



5-26-2022

The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court

Jeffrey D. Dunn

Munsch Hardt Kopf & Harr P.C.

Follow this and additional works at: <https://commons.stmarytx.edu/thestmaryslawjournal>



Part of the [Courts Commons](#), [Legal History Commons](#), [State and Local Government Law Commons](#), and the [Women's Studies Commons](#)

Recommended Citation

Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court*, 53 ST. MARY'S L.J. 409 (2022).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol53/iss2/3>

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in St. Mary's Law Journal by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact egoode@stmarytx.edu, sfowler@stmarytx.edu.

ARTICLE

THE LEGACY OF *JOHNSON V. DARR*: THE 1925 DECISION OF THE ALL-WOMAN TEXAS SUPREME COURT

JEFFREY D. DUNN*

I.	Governor Pat M. Neff Appoints Three Women-Attorneys to the Texas Supreme Court	411
II.	The All-Woman Court Considers the Application for Writ of Error	417
III.	The Woodmen Trustees Convey Title, but Retain a Trust	419
IV.	What Were Governor Neff's Motives?	422
V.	The Legal Legacy of <i>Johnson v. Darr</i>	433
	Appendix	435

* Attorney and Shareholder, Munsch Hardt Kopf & Harr P.C., in Dallas. The author graduated from Southern Methodist University (J.D. 1982); Lyndon B. Johnson School of Public Affairs, University of Texas at Austin (M.P.A., 1978); and Texas A&M University (B.A. 1976). He was assisted with research by Susan Serio and advice from Bill Pugsley, Executive Director of the Texas Supreme Court Historical Society in 2004. Any errors and opinions in this paper are strictly those of the author.

The Texas Supreme Court case of *Johnson v. Darr*,¹ the first case decided in any state by an all-woman appellate court, was a singular event in American legal history. On January 9, 1925, three women lawyers appointed by Texas Governor Pat Neff met at the state capitol in Austin to issue rulings solely on one case involving conflicting claims to several residential properties in El Paso. The special court was appointed because the three elected justices recused themselves over a conflict of interest involving one of the litigants, a popular fraternal organization called Woodmen of the World. The special court granted the writ of error to enable the appeal, heard oral arguments on January 30, issued its decision on May 23, and disbanded on June 12 after denying a motion for rehearing. It would take fifty-seven years, 1982, before another woman was appointed to the court, and ten more years, 1992, before the first woman was elected to the court. After 1925, and particularly after women became ubiquitous as attorneys during and after the 1980s, *Johnson v. Darr* was noted as a curious oddity and celebrated milestone in the history of women in the legal profession.

The following Article was presented at the annual meeting of the Texas State Historical Association on March 6, 2004, in Austin, Texas. The paper's objective is to examine the circumstances that led to Governor Neff's appointments, his motivations in appointing the women, and the legal legacy of the substantive result of the decision. The paper has been cited many times and with this publication is now more easily accessible. Except for a few edits, corrections, and the addition of new case citations in the appendix, the paper is published as it was presented in 2004.²

1. *Johnson v. Darr*, 272 S.W. 1098 (Tex. 1925).

2. Among the articles citing this paper are Linda C. Hunsaker's *Family Remembrances and the Legacy of Chief Justice Hortense Sparks Ward*, J. TEX. SUP. CT. HIST. SOC'Y, Summer 2015, at 54, and Alice G. McAfee's *The All-Woman Texas Supreme Court: The History Behind a Brief Moment on the Bench*, 39 ST. MARY'S L.J. 467 (2008). McAfee's article relied extensively on this paper but took a different approach by analyzing the case as a chapter in the expansion of the status of women in Texas law and politics. See generally *id.* (discussing the all-woman Supreme Court in the context of the women's movement). In recent years, the case has been featured in a living history format. A reenactment of the oral arguments was held at Baylor Law School in 2015 and at the State Bar of Texas annual meeting in Fort Worth in 2016. Elizabeth Furlow, *Reenactment of Johnson v. Darr Marks the Ninetieth Anniversary of the Historic All-Woman Texas Supreme Court*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2015, at 72; David A. Furlow, *All-Woman Court Ruled the State Bar Annual Meeting*, J. TEX. SUP. CT. HIST. SOC'Y, Summer 2016, at 82; see also David A. Furlow & Lynne Liberato, *History Revisited: The 1925 All-Woman Court Will Be Reenacted at the State Bar of Texas Annual Meeting*, 79 TEX. B.J. 357, 358 (2016). In January 2021, Texas Court of Appeals (Fourteenth District) Justice Ken Wise brought the story of *Johnson v. Darr* to a wider audience by featuring the case on his Texas history audio podcast. Ken Wise, *Wise About Texas: The Texas History Podcast—Episode 96: The All-Woman Supreme Court* (Jan. 31, 2021), wiseabouttexas.com/ep-96-the-all-woman-supreme-court/ [perma.cc/HY55-8DGV].

I. GOVERNOR PAT M. NEFF APPOINTS THREE WOMEN-ATTORNEYS
TO THE TEXAS SUPREME COURT

On March 8, 1924, Chief Justice Calvin M. Cureton of the Texas Supreme Court certified to Governor Pat M. Neff that he and the court's two associate justices, Thomas B. Greenwood and William Pierson, were disqualified to consider the application for writ of error in a lawsuit brought by J.M. Darr and others against W.T. Johnson and others for tracts of land in El Paso County.³ The judges had an impermissible interest in the case because the Darr parties brought the suit as trustees for the fraternal beneficiary association known as the Woodmen of the World.⁴ All three justices were members of the association and therefore proportionate owners of the association's assets.⁵ Chief Justice Cureton's certification of disqualification required Governor Neff to replace the justices "immediately" with appointees who met the three requirements set forth in the State Constitution.⁶ At the time, the Texas Constitution required each candidate be a citizen of Texas and the United States, at least thirty years old, and a practicing Texas lawyer or judge of a state court for at least seven years.⁷ The appointees would sit as a special court to consider the writ of error application solely with respect to this case and, if granted, rule on the legal issues presented to the court.⁸

3. Mary G. Ramos, *The Texas All-Women Supreme Court*, TEX. ALMANAC, <https://www.texasalmanac.com/articles/the-texas-all-woman-supreme-court> [perma.cc/U93R-GHUN].

4. See *Darr v. Johnson*, 257 S.W. 682, 682 (Tex. App.—El Paso 1923, writ granted) ("Action by J.M. Darr and others, as trustees for the Woodmen of the World . . .").

5. Debbie Mauldin Cottrell, *All-Woman Supreme Court*, HANDBOOK OF TEX. ONLINE (Nov. 1, 1994), <https://www.tshaonline.org/handbook/entries/all-woman-supreme-court> [perma.cc/D4HL-W5BE].

6. *Id.*

7. TEX. CONST. art. V, § 2 (1891).

8. Ramos, *supra* note 3; see *Neff Names Three Texas Women to Function as Special Supreme Court*, DALLAS MORNING NEWS, Jan. 2, 1925, at 1 (explaining what the women appointed are to do in respect to the case). In 1925, the Texas Supreme Court consisted of one "chief justice" and "two associate justices." TEX. REV. CIV. STAT. ANN. art. 1512. The Texas Constitution provides, "No judge shall sit in any case wherein the judge may be interested . . ." TEX. CONST. art. V, § 11. The implementing statute contained nearly identical wording disqualifying the judge "in any cause wherein he may be interested in the question to be determined . . ." TEX. REV. CIV. STAT. ANN. art. 1516. When the Supreme Court found itself disqualified to hear and determine a case, the disqualification was certified to the governor, "who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause . . ." TEX. CONST. art. V, § 11 (1891); see also TEX. REV. CIV. STAT. ANN. art. 1516 (establishing the disqualification of judges in a statutory format). This disqualification language remains in effect today. TEX. CONST. art. V, § 11.

Neff took no action to fill the special court until January 1, 1925, just one week before the scheduled January 8 hearing on the application.⁹ Acting through his assistant secretary, John H. Johnson, Neff stunned the legal community and the people of Texas by announcing that the special court would consist of three women: Mrs. Edith E. Wilmans of Dallas, Miss Nellie Robertson of Granbury, and Mrs. Hortense Ward of Houston.¹⁰ They would be the first women to sit on the Texas Supreme Court and the first all-woman appellate court in the United States.¹¹ What followed was a media frenzy and rare public glimpse into how the Texas Supreme Court dispensed with applications for writs of error. Newspapers vied with each other to provide as much detail as possible on this history-making announcement.¹²

Research indicates there were less than seventy-five women lawyers in Texas between 1910 and 1930, with even fewer meeting the qualifications for appointment in 1924.¹³ After the appointments had been announced, Mrs. Emma R. Webb, Bastrop County's only woman lawyer, made known that she had been asked to serve on this court, but was disqualified because of her affiliation with the Woodmen Circle, a women's auxiliary of Woodmen of the World, and, according to one account, because of her

9. Ramos, *supra* note 3.

10. *Id.*

11. JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986*, at 168 (2013).

12. *See Neff Names Three Texas Women to Function as Special Supreme Court*, *supra* note 8, at 1 (describing the first all-woman Supreme Court, who it is to be composed of, and what they were to decide).

