, Chancery and Circuit Courts, State and Federal, and be published in the daily newspapers of Little Rock.

[Signed] GEORGE B. ROSE,
F. T. VAUGHAN,
C. T. COFFMAN,
G. W. MURPHY,
JOHN M. MOORE.

In presenting these Resolutions, Mr. Rose spoke as follows:

Judge Thomas Bolling Martin was born in Dallas County, Arkansas, on March 1, 1852. He practiced law in Pine Bluff until 1880, when he removed to Little Rock, and speedily became one of the most conspicuous advocates in the State. On the 21st of January, 1885, he was appointed chancellor of the First Chancery District, and held the office for the full term of eight years. About the time of his retirement, he fell into ill health, and was never able again to take an active part in the practice. He died at his home on the 19th day of January, 1908, after a long and lingering illness.

Judge Martin was equally distinguished at the bar and on the bench. He was a strong personality, too striking to be forgotten by those who knew him, and one who should be remembered in the years to come.

When we speak of such a man, the language of formal eulogy should be laid aside, and he should be described exactly as he was; for with such the plain truth suffices. He was my friend, faithful and more than just to me; and I am glad to feel that in speaking the simple truth I do him the greatest honor.

At the bar he was extremely successful. His most marked quality as an advocate was his intensity. He threw himself into every case with all his heart and soul. He put into every effort all the vigor of his mind. He informed himself thoroughly as to the facts. He mastered the controlling authorities. In the conduct of a case, whether he was prosecuting or defending, he was constantly aggressive. Always persuaded that his client's cause was just and that his adversary was in the wrong, he maintained his position and assailed those of his adversary with vehement energy. He was equally strong before courts and juries. He was well read in the law, and the straightforward and logical way in which he presented his views was persuasive with the court, while the earnestness and vigor of his speeches, their passionate intensity and sense of personal conviction generally carried away the minds of the jury. With him the law was strictly a practical science. It dealt, not with broad ideas of general jurisprudence, but with practical rules of human conduct. The characteristics of his mind was not so much breadth as clearness. There are many who have a wider range of vision; there

are few who see more plainly the matters in hand. His intelligence was singularly keen. He was usually content to devote it to the case he was conducting, but that case he saw through completely. His mind was a beacon that lighted the path before his feet, and lighted it so well that he seldom missed the way that led to success.

All men are much influenced by their physical characteristics, and Judge Martin was no exception. He was unusually small in stature, little over five feet in height, and slender in proportion. A small man is at a great disadvantage in the battle of life. He will be thrust aside or run over unless he asserts himself. Judge Martin realized this, and was determined that he would be neither run over nor thrust aside. The history of Europe would have been different had Napoleon been six inches taller, and Judge Martin would not have been so aggressive nor so punctilious had he been larger. As it was, he started out with the determination that all men should respect him and his rights. His courage, moral and physical, had no bounds. He was always ready to meet any issue, to measure swords with any antagonist and in any way. As long as you were courteous to him, he was courteous to you; but he was quick to resent a slight and vigorous in the defense of his personal dignity. To overcome as much as possible the smallness of his stature, he held himself very erect, so that he made the impression of being larger than he was.

His memory was wonderful. He never made a memorandum of anything, and yet forgot nothing. In the longest trial he took no notes, yet when he came to argue the case to the jury, he could give the substance of the testimony of every witness and often the exact words as taken down by the stenographer.

While he was quick to take offense, he was prompt to forgive, and his relations with his brother lawyers were warm and cordial. He was the most active of all in the organization of our State Bar Association. He took a deep interest in its proceedings, and was its third president. His soul was in his profession, and his heart was with his brethren at the bar.

Before appointing him chancellor, Governor Clarke consulted most of the lawyers who practiced in that court. All of us, admiring his talents and sterling integrity, concurred in commending him for the place. Yet it was not without misgivings. He seemed too intense, too much of an advocate, for the bench. But we were all most agreeably surprised As a chancellor, he was thoroughly admirable. The clearness of his mind enabled him to see straight through the machinations of fraud, and the unveiling of fraud is one of the chancellor's most important duties. His wonderful memory enabled him to grasp all the threads of testimony as the evidence was read to him, and to detect every inconsistency. He rarely made a mistake in his finding of facts, and his splendid courage

prevented his ever shirking an issue. The knave who entered his court, or was brought into it, went forth not only exposed but rebuked. And, despite his impatience at the bar, on the bench he was a good listener, hearing counsel fully and considering all their arguments before announcing his decision. I have never practiced in a court from which there were so few appeals. Somehow he generally convinced both sides that he was right. During his whole term of eight years there was no appeal in any case in which I personally appeared. If we were not satisfied, both sides at any rate saw the futility of appealing. And I must say that as I look back upon his judgments I can recall none where substantial justice was not administered. His perception of the truth of the facts was so keen that he rarely erred in that regard, and his sense of justice was so strong that he allowed no technicalities to stand in its way. And he was most prompt in deciding; usually his judgments were rendered as soon as counsel had ceased to speak. In delivering them he always summed up the evidence and the arguments of counsel with such fullness as to demonstrate that he understood both the facts and the law. Fortunately he has left us in his volume of Martin's Chancery Reports an enduring proof of his talents and learning.

In that part of a chancellor's function that consists in the administration of estates he was wholly admirable. He was a sagacious business man, who conducted his own affairs with wisdom and foresight, and he applied business principles to everything about his court. Estates were administered with economy and efficiency. There was around him no coterie of favorites to be enriched with receiverships, masterships and the like. He chose the best man he could find for each task, and while the rewards were not niggardly they were not excessive; and he saw that the officer did his duty and that the best results were attained. And in looking after his records he was most diligent. He saw to the entry of every order, and took care that it was right.