13. Elizabeth York Enstam, *Women and the Law*, TEXAS STATE HISTORICAL ASSOCIATION, <https://www.tshaonline.org/handbook/entries/women-and-the-law> [<https://perma.cc/F5YJ-XHM9>]; *see* HALEY, *supra* note 11, at 168 (“[F]or beyond this five, there were only about two dozen more female lawyers in Texas to choose from.”). The University of Texas Law School graduated sixteen women between 1920 and 1924 out of 376 graduates during the same period. *See UT School of Law Class Composites 1884–1959*, TARLTON LAW LIBRARY, <https://tarlton.law.utexas.edu/class-composites/1920s> [<https://perma.cc/9NE5-ZHFP>] (listing UT law graduating classes from 1880s through 1950s). At the time, the Texas Constitution provided in relevant part, “No person shall be eligible to serve in the office of chief justice or associate justice of the Supreme Court unless he be, at the time of election, a citizen of the United States and of this State, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court or such lawyer and judge together at least seven years.” TEX. CONST. art. V, § 2 (1891). The implementing statute had nearly identical wording. *See* TEX. REV. CIV. STAT. ANN. art. 1514 (“No person shall be eligible to the office of chief justice or associate justice of the [S]upreme [C]ourt, unless he be, at the time of his election, a citizen of the United States and of this state, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court in this state, or such lawyer and judge together, at least seven years.”).

husband's membership in the Woodmen order.¹⁴ During the week preceding the hearing, Governor Neff learned that announced appointees, Wilmans and Robertson, also were not qualified, thus causing him to scramble for replacements.¹⁵ In both instances, Neff appointed women to take their places.

Edith Wilmans, one of the three initial appointees, was a well-known participant in the women's suffrage movement. In 1922, she became the first woman elected to the Texas legislature.¹⁶ When Wilmans learned of her appointment, she "accepted at once[,]" telling the *Dallas Morning News*: "I think it is a great honor to the womanhood of Texas that the Governor should select three women as members of a special court. Every day it is being demonstrated that woman's capacity to serve is recognized and her opportunities are multiplying."¹⁷ Her appointment, however, was short-lived. One of the lawyers in the legal department of the Woodmen of the World discreetly contacted Dallas judge Royall R. Watkins and mentioned to him that Wilmans had not been practicing law long enough to satisfy the seven-year minimum requirement under the State Constitution.¹⁸

On January 3, Judge Watkins notified Governor Neff of this conference in a letter he labeled "purely personal and confidential."¹⁹ Evidently recognizing Neff's objective to appoint an all-woman special court, Judge Watkins recommended two Dallas women to be her replacement: Mrs. Sarah C. Menezes and Miss Hattie Henenberg.²⁰ He was profuse in his praise for Mrs. Wilmans and assured the governor that her disqualification from the honor he conferred on her "will not hurt you."²¹

Shortly thereafter, Wilmans learned of the problem with her nomination and on Sunday night, January 4, she announced to the press that she was disqualified and had forwarded her resignation to Governor Neff.²² She

14. *Neff Names Three Women to Supreme Court*, AUSTIN AMERICAN-STATESMAN, Jan. 2, 1925, at 1.

15. HALEY, *supra* note 11, at 168.

16. *Neff Names Three Women to Function as Special Supreme Court*, *supra* note 8, at 1; Edith Eunice Wilmans Malone, *Wilmans, Edith Eunice Therrel (1882-1966)*, HANDBOOK OF TEX. ONLINE (Jan. 15, 2017), <https://www.tshaonline.org/handbook/entries/wilmans-edith-eunice-therrel> [perma.cc/F9KM-GK7W].

17. *Neff Names Three Texas Women to Function as Special Supreme Court*, *supra* note 8, at 1.

18. Letter from Watkins to Neff (Jan. 2, 1925) (The Texas Collection at Baylor University).

19. *Id.*

20. *Id.*

21. *Id.*

22. *See Mrs. Wilmans Finds She Is Ineligible to Serve on State Supreme Court*, DALLAS MORNING NEWS, Jan. 5, 1925, at 1 (reporting on Mrs. Wilmans resignation the morning after she learned the news).

told the *Dallas Morning News* that she was just two months shy of satisfying the seven-year practice requirement.²³ Governor Neff received the letter from Judge Watkins “just at the proper time,” and on Monday, January 5, he appointed Hattie Henenberg to replace Wilmans.²⁴ The *Dallas Morning News* reported that Henenberg was “recommended by a number of attorneys of the Dallas bar, including six women lawyers.”²⁵ Henenberg, who was 31 years old, graduated from the Dallas School of Law—the precursor to SMU law school—and was licensed in Texas in 1916.²⁶ A strong advocate for providing legal assistance to the poor, Henenberg told a journalist at the time of her appointment that “from birth to death, the poor man is the prey of petty swindlers.”²⁷ She said, “[A] legal aid society does not give charitable support to needy persons, but only justice and the enforcement of just and honorable claims.”²⁸

Mrs. Wilmans’ resignation was followed by the disqualification of another initial appointee, Nellie Robertson, for the same reason.²⁹ At the time, Robertson was serving as the county attorney for Hood County, the only elected woman county attorney in the state.³⁰ However, she was forced to resign from the Supreme Court appointment because she had been practicing law for only six years and nine months—three months shy of the constitutional minimum.³¹ On January 7, just one day prior to the scheduled hearing in Austin, Neff appointed Miss Ruth Virginia Brazzil of

23. *Id.*

24. Letter from Neff to Watkins (Jan. 15, 1925) (The Texas Collection at Baylor University); *Dallas Woman Named on Special Tribunal*, DALLAS MORNING NEWS, Jan. 6, 1925, at 1.

25. *Dallas Woman Named on Special Tribunal*, *supra* note 24.

26. Sherilyn Brandenstein, *Henberg, Hattie L. (1893–1974)*, HANDBOOK OF TEX. ONLINE (Jan. 1, 1995), [hereinafter *Henberg*] <https://www.tshaonline.org/handbook/entries/henberg-hattie-l> [<https://perma.cc/CS9Q-VST4>].

27. Alyson Drake, *March Madness (3/9/2018)-Bella Abzug v. Hattie Leah Henenberg*, TEX. TECH L. LIBR. (Mar. 3, 2018), <https://texastechlawlibrary.com/2018/03/09/march-madness-3-9-2018-bella-abzug-v-hattie-leah-henberg/> [<https://perma.cc/B55E-KY4T>].

28. *Id.* Henenberg died on November 28, 1974. *Miss Henenberg, Law Pioneer, Dies*, DALLAS MORNING NEWS, Nov. 29, 1974, at 11B; *Memorials*, 38 TEX. B.J. 183, 186 (1975).

29. *Another Woman on High Court Bench*, DALLAS MORNING NEWS, Jan. 8, 1925, at 1; HALEY, *supra* note 11, at 167; Caitlin Marks, *Robertson, Nellie Gray (1894–1955)*, HANDBOOK OF TEX. ONLINE (June 13, 2017), <https://www.tshaonline.org/handbook/entries/robertson-nellie-gray> [perma.cc/8R6N-FDT2].

30. Marks, *supra* note 29.

31. *Neff Names Three Women to Function as Supreme Court*, *supra* note 8, at 1; *New Chief Justice is Texas College Graduate*, HOUSTON POST DISPATCH, Jan. 5, 1925, at 10; *Another Woman on High Court Bench*, *supra* note 29; HALEY, *supra* note 11, at 167; Marks, *supra* note 29.

Galveston as Robertson's replacement.³² He made Brazzil and Henenberg Special Associate Justices and elevated his remaining appointee, Hortense Ward, to Special Chief Justice.³³ Brazzil, 35 years old, was born in Tyler and lived in Wharton before moving to Galveston in 1918.³⁴ She was a quiet, private person who became a "special student" in law at the University of Texas.³⁵ She passed the bar exam in 1912.³⁶ Brazzil opposed women's suffrage. Around the time of her appointment, Brazzil said that "there is little chance of the majority of our public offices ever being filled by women. There are too many men well qualified, for that, and, as a rule, the average woman has more exacting, and, to her, more absorbing duties than those of a political nature."³⁷ Nonetheless, she did not oppose women's entry into politics and said that she hoped it "will mean the enactment of better State laws looking to the protection of working women and children, and particularly the children."³⁸ Brazzil was not married at the time of her appointment, but in December 1927 she married Roy Roome.³⁹ Although the marriage apparently lasted six to ten days, she retained her married name of Ruth Roome for the rest of her life.⁴⁰

Hortense Ward, age 52, was the only initial appointee who survived scrutiny of her qualifications.⁴¹ Ward was a divorcee with three young daughters when she married lawyer William Ward in 1908.⁴² In 1910, after taking a correspondence course in Houston, she became one of the first women to receive a law license in Texas.⁴³ She joined her husband in practicing law and their firm became known as Ward & Ward.⁴⁴ In 1913,

32. *Another Woman on High Court Bench*, *supra* note 29.

33. *Id.*

34. Sherilyn Brandenstein, *Roome, Ruth V. Brazzil (1889–1976)*, HANDBOOK OF TEX. ONLINE (June 1, 1995), <https://www.tshaonline.org/handbook/entries/roome-ruth-v-brazzil> [perma.cc/6GND-WZEK].

35. *Id.*

36. *Id.*

37. Ramos, *supra* note 3.

38. John William Stayton, *The First All-Woman Supreme Court in the World*, HOLLAND'S MAGAZINE, March 1925, at 73.

39. Brandenstein, *supra* note 34.

40. Sue M. Hall, *The 1925 All-Woman Supreme Court of Texas* 14 (1978) (unpublished paper) (on file with St. Mary's University School of Law); Brandenstein, *supra* note 34. Ruth Brazzil Roome died in Kerrville in 1976. *Id.*

41. *See* Ramos, *supra* note 3 (stating Ward was born in 1875).

42. *Hortense Sparks Ward (1875–1944)*, TARLTON LAW LIBRARY, <https://tarltonapps.law.utexas.edu/justices/profile/view/112> [perma.cc/L2GM-MF9K].

43. *Id.*

44. *Id.*

she assisted in the preparation and passage of the “Married Woman’s Property Rights Law,” which gave married women in Texas greater control over their separate property.⁴⁵ In 1915, she became the first woman in Texas and the South to be admitted before the United States Supreme Court.⁴⁶ Ward supported prohibition and women’s suffrage.

On June 27, 1918, as president of the Harris County Equal Suffrage Association, she became the first woman to register as a voter in Harris County.⁴⁷ One of her daughters married attorney John H. Crooker, one of the founding partners of the Houston law firm of Fulbright & Jaworski.⁴⁸

The special appointments to consider the writ of error in *Johnson v. Darr* were among Governor Neff’s last official acts.⁴⁹ After winning election as governor in 1920, Neff became an outspoken crusader and moralist, and one of the most colorful Texas politicians of the 20th century.⁵⁰ He was a deeply religious Baptist with undergraduate and master’s degrees from Baylor University and a law degree from the University of Texas.⁵¹ Neff possessed outstanding oratory skills and a homespun personality. He is often remembered for his strong advocacy of women’s suffrage and prohibition, particularly the enforcement of prohibition laws in effect during his service as governor.⁵² According to Neff’s friend and Baylor classmate, U.S. Senator Tom Connally, “Pat never drank anything stronger than

45. *Id.*

46. *Id.*; Janelle D. Scott, *Ward, Hortense Sparks (1872–1944)*, HANDBOOK OF TEX. ONLINE (Nov. 1, 1995), <https://www.tshaonline.org/handbook/entries/ward-hortense-sparks> [perma.cc/L39S-S6RW].

47. Scott, *supra* note 46.

48. Hall, *supra* note 40, at 3–10; *see also* Scott, *supra* note 47 (“Her son-in-law, John H. Crooker, was a partner in the law firm of Fulbright and Crooker, which grew into the prominent Houston firm of Fulbright and Jaworski.”). Ward died December 5, 1944, in Houston. *Id.*; *Memorials*, 8 TEX. B.J. 580, 585 (1945). For an excellent summary of Ward’s life, see Hunsaker, *supra* note 2, at 51.

49. *See* Cottrell, *supra* note 5 (“On January 1, 1925, shortly before his term as governor ended, Neff officially named three women to serve on the special court . . .”).

50. *See* Thomas E. Turner, *Neff, Pat Morris*, HANDBOOK OF TEX. ONLINE (Mar. 9, 2019), <https://www.tshaonline.org/handbook/entries/neff-pat-morris> [perma.cc/PF7J-4J6G] (“Viewed by many as a crusader and a moralist, he immediately put his campaign issues before the legislature.”).

51. *See id.* (discussing his involvement in Baptist organizations such as the Baptist General Convention of Texas as well as the Southern Baptist convention).

52. *See id.* (describing the contrast between his main opponent for Governor, Joseph Weldon Bailey, and himself in regard to issues including, women’s suffrage, prohibition, and a majority of the Progressive era agenda).

Brazos River water.”⁵³ Neff was handily re-elected in 1922 to his second term, which ended January 17, 1925, less than three weeks after his appointment of the special all-women court.⁵⁴

Neff was succeeded in office by Miriam Ferguson, the wife of former Governor James Ferguson, who was impeached and removed from office in 1917.⁵⁵ Mrs. Ferguson was creating women’s history in her own right by becoming the first woman governor of Texas.⁵⁶ She missed being the first woman governor of any state by only a few days after the honor was taken by Wyoming’s Nellie Ross.⁵⁷ Much attention was given to the pending inaugurations of the two women, but the all-woman Texas Supreme Court was creating a sensation of its own in the first two weeks of 1925.⁵⁸

II. THE ALL-WOMAN COURT CONSIDERS THE APPLICATION FOR WRIT OF ERROR

Hortense Ward, Hattie Henenberg, and Ruth Brazzil met each other for the first time in Governor Neff’s office at the state capitol on Thursday morning, January 8.⁵⁹ Few details of the event were overlooked by the press. One journalist wrote that the appointees were “no freak affair, but a tribunal thoroughly competent to sit in judgment and reach a conclusion just as sound as a decision might have been with all the Mr.’s since Adam stacked behind it.”⁶⁰ Another wrote the three women “were a good deal

53. *Ex-Governor Pat Neff Dies of Heart Attack*, THE HOUSTON CHRONICLE, Jan. 21, 1952, at 12; Neff served on the Texas Railroad Commission from 1929 to 1932, and as president of Baylor University from 1932 to 1947. *Id.* He died in Waco in 1952. Turner, *supra* note 50.

54. Turner, *supra* note 50.

55. John D. Huddleston, *Ferguson, Miriam Amanda Wallace [Ma]*, HANDBOOK OF TEX. ONLINE (June 29, 2019), <https://www.tshaonline.org/handbook/entries/ferguson-miriam-amanda-wallace-ma> [perma.cc/3RH5-3RUR]; Ralph W. Steen, *Ferguson, James Edward*, HANDBOOK OF TEXAS ONLINE (Sept. 26, 2019), <https://www.tshaonline.org/handbook/entries/ferguson-james-edward> [perma.cc/K96A-KZ7D].

56. Cottrell, *supra* note 5.

57. Huddleston, *supra* note 55.

58. *Id.*

59. Ramos, *supra* note 3.

60. Allie Morris & Austin Bureau, *Only All-Woman Texas Supreme Court Panel a Rarity in 1925— and Today*, SAN ANTONIO EXPRESS NEWS (Dec. 31, 2017), <https://www.expressnews.com/news/local/article/Only-all-woman-Texas-Supreme-Court-panel-a-rarity-12465000.php> [https://perma.cc/EST6-TYLR].

better looking than the Supreme Court which regularly deliberates on the third floor of the capitol.”⁶¹

Governor Neff gave the women their commissions, complete with gold embossed seals, before they were escorted to the Court's consultation room and greeted by Chief Justice Cureton, Judges Greenwood and Pierson, court attachés, and more newspaper reporters, all of whom were men.⁶² When Judge Cureton administered the oath, the women did not raise their hands.⁶³ They smiled when he got to the part on whether they had ever fought a duel.⁶⁴ The reporter for the *Dallas Morning News* noted that Brazzil signed the oath with her left hand, while Ward and Henenberg signed with their right hand.⁶⁵

Judge Cureton instructed the special justices on the decision they had to make with respect to the application for writ of error.⁶⁶ He handed them three rubber stamps marked “granted,” “refused,” and “dismissed.”⁶⁷ By granting the writ, the attorneys for the parties would have to prepare briefs and argue the case for an opinion from the Court. By refusing or dismissing the writ, their service would end, and the civil appeals opinion, which favored the Woodmen of the World trustees, would stand. After deliberating for twenty minutes, the women emerged and took their places behind the Court's bench.⁶⁸ At 11:30 in the morning, Special Chief Justice Ward told the audience: “Application No. 13371,

61. *Id.* In 1925, the court met on the third floor of the north wing of the Texas state capitol. See Ramos, *supra* note 3 (describing the first meeting of the special all-women Supreme Court); *Texas Supreme Courtroom*, TEX. STATE PRES. BD. (Aug. 2015), <https://tspb.texas.gov/prop/tc/tc-spaces/spaces05.html> [perma.cc/FQT5-QE7B] (describing “the third floor north wing” as the setting in which the Supreme Court used to meet). A separate building, dedicated solely for the court's use, was not constructed until 1959. *Id.*

62. Ramos, *supra* note 3; Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY'S L.J. 289, 292 (1993); *Court of Women Gives Decision*, DALLAS MORNING NEWS, Jan. 9, 1925, at 1.

63. Aldave, *supra* note 62.

64. *Court of Women Gives Decision*, *supra* note 62; Ramos, *supra* note 3.

65. *Court of Women Gives Decision*, *supra* note 62.

66. *Id.*

67. See Richard Morehead, *Texas Had One All-Woman Court*, DALLAS MORNING NEWS, Oct. 3, 1955, at 2 (describing the stamps given to Mrs. Ward by Judge C.M. Cureton, each indicating a different ruling).

68. See *Sentiments of Women Judges Are Outlined*, THE HOUSTON CHRONICLE, Jan. 9, 1925, at 17 (expressing the “fact that it required only 20 minutes for the women to come to a decision to grant the writ of error does not indicate any hasty action”); see also *Court of Women Gives Decision*, *supra* note 62 (“[T]he special court took the case in consultation, and within less than an hour had agreed to grant the application.”).

W.T. Johnson et al., from El Paso County, for writ of error, is granted and the cause set for argument Jan[uary] 30, 1925.”⁶⁹ Ward then turned to F.T. Connerly, clerk of the court, and announced: “I think that is all, except to have our pictures taken.”⁷⁰ The photo of the three women at the bench appeared in newspapers across the state the next day.⁷¹ After a short reception with their women friends in attendance, they left Austin and returned on January 30th to hear oral arguments.⁷²

III. THE WOODMEN TRUSTEES CONVEY TITLE, BUT RETAIN A TRUST

Johnson v. Darr involved a dispute between a judgment creditor and trustees for a Woodmen of the World camp located in El Paso.⁷³ In 1921, the Tornillo Camp No. 42, Woodmen of the World, held fee simple title to all or part of five residential lots located in the City of El Paso.⁷⁴ The lots were worth about \$10,000.⁷⁵ Title to the lots was in the name of J.M. Darr, W.S. Barnes, H.A. Borcharding, and F.P. Jones, as trustees for the camp.⁷⁶ On August 24, 1921, the trustees executed a general warranty deed conveying title to the properties to one of the trustees, F.P. Jones.⁷⁷ Contemporaneously with the delivery of the deed, Jones executed an instrument in favor of the other camp trustees acknowledging that he was holding title to the property as trustee for the camp and would reconvey the title at their request.⁷⁸ The general warranty deed was recorded in the El Paso County deed records, but the trust instrument was not recorded until later.⁷⁹

69. *Court of Women Gives Decision*, *supra* note 62.