Chief Justice Hill responded as follows:

Thomas B. Martin brought to the bench vigor, learning and a keen sense of the right of a case. These fine judicial qualities made his administration as chancellor a brilliant and memorable chapter in the history of the jurisprudence of the State.

His opinions, published in "Martin's Chancery Decisions," are in constant use by bench and bar. They have been frequently referred to by this court with respect and admiration. Lawyers are critics by training; they are schooled to reach for the weak places in evidence, arguments and opinions. They are ever seeking to insert the dart in the vulnerable heel of Achilles. But they are just critics, as ready to bestow praise when earned as censure when deserved. They are quicker to defend than to condemn. They must study human nature as presented across the counsel table, on the witness stand, in the jury box and on the bench.

They become vivisectionists of character, but their scalpel seeks to discover truth as that of their scientific brethren seeks to discover knowledge.

The most difficult position is judge of a trial court. His every word and action is under the watchful eye of these keen and trained analytical observers, jealous litigants and a thinking public. To win their approbation, he must possess poise and unflinching moral courage, a well as the requisite learning and ability. His decrees are constantly in review in the appellate court, where they have to meet the severest tests which the ingenuity of counsel can devise.

In this difficult station Chancellor Martin earned, and won, a State-wide reputation for learning, judicial capacity and right-mindedness. He created a respect for his court well worthy of emulation by all who sit in judgment. He was an intense man; he never did anything half-way; and he gave to his judicial work the best that was in him, whole-heartedly and completely.

The Court is pleased to hear these well deserved tributes to his memory. The resolutions will be recorded, the addresses filed, and the entire proceedings published in the Reports. In this way the Court will preserve the memory of this earnest man, accomplished lawyer and just judge.

APPENDIX

II.

OPINIONS NOT REPORTED.

Brewer *v.* Johnson; appeal from Lee Chancery Court; Jesse C. Hart, chancellor, on exchange of circuits; affirmed July 6, 1908; *per* Wood, J.

Tebbs *v.* Wiseman; appeal from Ashley Circuit Court; Henry W. Wells, judge; affirmed July 6, 1908; *per* Hill C. J.

Eoff *v.* Citizens' Bank of Harrison; appeal from Boone Chancery Court; T. H. Humphreys, chancellor; affirmed July 13, 1908; *per* Hill, C. J.

Black *v.* Roberson; appeal from Lafayette Circuit Court; George W. Hays, judge; affirmed July 13, 1908; *per* Hill, C. J.

St. Louis, I. M. & S. Ry. Co. *v.* Coalson; appeal from Sebastian Circuit Court, Greenwood District; Daniel Hon, judge; affirmed June 22, 1908; *per* Hill C. J.

Blackburn *v.* Cherry; appeal from Pulaski Chancery Court; Jesse C. Hart, chancellor; affirmed October 12, 1908; *per* Hill, C. J.

Louisiana & Arkansas Ry. Co. *v.* Hobbs; appeal from Hempstead Circuit; Jacob M. Carter, judge; affirmed October 12, 1908; *per* Wood, J.

Hight *v.* Oates; appeal from Washington Circuit Court; J. S. Maples, judge; affirmed October 19, 1908; *per* McCulloch, J.

St. Louis S. W. Ry. Co. *v.* Wells; appeal from Monroe Circuit Court; Eugene Lankford, judge; affirmed October 19, 1908; *per* McCulloch, J.

III.

CASES DISPOSED OF ON MOTION.

Pearl Davis *et al. v.* A. F. Yopp *et al.;* Prairie Chancery Court; John M. Elliott, chancellor; compromised and appeal dismissed, September 14, 1908; *per curiam.*

Cache Valley Lumber Company *v.* Herbert Durham by next friend; Lawrence Circuit Court; Joseph W. Phillips, judge; settled and cause dismissed, September 14, 1908; *per curiam.*

Sligo Wagon Wood Company *v.* C. P. Jones; Washington Circuit Court; J. W. Meeks, judge; affirmed under rule seven, September 14, 1908; *per curiam.*

S. H. Casey, as next friend of Eva E. Thomas *et al. v.* J. R. Willis, Admr. *et al.;* Poinsett Chancery Court; Edward D. Robertson, chancellor; appeal dismissed for want of service, September 21, 1908; *per curiam.*

Cincinnati Cooperage Company *v.* Vian McCall; Searcy Circuit Court; Brice B. Hudgins, judge; affirmed as a delay case, October 5, 1908; *per curiam.*

Owosso Manufacturing Company *v.* Mattie H. Gann, guardian, etc.; Saline Circuit Court; W. H. Evans, judge; compromised and settled and cause dismissed, October 5, 1908; *per curiam.*

Reynolds, Davis & Company *v.* Singleterry; Scott Circuit Court; Jeptha H. Evans, judge on exchange of circuits; affirmed for non-compliance with rule nine, October 5, 1908; *per curiam.*

J. M. Perrine, *Ex parte;* certiorari to Union Circuit Court; action of lower court denying bail reversed and petitioner allowed to give bail, October 12, 1908; *per curiam.*

B. Faisst, *et al. v.* Fourche River Lumber Company; Perry Chancery Court; Jeremiah G. Wallace, chancellor; affirmed by consent, October 19, 1908; *per curiam.*

J. F. Hasty & Sons *v.* Howard County; Howard Circuit Court; James S. Steel, judge; reversed on confession of error, October 26, 1908; *per curiam.*

F. W. Maurice and Dalhoff Construction Company; Phillips Circuit Court; Hance N. Hutton, judge; compromised and judgment for amount agreed upon, October 26, 1908; *per curiam.*