70. *Id.*; *Sentiments of Women Judges are Outlined*, *supra* note 68.

71. *See Special Woman's Supreme Court of Texas*, DALLAS MORNING NEWS, Jan. 10, 1925, at 8 (displaying a photo taken after the special court granted the writ).

72. *Women Justices Grant Error Writ in W.O.W. Case*, SAN ANTONIO EXPRESS NEWS, Jan. 9, 1925, at 9; *see also Sentiments of Women Judges are Outlined*, *supra* note 68 (quoting Hortense Ward: “The fact that it required only twenty minutes for the women to come to a decision to grant the writ of error does not indicate any hasty action On the contrary, she said, it means that the case will be determined only after exhaustive study.”)

73. *Johnson v. Darr*, 272 S.W. 1098, 1098 (Tex. 1925).

74. *Darr v. Johnson*, 257 S.W. 682, 683 (Tex. App.—El Paso 1923, writ granted).

75. *Neff Names Three Texas Women to Function as Special Supreme Court*, *supra* note 8, at 1.

76. *Darr*, 257 S.W. at 683.

77. *Id.*

78. *Id.*

79. *See id.* (stating the instrument was not recorded until October 24, 1922).

In June 1922, Jones was sued by W.T. Johnson and others for an unpaid personal debt.⁸⁰ At the time of the suit, Johnson had no notice or knowledge of the claimed trust in favor of the camp.⁸¹ In December 1922, Johnson obtained a large money judgment against Jones and an attachment order directing the sale of the lots to satisfy the judgment.⁸² One of the lots in question was possessed by tenants, but the others were unimproved.⁸³

The Woodmen trustees filed suit against Johnson to declare his creditor lien void as against those lots and to enjoin the trial court's order for the attachment lien sale.⁸⁴ The trial court distinguished between the lot occupied by tenants and the unimproved lots, holding the creditor lien void as to the occupied lot, but effective as to the other lots, apparently because the trust instrument had not been recorded.⁸⁵ The Woodmen trustees appealed the decision arguing the attachment lien sale should not proceed against any of the lots.⁸⁶

The El Paso Court of Civil Appeals agreed with the Woodmen trustees and reversed the trial court's ruling.⁸⁷ In a decision rendered on December 6, 1923, the court concluded that the trust instrument signed by Jones was not a conveyance, but a mere declaration of trust, and therefore was not required to be recorded under the state registration statute.⁸⁸ The registration statute applied only to conveyances of land.⁸⁹ The court also held the judgment lien did not attach to the unoccupied lots because the "the attaching creditors . . . acquired no more interest in the lands than Jones had."⁹⁰ Jones only had bare legal title, while the Woodmen trustees held an equitable interest through an unrecorded trust.⁹¹ The decision, however, was not unanimous.⁹² Judge Higgins argued in his dissent that the trust instrument was evidence of an unrecorded conveyance, and therefore, the instrument had to be recorded under the registration statute

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 684.

84. *Id.* at 682.

85. *Id.* at 684.

86. *Id.*

87. *Id.*

88. *Id.* at 684–85.

89. *Id.* at 684.

90. *Id.* (emphasis added).

91. *Id.*

92. *Id.*

for it to be binding on third parties.⁹³ Judge Higgins contended that the majority's decision was based on common law, but that common law was changed with the adoption of the registration statutes.⁹⁴

The special Texas Supreme Court issued an opinion affirming the civil appeals court opinion on May 23, 1925.⁹⁵ Judge Hortense Ward, writing for the court, indicated that the issue to be decided in the case was whether an unrecorded trust instrument, creating an equitable title in real property, was a conveyance that fell within purview of state registration laws requiring the recordation of conveyances of real property, and if not, whether an attachment lien creditor can prevail against equitable owners of the property.⁹⁶

Judge Ward held the unrecorded instrument in favor of the Darr parties (the Woodmen trustees) created a trust in the land, which meant their deed to Jones passed only naked legal title while they retained equitable title for themselves.⁹⁷ Moreover, the trust instrument was not a conveyance of title.⁹⁸ “[U]nder no rational rule of construction,” she wrote, “can [the trust instrument] be regarded as a conveyance or passing of an estate in land.”⁹⁹ Given that the trust agreement was not a conveyance of land, it was not within the purview of the registration statutes, and for this reason did not require recordation to be effective. Regarding a judgment creditor's claim to the property against the unrecorded equitable owner's claim, Judge Ward wrote case precedent had clearly established “that attachment lien creditors acquire[d] no greater interest in the land than” the interest owned by the judgment debtor at the date of the levy absent a statute abrogating the common law rule.¹⁰⁰ After discussing several relevant decisions, Judge Ward found that where the doctrine of estoppel applied, outside the

93. *Id.* at 685.

94. *Id.* at 684–85. The registration statute at the time of the decision can be found at Tex. Rev. Civ. Stat. art. 6626 (1911), but is now codified at Texas Property Code, Section 13.001 (“Effects of Recording”).

95. *Johnson v. Darr*, 272 S.W. 1098, 1102 (Tex. 1925); *see also Supreme Court of Women Files First Opinion*, THE HOUSTON CHRONICLE, May 23, 1925, at 2 (“There was little formality. The three women solemnly took their places, the judgment was announced, and the court then recessed until the judgments could be entered in the minutes. The court then reconvened, and after approving the minutes, the three women signed them, thus leaving on permanent record evidence of the first Supreme Court in the world composed exclusively of women.”).

96. *Johnson*, 272 S.W. at 1099.

97. *Id.*

98. *Id.* at 1100.

99. *Id.* at 1099.

100. *Id.*

recording statutes, a third party could prevail against an unrecorded equitable title, such as situations involving a bona fide purchaser without notice who gave value.¹⁰¹ However, when a third party, such as an attachment lien creditor, cannot assert the doctrine of estoppel, the equitable title will prevail.¹⁰² Not finding estoppel present in this case, the Court held for the Darr parties and affirmed the civil appeals court decision.¹⁰³

Judge Brazzil wrote a concurring opinion emphasizing that equitable titles are not affected by the registration statutes, and therefore, the failure to record the trust instrument did not impair the rights of the attaching lien creditor.¹⁰⁴ The relationship of the parties was not affected by the registration of the deed to Jones.¹⁰⁵ Therefore, she wrote: “[T]he creditors have lost nothing by said transaction; there is no injury to prevent and no wrong to redress.”¹⁰⁶ Judge Henenberg also wrote a concurring opinion, concluding that “the attaching creditor is left with the right he had at common law, and can claim as against such unrecorded instrument only the actual interest of Jones at the time of the levy.”¹⁰⁷ Following consideration and denial of a motion for rehearing on June 12, 1925, the special court ceased its purpose and disbanded.¹⁰⁸ Remarkably, even the perfunctory denial of the rehearing motion did not escape media attention.¹⁰⁹

IV. WHAT WERE GOVERNOR NEFF'S MOTIVES?

Prior to the 1970s, articles about the case revealed little other than its oddity in Texas jurisprudence because of the sex of the judges who decided the case. Hattie Henenberg wrote about the case in the August 1932 issue of the *Women Lawyer's Journal*, but the article is largely confined to her participation on the court. Henenberg asserted that the decision was “[t]he leading case on the application of registration statutes to equitable titles[.]”

101. *Id.* at 1099–1102 (concluding, after review of precedent, the doctrine estoppel could allow a third party to prevail over an unrecorded equitable title).

102. *Id.* at 1100.

103. *Id.* at 1102.

104. *Id.* (Brazzil, J., concurring).

105. *Id.* at 1103.

106. *Id.*

107. *Id.* (Henberg, J., concurring).; see Austin Bureau, *Woodmen Win in Court of Women*, DALLAS MORNING NEWS, May 23, 1925, at 1 (stating Judge Henenberg wrote a concurring opinion in the case).

108. See *Women Judges of High Court Deny Rehearing Plea*, THE HOUSTON CHRONICLE, June 12, 1925, at 24 (stating the Court convened on June 12, 1925 and denied Johnson's motion for rehearing).

109. *Id.*

and that the court was “the first appellate court in the history of the country to be entirely composed of women.”¹¹⁰ Other articles mentioning the decision include an article appearing in the *Dallas Morning News* in 1955 and another in the *Southwestern Historical Quarterly* in 1956 on the history of civil courts in Texas.¹¹¹ The latter referred to the case merely as a “unique chapter in Texas judicial history”¹¹²

In the early 1970s, with growing presence of women in the legal profession, *Johnson v. Darr* emerged with a new perspective in historical literature as a milestone event. One of the more remarkable stories published at the time was written by Dean Moorhead in the February 11, 1973 issue of the *Texas Star Magazine*, a Sunday insert issued with the *Houston Post*.¹¹³ Moorhead wrote that during the hiatus between Governor Neff’s notification of the sitting court’s disqualification in March 1924, and the women’s appointment on January 1, 1925, he was diligently searching *for men* to fill the special court, but was frustrated in his inability to find qualified men without ties to Woodmen of the World:

[Neff] apparently made numerous attempts to secure men to serve as special justices. According to the late H.L. Clamp—a tall, thin and most delightful gentleman who was Deputy Clerk of the Supreme Court for 51 years (from 1902 to 1953)—each time the Governor offered an appointment to a prominent male member of the Bar, the attorney would respond by saying that he too belonged to the Woodmen of the World and was also disqualified. Finally, in frustration, Governor Neff decided to appoint three attorneys who, because of their sex, could not possibly be members of that organization.¹¹⁴

With few exceptions, nearly every subsequent writing on the case quickly seized upon this colorful anecdote. For example, an article entitled *Women in the Law* published in the *Texas Bar Journal* in April 1974, mentioned the

110. Hattie L. Henenberg, *Women of the Supreme Court of Texas—Johnson v. Darr*, 19 WOMEN LAW’STJ. 16, 16 (1932).

111. See Moorhead, *supra* note 67 (“While no woman has served regularly on the Texas Supreme Court, an all-female court once decided a case.”); Leila Clark Wynn, *A History of the Civil Courts in Texas*, 60 THE SOUTHWESTERN HISTORICAL QUARTERLY 1, 11, July 1956 (“A unique chapter in Texas judicial history was added in January of 1925. Governor Pat Neff appointed Hortense Ward, Hattie L. Henenberg, and Ruth V. Brazzil to the only all-woman court which ever sat in Texas, or perhaps in any other state.”).

112. Wynn, *supra* note 111, at 11–12.

113. See generally Dean Moorhead, *Texas’ All-Woman Supreme Court*, TEXAS STAR, Feb. 11, 1973, at 13 (describing the events leading up to Neff’s appointment of the special court).

114. *Id.*

“famed ‘Petticoat Supreme Court’” appointed by Governor Neff, and stated that the three elected justices “and all otherwise qualified men were WOW members and could not hear the suit.”¹¹⁵ The author concluded: “In a stroke of desperation or genius, the Governor appointed Hattie Henenberg of Dallas and Ruth Brazzil of Galveston as associate justices, and Mrs. Hortense Ward of Houston as special chief justice.”¹¹⁶ The story was repeated in a special article on women lawyers appearing in the January 1982 issue of the *Texas Bar Journal*.¹¹⁷ In this article the presumed political muscle of Woodmen of the World was introduced into the lore of the case:

The case concerned the property rights of Woodmen of the World, a fraternal order with so much political influence that practically every office-holder in the state found it expedient to become a member. Members of the bar as well as public officials had come under its spell. One after another, every male attorney had to refuse appointment as a special justice because of his membership. In this dilemma, Gov. Neff chose the solution of appointing women lawyers.¹¹⁸

Norman D. Brown, in his authoritative 1984 book on Texas politics in the 1920s, *Hood, Bonnet and Little Brown Jug*, relied on Moorhead’s conclusions: “Neff apparently made many attempts to secure men as special justices, but each time he offered an appointment to a prominent male member of the bar, the attorney declined because he too belonged to the Woodmen of the World.”¹¹⁹

Karen Berger Morello in *The Invisible Bar: The Woman Lawyer in America, 1638 to the Present*, wrote in 1986 that Governor Neff “was forced to appoint a special three-member court composed of women attorneys—the only lawyers in the area who were not members of the fraternal organization.”¹²⁰ In 1993, Barbara Aldave, Dean and Professor of Law at St. Mary’s School of Law, writing in the *St. Mary’s Law Journal*, cited the earlier articles in concluding that “virtually all other male lawyers who were qualified to serve

115. *Women in the Law*, 37 TEX. B.J. 325, 327 (1974).

116. *Id.*

117. *See generally* Marian O. Boner, *Women and the Law in Texas*, 45 TEX. B.J. 44 (1982) (discussing the challenges and triumphs of women in the law in Texas).

118. *Id.* at 45.

119. NORMAN D. BROWN, HOOD, BONNET, AND LITTLE BROWN JUG: TEXAS POLITICS, 1921–1928, at 156–57, (Robert A. Calvert and Larry D. Hill eds., 1984).

120. KAREN BERGER MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT 235 (1986).

as judges were Woodmen, too[.]” and that Neff, “[m]aking the most of his limited options . . . [.] appointed a special three-woman panel to decide *Johnson v. Darr*.”¹²¹ In October 1996, the *Texas Bar Journal* again published an article stating that “[b]ecause most male lawyers—and all three Supreme Court justices—in Texas bought insurance and sought political influence through Woodmen of the World, one barrister after another disqualified himself from judging the case. Lame-duck Gov. Pat Neff reluctantly made feminist history.”¹²²

The story of Governor Neff facing the frustrating problem of failing to find qualified men was repeated in the *Texas Almanac* editions of 1998–1999 and 2002–2003:

During the following 10 months [after March 8, 1924], Neff evidently attempted to find male judges or attorneys to sit on the special court. However, according to H.L. Clamp, the Deputy Clerk of the Supreme Court from 1902 to 1953, each time Neff offered an appointment to a male judge or attorney, the lawyer responded that he, too, was a member of the WOW, and therefore was disqualified from serving.¹²³

The Handbook of Texas, an authoritative encyclopedic work published by the Texas State Historical Association, provided additional fuel to this anecdote:

Governor Neff, however, found it difficult to name suitable replacements quickly. Beginning in March 1924, when the court disqualified itself, he made numerous attempts to find justices for the special court, but discovered, with increasing frustration, that each prominent male attorney he approached was also a member of the Woodmen. Ultimately, Neff decided that he would appoint women attorneys to the special court, as the Woodmen was a male-only organization and females would be safe from disqualification. . . . [T]he use of female justices was not common, and Neff resorted to it only after determining that he simply would not be able to appoint qualified men to the court.¹²⁴

Does the evidence support the anecdote attributable to Deputy Clerk H.L. Clamp, as reported by Dean Moorhead in his 1973 article? On January 2, 1925, the *Dallas*

121. Aldave, *supra* note 62, at 291 (footnote omitted).

122. Hollace Weiner, *A Case When Women Reigned Supreme*, 59 TEX. B.J. 890, 890–91 (1996).

123. Ramos, *supra* note 3.

124. Cottrell, *supra* note 5.

Morning News reported that Governor Neff had called Clamp to ask him if he thought the appointments of the women would be legal.¹²⁵ “Mr. Clamp opined that probably they were if all eligibility rules were observed, which would require a minimum of seven years’ practice of the legal profession and having reached the age of 30 years.”¹²⁶ Nothing was reported, however, about Neff’s alleged search for qualified men or that women were chosen only because men without conflict of interest could not be found.

It is possible Clamp told Moorhead the story as he remembered it, and there might be some truth to it, but Clamp would have been an unlikely confidante of Neff’s appointment process. There is no indication in the archival files of the case, or in Neff’s papers at Baylor University, to indicate that Neff ever asked any male attorney to serve on this court. The documentary evidence suggests the delay in making the appointments was the result of Neff’s procrastination on these and over one hundred other appointments toward the end of 1924 because of his distractions with political campaigns and the Democratic National Convention held that year.

The source for Neff’s procrastination as the reason for his delayed appointments can be found in two letters discovered in the case file in the Texas State Library archives. On November 24, 1924, the attorneys for Johnson wrote to F.T. Connerly, the clerk of the Texas Supreme Court and Clamp’s superior, inquiring about the status of the writ application.¹²⁷ Connerly responded on December 1 stating the three justices had recused themselves by certification to the Governor on March 8, and that the Governor “appears to have overlooked the matter” by not appointing special justices.¹²⁸ Connerly advised them to notify the Governor that the appointment of a special court was required.¹²⁹ Whether they contacted the Governor is not clear because the next correspondence in the case file is a letter dated January 1, 1925, from Governor Neff’s assistant secretary announcing the appointment of three women lawyers as special justices.¹³⁰ Although newspaper reports of the appointments promptly mentioned that

125. *Neff Names Three Texas Women to Function as Special Supreme Court*, *supra* note 8, at 1.

126. *Id.*

127. Armstrong & Morrow to Connerly, Nov. 24, 1924 (Johnson v. Darr case file at Texas State Archives).

128. Connerly to Armstrong & Morrow, Dec. 1, 1924 (Johnson v. Darr case file at Texas State Archives).

129. *Id.*

130. Johnson to The Texas Supreme Court, January 1, 1925 (Johnson v. Darr case file at Texas State Archives).

Mrs. Emma Ward was one of the preferred appointees—before finding herself disqualified—no newspaper reports searched for this study mention that any men were ever considered.

Was the Woodmen of the World organization so popular that Governor Neff could not find a qualified non-member male attorney? The answer is no. Woodmen of the World was a popular mutual life insurance company with membership open only to men.¹³¹ The size of the company made litigation inevitable, but *Johnson* was neither the first nor the last time Texas judges had to face recusal in a case involving the organization. The precedent was established in 1909 when the Texas Court of Civil Appeals held a trial court's opinion had to be reversed because the judge, who held an insurance policy issued by Woodmen of the World and was a member of the organization, was disqualified under state law to hear and determine a case involving the organization as a party.¹³² Governor Neff, prior to facing the special appointments in *Johnson v. Darr*, had already appointed special justices to hear and determine three other cases involving Woodmen of the World, including *Hutcherson v. Sovereign Camp, Woodmen of the World*,¹³³ decided April 20, 1923, *Sovereign Camp Woodmen of the World v. Ayres*,¹³⁴ decided April 25, 1924, and *Wirtz v. Sovereign Camp, Woodmen of the World*,¹³⁵ decided January 12, 1925. *Wirtz* was decided only four days after the women in *Johnson v. Darr* granted the writ of error application.¹³⁶ All three of the other Woodmen of the World special courts appointed by Neff were composed entirely of men.¹³⁷ Male attorneys also were appointed special justices in two Woodmen of the World cases heard in 1927.¹³⁸ There is no indication

131. See *WoodmenLife's Storied History*, WOODMENLIFE, <https://www.woodmenlife.org/about/history/> [https://perma.cc/D29T-8APH] (describing the backstory of the fraternal organization).

132. *Sovereign Camp, Woodmen of the World v. Hale*, 120 S.W. 539, 539 (Tex. 1909).

133. *Hutcherson v. Sovereign Camp, Woodmen of the World*, 251 S.W. 491 (Tex. 1923).

134. *Sovereign Camp, Woodmen of the World v. Ayres*, 261 S.W. 1000 (Tex. 1924).

135. *Wirtz v. Sovereign Camp, Woodmen of the World*, 268 S.W. 438 (Tex. 1925).

136. See Cottrell, *supra* note 5 (stating the all-woman supreme court met and granted the writ on January 8, 1925); *Hold Fraternal Firms Have Power to Make Reasonable Increases*, DALLAS MORNING NEWS, Jan. 13, 1925, at 3 (recapitulating the decision of the all-male Special Supreme Court in *Wirtz* on January 12, 1925).

137. *Hutcherson*, 251 S.W. at 491, 494 (opinion issued by Special Associate Justice George S. King, and dissenting opinion by Special Associate Justice J.W. Madden); *Ayres*, 261 S.W. at 1000 (opinion issued by Special Chief Justice I.W. Stephens); *Wirtz*, 268 S.W. at 438, 439, 443, 444 (opinion issued by Special Chief Justice Norman G. Kittrell, with Special Associate Justice W.C. Woodward concurring, and Special Associate Justice Charles Black concurring by separate opinion).

138. *Sovereign Camp, Woodmen of the World v. Patton*, 295 S.W. 913, 914 (Tex. 1927); *Sovereign Camp, Woodmen of the World v. Boden*, 1 S.W.2d 256 (Tex. 1927).

that qualified men were difficult to find for any of the Woodmen of the World special courts appointed in the cases between 1923 and 1927, or that women attorneys were considered for appointment in any of the cases except *Johnson v. Darr*.

The observation that Moorhead (or Clamp) could be wrong was raised in an essay prepared in 1978 by Assistant Professor of Law Sue M. Hall of St. Mary's University Law School.¹³⁹ While asserting that Neff probably experienced "some initial difficulty in finding men to fill the posts," she concluded nonetheless that the "theory [raised by Moorhead] . . . is in all likelihood not correct."¹⁴⁰ Hall's article was never published and not relied upon, apparently, in any subsequent articles with the notable exception of a piece by Murphy Givens in the *Corpus Christi Caller-Times*.¹⁴¹ In the article written about the special court on April 5, 2000, Givens concluded that Neff's motive in taking the unusual step of appointing the women was never made clear, but that he "could easily have found male lawyers who were not members of the Woodmen of the World."¹⁴²

The weight of authority points to the conclusion that Neff was not seeking women out of frustration or desperation after failing to find qualified men to appoint. Not only is the anecdote based on hearsay emerging in print for the first time nearly fifty years after the court did its work, but it is also demeaning to the three women who were selected. The appointments can hardly be considered a landmark achievement for women lawyers if the appointees obtained their commissions only because no qualified man could be found. What makes the case meaningful is that the women were appointed even though many well-qualified men were available to serve.

Was Neff motivated to appoint women for political advantage? The evidence suggests not. Neff certainly courted the female vote and was a strong supporter of women suffrage, but by the end of 1924 his political career was finished, and he knew it. The apex of his career was mid-1924 when he was promoted by his supporters as a Texas favorite-son candidate for the

139. Hall, *supra* note 40, at 2 (1978).

140. *Id.* Hall incorrectly states that Miriam Ferguson defeated Neff for re-election. *Id.* at 23. Neff and the Fergusons never faced each other in an election.

141. Murphy Givens, *All-Woman Supreme Court Made History*, CORPUS CHRISTI CALLER-TIMES, Apr. 5, 2000, at 11.

142. *Id.* Givens relied on information furnished by State Bar archivist Angela Dorau and Sue Hall's essay. *Id.*

Democratic nomination for president.¹⁴³ He could have appointed the women as early as March 1924, when it would have had political impact, but he did not do so. His appointments came nearly two months *after* the November general election and only a few weeks before his farewell address.¹⁴⁴ On January 20, 1925, at the Ferguson inauguration, only days after the court's hearing, Neff publicly stated his intention of retiring to private life.¹⁴⁵

Was Neff motivated to pay tribute to Mrs. Ferguson as the first woman governor of Texas? Likely not, but possibly. An article in the *Austin American-Statesman* published on January 2, 1925, stated that Neff gave no reason for the appointments, but that the appointments “were considered not only a high tribute to the women lawyers named, but also to the incoming woman governor of Texas.”¹⁴⁶ Sue Hall accepted this reasoning in part in her paper, concluding that Neff was likely making “a gesture of welcome to Texas’s first woman governor by the public recognition of the fact that other competent women were also available for public service, even to becoming chief justice and associate justices of the highest court in the state.”¹⁴⁷ The relationship between Neff and the Fergusons was cordial, but not effusive. Both were Democrats, but Neff did not endorse Miriam either before or after she received the Democratic nomination for governor. Neff remained silent through election day. These appointments may have been his way of stealing some of the limelight surrounding her pending inauguration. There is evidence, however, of a conflict with respect to other appointments. In early January 1925, Neff sent a large number of recess

143. Turner, *supra* note 50.

144. See Ramos, *supra* note 3 (“Not until Jan. 1, 1925, only a week before the case was scheduled to be heard, did Neff finally appoint the special justices . . .”); *United States Presidential Election of 1924*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/United-States-presidential-election-of-1924> [perma.cc/7UN5-WCMA] (“United States presidential election of 1924, American presidential election held on November 4, 1924 . . .”); see generally GOVERNOR PAT M. NEFF, *Farewell Address*, in THE BATTLES OF PEACE 267–270 (1925) (addressing the Texas Legislature and Texas citizens).

145. GOVERNOR PAT M. NEFF, *supra* note 144, at 269 (“I am retiring today to the sylvan shades of private life. I am going back to take my place amidst the rank and file of the people, where the great heart of humanity beats.”); see BROWN, *supra* note 119, at 253 (stating the inauguration occurred on January 20, 1925). Four years later he emerged again as a public figure by serving on the Railroad Commission of Texas from January 1, 1929 to January 1, 1933. *Railroad Commissioners Past Through Present*, RRC, <https://www.rrc.texas.gov/about-us/commissioners/commissioner-list/> [https://perma.cc/HU6D-2AUT].

146. *Neff Names Three Women to Supreme Court*, *supra* note 14.

147. Hall, *supra* note 40, at 2.

appointments to the Texas Senate in what some described as a potential “show down” with Ferguson’s nominations for the same posts.¹⁴⁸ The Texas Senate confirmed a few of Neff’s appointments before Ferguson’s inauguration on January 20th.¹⁴⁹ These last-minute appointments were not a polite way to welcome your successor.

In assessing Governor Neff’s motives, a glance at his personality is helpful. Neff was an unusual man with an abundance of sincerity and sentimentality. His record and actions in office suggest that his motive in appointing the three women might very well have been the obvious one: a genuine interest in advancing the status of women in state government for its own sake, and to encourage the notion that greater participation among women in state government would benefit the state. Neff had made it his policy to name one or more women to serve on every state board, including university regent positions, and was the first Texas governor to appoint a woman as the governor’s private secretary.¹⁵⁰ It would have been no great leap for him to have extended this policy to judiciary appointments, even if the step he took with these appointments affected only one case.

The symbolic message of his all-woman Supreme Court appointments is underscored by the fact that he was dogmatic in appointing women for this case even after suffering the embarrassment of learning that his preferred appointee, Emma Webb, was disqualified.¹⁵¹ The embarrassment continued as two more of his announced appointees, Edith Wilmans and Nellie Robertson, discovered they too were disqualified only days after their appointments had been announced publicly.¹⁵² It made no difference to Neff who received the recognition so long as the honor was received by women.¹⁵³ This attitude is supported by comments he made in a letter he wrote on January 9 to Nellie Metcalfe of the Texas Woman’s Chamber of Commerce: “I am in hopes that this recognition of the womanhood of the

148. See BROWN, *supra* note 119, at 256 (describing the Senate’s treatment of Neff’s swell of final appointments).

149. Ralph W. Steen, *Governor Miriam A. Ferguson*, 17 EAST TEX. HIST. J., 3, 9 (1979) (“As is customary, the Senate confirmed some of the Neff appointees and rejected some of them.”).

150. Ramos, *supra* note 3; BROWN, *supra* note 119, at 156.

151. Betty Trapp Chapman, *Rough Road to Justice: The Journey of Women Lawyers in Texas*, J. TEX. SUP. CT. HIST. SOC., Summer 2015, at 78.

152. See Ramos, *supra* note 3 (describing Wilmans’s and Robertson’s resignations due to not meeting the requisite seven years of law practice).

153. See *Perhaps They are Portias*, DALLAS MORNING NEWS, Jan. 10, 1925, at 14 (questioning Neff’s appointment of women solely because they are women).

State as attorneys will be helpful in many ways to those women, wherever they may be, who are fighting single-handed the battles of life.”¹⁵⁴

Was Neff cautious in appointing women to the special court for legal reasons? Possibly. The issue of whether women were eligible for public office had been considered but not decided until Miriam Ferguson’s run for governor in 1924.¹⁵⁵ Her husband, James Ferguson, was not only impeached as governor in 1917, but also banned by the Texas Senate from seeking office again.¹⁵⁶ Nonetheless, in 1924 he was anxious to vindicate his name and make a political comeback by positioning himself as the foremost opponent of the then-powerful Ku Klux Klan movement.¹⁵⁷ Early that year, he announced his intention to place his name on the ballot as a candidate for governor in defiance of the 1917 ban on his ability to hold office.¹⁵⁸ John Maddox and others promptly filed suit against him and members of the Democratic State Executive Committee.¹⁵⁹ In the trial court, the plaintiffs obtained an injunction restraining the committee from placing his name on the ballot.¹⁶⁰ Ferguson appealed to the court of civil appeals, but that court side-stepped the matter and certified several questions to the Texas Supreme Court.¹⁶¹ In a decision rendered on June 12, 1924, the Court held that Ferguson’s impeachment proceedings were valid and the Texas Senate had the power and jurisdiction to render judgment disqualifying him from holding any state office.¹⁶² This ended any doubt as to James Ferguson’s ability to run for governor again.¹⁶³

154. Neff to Metcalfe, January 9, 1925 (The Texas Collection at Baylor University).

155. See BROWN, *supra* note 119, at 105–06 (stating Miriam Ferguson withdrew her name from the United States Senate ballot prior to voting); *Id.* at 3–4 (“In 1924, Mrs. Miriam A. Ferguson, a housewife and other, made a successful race for governor of Texas as a proxy for her husband . . .”).

156. *Id.* at 4 (“Governor James E. Ferguson . . . was barred from holding state office by his impeachment conviction of 1917 . . .”).

157. See *id.* at 215–17 (discussing James Ferguson’s run for governor of Texas against the Ku Klux Klan despite his 1917 impeachment).

158. *Id.* at 216.

159. Ferguson v. Maddox, 263 S.W. 888, 888 (1924).

160. *Id.* at 888–89.

161. *Id.* at 888.

162. *Id.* at 893.

163. See *id.* at 892–93 (answering the certified question as to whether the judgement decreeing James Ferguson unqualified to hold any office in Texas invalid in the negative). Chief Justice Cureton and Associate Justice Greenwood certified to the Governor that they were disqualified to sit as judges in this case. *Id.* at 888. Governor Neff appointed Alexander Coke as Special Chief Justice and Howard Templeton as Special Associate Justice. *Id.*

Ferguson solved this problem by placing his wife's name on the ballot. Miriam Ferguson, known as "Ma" Ferguson, in contrast to her husband's "Pa" Ferguson nickname, made it clear that if she was elected, her husband would be her close advisor, if not her surrogate.¹⁶⁴ Mrs. Ferguson's name appeared on the ballot for the Democratic primary, and at the election held on July 26, 1924, she received 20.83% of the vote, coming in second behind Ku Klux Klan supporter Felix D. Robertson, who received 27.52% of the vote, forcing a runoff.¹⁶⁵ In the runoff election, held August 23, 1924, she won convincingly with 56.7% of the vote.¹⁶⁶

Her victory ended Robertson's political career and marked the beginning of the end for the Ku Klux Klan's influence in Texas politics. However, it did not end the legal challenges to her candidacy. The legitimacy of a female governor was raised by Charles M. Dickson, a resident of Bexar County, in a lawsuit he brought against Miriam and James Ferguson, Secretary of State J.J. Strickland, and the county judges, clerks, and sheriffs of every county in the state.¹⁶⁷ Certified questions again reached the Texas Supreme Court, this time only weeks before the November election. Among other things, Dickson claimed that Miriam Ferguson was ineligible to hold office because she was a woman, a married woman, and the wife of James Ferguson who himself was ineligible to hold office.¹⁶⁸ One of the arguments raised was "that the words 'he' and 'his' are used in [S]ection 4 of [A]rticle 4 [of the state constitution] in defining the Governor's qualifications."¹⁶⁹ The Court issued an opinion upholding Ferguson's candidacy, noting that on this issue "depends the right of all women to hold office in Texas under the present Constitution[.]"¹⁷⁰ and that "[s]ince we have no English word, which in the singular number, includes both 'he' and 'she,' the most appropriate word under common usage, to include both sexes while using the singular number, is the word 'he'. . . . That 'he' must include 'she' is obvious . . ."¹⁷¹ The Court also recognized the role of the suffrage amendments making women qualified electors, concluding that

164. See BROWN, *supra* note 119, at 225 (discussing Miriam Ferguson's acknowledgement of her husband as a guide through her governorship).

165. *TX Governor-D Primary*, OUR CAMPAIGNS, <https://www.ourcampaigns.com/RaceDetail.html?RaceID=296490> [<https://perma.cc/K6YY-XSF6>].

166. *Id.*

167. *Dickson v. Strickland*, 265 S.W. 1012, 1012–13 (Tex. 1924).

168. *Id.* at 1013.

169. *Id.* at 1021.

170. *Id.* at 1019.

171. *Id.* at 1021.

their status as such “removed any pre-existing sex ineligibility to office.”¹⁷² The Court remarked,

[I]t is to blind one’s eyes to the truths of current history not to recognize that the last vestige of reason to sustain a rule excluding women from office was removed when she was clothed with equal authority with men, in the government of state and nation, through the ballot. When the reason for the rule of exclusion has failed, the rule should no longer be applied.¹⁷³

The decision in *Dickson* was issued on October 15, 1924.¹⁷⁴ Seventeen days later, on November 4, Ferguson was elected governor over her Republican opponent with nearly 59% of the vote.¹⁷⁵

The provisions of the state constitution concerning the qualification of Supreme Court justices also used “he” and “his” terminology.¹⁷⁶ If Governor Neff had any doubts about the legality of women appointees to the Supreme Court because of their gender, the *Dickson* decision removed them. Thus, the duly elected Texas Supreme Court deserves some credit in laying the groundwork for the appointment of the all-woman court. *Johnson v. Darr* was Neff’s first (and last) opportunity, following *Dickson*, to appoint women jurists without having to face a court challenge based on gender qualification. There is no indication that anyone questioned the legality of Neff’s appointees merely because they were women.

V. THE LEGAL LEGACY OF JOHNSON V. DARR

If Governor Neff’s objective was to pave the way for additional women appointments to Texas courts, his effort was a failure. No future governor would take this step until James V. Allred appointed Sarah T. Hughes to a state district court position in 1935.¹⁷⁷ Another woman would not sit on the Texas Supreme Court until 1982, when Governor Bill Clements

172. *Id.* at 1023.

173. *Id.*

174. *Id.* at 1012.

175. *TX Governor-D Runoff*, *supra* note 165.

176. TEX. CONST. art. V, § 2 (1891) (“No person shall be eligible to the office of chief justice or associate justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States . . .”).

177. See Aldave, *supra* note 62, at 292 (1993) (reflecting on the decade that passed between the *Johnson v. Darr* decision and Governor James Alfred appointing Sarah T. Hughes as the first full-time judge in Texas).

appointed Ruby K. Sondock to fill a vacancy.¹⁷⁸ Ten years later, in 1992, Justice Rose Spector became the first woman elected to the Court.¹⁷⁹ Other women did not serve on the court until 1998 and subsequent years.¹⁸⁰

Nonetheless, the decision in *Johnson v. Darr* was not forgotten in the law books. The question of whether the decision rendered by the all-woman court had any lasting legal significance can be found in subsequent case law, including nearly forty cases that have cited or followed at least one of the substantive points of the decision.¹⁸¹ These cases cite *Johnson v. Darr* for the principle that equitable interests in real property are valid even if not recorded in county deed records absent estoppel, an attaching lien creditor acquires no greater interest in land than that owned by the debtor except when abrogated by statutes, or that recording statutes are in derogation of the common law and therefore must be strictly construed.¹⁸² In a few cases the decision is cited in the context of judicial recusals, but only as dicta.¹⁸³ Citations to these cases are compiled in the appendix.

It is noteworthy that only one case mentions the composition of the court after citing the case for substantive legal precedent.¹⁸⁴ All of the other cases citing *Johnson v. Darr* for legal precedent do not mention that the jurists were women, which is perhaps the greatest compliment.¹⁸⁵ Their legal reasoning, and not the fact that women rendered the decision, is the enduring legal legacy of *Johnson v. Darr*.

178. *Id.* at 299; *Woman Named to Texas Supreme Court*, 45 Tex. B.J. 1156, 1156 (1982).

179. Aldave, *supra* note 62, at 299.

180. Judith N. McArthur, *Women and Politics*, HANDBOOK OF TEX. ONLINE (1976), <https://www.tshaonline.org/handbook/entries/women-and-politics> [https://perma.cc/S32A-MY YD].

181. *See infra* Appendix (listing cases that have cited *Johnson v. Darr*).

182. *See infra* Appendix (listing cases that have followed *Johnson v. Darr* substantively).

183. *See infra* Appendix (listing cases that have cited *Johnson v. Darr* in respect to judicial recusal).

184. *See* Tex. Indus. Accident Bd. v. Indus. Found. of the S., 526 S.W.2d 211 (Tex. Civ. App.—Beaumont 1975, writ denied) (highlighting the substantive holding and remarking in a footnote that it was the only case in Texas jurisprudence to be decided by an all-woman Supreme Court of Texas) (citing *Johnson v. Darr*, 272 S.W. 1098 (Tex. 1925)).

185. *See infra* Appendix (listing cases citing *Johnson v. Darr*, which do not mention that jurists were women).

APPENDIX

CASES MENTIONING OR FOLLOWING *JOHNSON V. DARR*
(1925 to 2021)¹⁸⁶

Year	Federal Cases
1932	Del Rio Bank & Trust Co. v. Cornell, 57 F.2d 142 (5th Cir. 1932). “Under the recording laws of Texas the equitable title of the appellant to the omitted land was not required to be recorded in order to protect it against creditors of the bankrupt in whose favor an attachment or an execution on a judgment against the bankrupt was issued[,]” citing <i>Johnson v. Darr. Id.</i> at 143.
1936	Citizens Nat’l Bank v. Turner, 14 F. Supp. 495 (N.D. Tex. 1936). Citing <i>Johnson v. Darr</i> for the proposition that it was immaterial that a trust agreement was not recorded.
1953	In re Rogal, 112 F. Supp. 712 (S.D. Cal. 1953). “Under the recording laws of Texas the equitable title of the appellant to the omitted land was not required to be recorded in order to protect it against creditors of the bankrupt in whose favor an attachment or an execution on a judgment against the bankrupt was issued[,]” citing <i>Johnson v. Darr. Id.</i> at 717–18.
1986	Prewitt v. United States, 792 F.2d 1353 (5th Cir. 1986). Ruling that “a divorce decree cannot be a ‘conveyance’ as contemplated by the statute. Since recording statutes are in derogation of common law principles, long established Texas doctrine recognizes that they should be narrowly construed,” citing <i>Johnson v. Darr. Id.</i> at 1356.

186. This listing of cases updates the citations mentioned in the original 2004 paper.

1997	Mueller v. United States, No. 96-20419, 1997 U.S. App. LEXIS 42566, at *10 n.10 (5th Cir., 1997). The court cites to <i>Johnson v. Darr</i> as additional authority for a quote from a 1990 Texas civil appeals court opinion: “[i]t is well settled that ‘the superiority of [an equitable] title may be asserted against a judgment lien holder even though he had no notice of the equitable title at the time of fixing his lien.’”
2004	Bank of Am., N.A. v. Schwartz (In re Hayes), No. SA-03-CA-1228-XR, 2004 U.S. Dist. LEXIS 25208 (W.D. Tex. 2004). The court quotes <i>Johnson v. Darr</i> . “[t]he decisions of this state uniformly hold that the registration statutes do not apply to equitable titles” and “[t]hat bona fide purchasers for value are protected against the assertion of [an unrecorded equitable title] is because of the doctrine of estoppel, and not the registration statutes.” <i>Id.</i> at *15–16.
2007	Pierce v. Howard (<i>In re Sedona Cultural Park, Inc.</i>), No. AZ-06-1339-MoPaBr., 2007 WL 7540968 (9th Cir. 2007). Quoting from the Blalak case (cited below) and its citation to <i>Johnson v. Darr</i> for the proposition that an equitable interest need not be recorded to prevail over a subsequent judgment lien because the recording act did not apply to equitable interests.
2015	Glick v. Edwards, 803 F.3d 505 (9th Cir. 2015). In a motion for recusal in which the appellant sued every judge in the District of Montana, the Ninth Circuit applied the rule of necessity and held the rule permits a district judge to hear the case in which he is named as a defendant where a litigant sues all the judges of the district. The court cited <i>Johnson v. Darr</i> not as legal precedent, but as an “unconventional option” to find unconflicted judges: “For example, when all five members of the Texas Supreme Court were disqualified from a case involving Woodmen of the World because each justice was a member of that fraternal organization, the governor appointed a Special Supreme Court of three women to hear the case.” <i>Id.</i> at 510 n.2.

Year	Non-Texas State Court Cases
1925	Johns-Manville, Inc. v. Lander County, 240 P. 925 (Nev. 1925). The court agreed that “when a right is solely and exclusively of legislative creation, the courts will not extend the application of the statute but will limit its application to the exact words of the act,” citing <i>Johnson v. Darr. Id.</i> at 926.
1993	Blalak v. Mid Valley Transportation, Inc., 858 P.2d 683 (Ariz. Ct. App. 1993). An equitable title did not require recordation under Texas recording statute, “the state from which our recording statute was taken,” citing <i>Johnson v. Darr. Id.</i> at 686.
1996	Hunnicut Construction, Inc. v. Stewart Title and Trust, 928 P.2d 725 (Ariz. Ct. App. 1996). Holding that an equitable interest need not be recorded to prevail over a subsequent judgment lien because the Arizona recording act does not apply to equitable interests, citing <i>Johnson v. Darr.</i>
2014	<i>In re</i> Protest Appeals of Lyerla, 336 P.3d 882 (Kan. Ct. App. 2014). The court considered an attempt to require the recusal of three Kansas Court of Tax Appeal judges and commented there was a possibility additional pro tem judges may be appointed to the court, citing as an example <i>Johnson v. Darr</i> , “noting that case was decided entirely by pro tem judges after all regularly appointed judges were disqualified.” <i>Id.</i> at 891.

Year	Texas Supreme Court Cases
1932	Estelle v. Hart, 55 S.W.2d 510 (Tex. Comm'n. App. 1932). Judgment lien did not attach to inherited land through unrecorded instrument, reversing Hart v. Estelle, 34 S.W.2d 665, 671 (Tex. App.—Austin 1930), both of which cited <i>Johnson v. Darr</i> .
1961	Second Injury Fund v. Keaton, 345 S.W.2d 711 (Tex. 1961). “[W]e are not permitted to give a liberal construction where the law is expressed in plain and unambiguous language as here. We are not to look to the consequences of our action here in limiting the application of the statute to the exact words of the Act.” <i>Id.</i> at 714.
2008	Entergy Gulf States, Inc. v. Summers, 282 S.W.3d 433 (Tex. 2009). In a concurring opinion involving statutory construction of the Texas Workers’ Compensation Act, Justice Nathan Hecht mentioned <i>Johnson v. Darr</i> in passing within a parenthetical in a footnote: “(The most famous exercise of the designation power was surely Governor Pat Neff’s appointment of a Special Supreme Court consisting of three women, Mrs. Hortense Ward, Special Chief Justice, and Miss Ruth Virginia Brazzil and Miss Hattie L. Henenberg, Special Associate Justices, to hear and determine the issues in <i>Johnson v. Darr</i> , 114 Tex. 516, 272 S.W. 1098 (1925).)” <i>Id.</i> at 492 n.11.

Year	Texas Court of Appeals Cases
1927	<p>Sugg v. Mozoch, 293 S.W. 907 (Tex. App.—Austin 1927, writ ref'd). Quoting from <i>Johnson v. Darr</i>: “[t]he decisions of this state uniformly hold that the registration statutes do not apply to equitable titles. That bona fide purchasers for value are protected against the assertion of such title is because of the doctrine of estoppel, and not the registration statutes.” <i>Id.</i> at 910.</p> <p>Citizens’ Nat’l Bank v. Billingsley, 300 S.W. 648 (Tex. App.—Waco 1927, writ ref’d) “It is also well-settled law that an attaching creditor acquires no greater interest in land than that owned by the debtor, except where the rule is abrogated by reason of the registration statutes[.]” citing <i>Johnson v. Darr</i>. <i>Id.</i> at 649.</p>
1929	<p>Brinkman v. Rick, 19 S.W.2d 808 (Tex. App.—Dallas 1929, writ ref’d). Stating appellees “can claim no greater interest in the stock than the interest owned by J. George Brinkman at the time the levies were made,” citing <i>Johnson v. Darr</i>. <i>Id.</i> at 812.</p>
1930	<p>Garrison v. Citizens’ Nat’l Bank, 25 S.W.2d 231 (Tex. App.—Waco 1930, writ ref’d). “[T]he rights of the holder of an equitable title were not affected by his failure to record a conveyance to him of the legal title[.]” quoting <i>Johnson v. Darr</i>. <i>Id.</i> at 233.</p>
1931	<p>Gamer v. Love, 41 S.W.2d 356 (Tex. App.—Fort Worth 1931, writ dism’d w.o.j.). “[I]t seems to be definitely settled that a judgment lien does not attach to an equitable title to realty owned by the defendant, but only to realty which the debtor holds by legal title[.]” quoting <i>Johnson v. Darr</i>. <i>Id.</i> at 359.</p>
1932	<p>South Texas Lumber Co. v. Nicoletti, 54 S.W.2d 893 (Tex. App.—Beaumont 1932, writ dism’d). “[T]hough an instrument be entitled to registration, still it is not required to be recorded in order to protect equitable title evidenced thereby against attaching creditors[.]” citing <i>Johnson v. Darr</i>. <i>Id.</i> at 896.</p>

1937	Martin v. Marquardt, 111 S.W.2d 285 (Tex. App.—San Antonio 1937, writ dism'd). “[S]tatement contained in this transfer was false, and therefore this transfer was insufficient to put appellee on notice of the fact that the appellant was, or might in the future assert an equitable lien against this land[.]” citing <i>Johnson v. Darr</i> . <i>Id.</i> at 286.
1938	Lusk v. Parmer, 114 S.W.2d 677 (Tex. App.—Amarillo 1938, dism'd). No consideration given for land other than release or credit upon debt and judgment, citing <i>Johnson v. Darr</i> .
1939	Broussard Trust v. Perryman, 134 S.W.2d 308 (Tex. App.—Beaumont 1939, writ ref'd). Execution of affidavit before a notary public that he held the “interest in the land in trust for” another did not “have the effect of a legal conveyance of the legal title to” the land to the beneficiary owner, citing <i>Johnson v. Darr</i> . <i>Id.</i> at 314.
1940	Roeser & Pendleton, Inc. v. Stanolind Oil & Gas Co., 138 S.W.2d 250 (Tex. App.—Texarkana 1940, writ ref'd). Assertion of equitable claim to real property prevails against the purchaser at execution sale, citing <i>Johnson v. Darr</i> and other cases.
1962	Hammett v. McIntire, 365 S.W.2d 844 (Tex. App.—Houston 1962, writ ref'd n.r.e.). Abstract of judgment lien did not attach to beneficial interest in real property, citing <i>Johnson v. Darr</i> .
1964	Perry v. Aetna Life Ins. Co. of Conn., 380 S.W.2d 868 (Tex. App.—Tyler 1964, writ ref'd n.r.e.). Concluding that an agreed statement of facts does not have to be signed and certified by the court “where it otherwise appears from the record that the case was tried upon such statement of facts,” citing the <i>Darr</i> civil appeals opinion as affirmed by the Texas Supreme Court. <i>Id.</i> at 876.
1972	Legate v. Bituminous Fire & Marine Ins. Co., 483 S.W.2d 488 (Tex. App.—Beaumont 1972, writ ref'd n.r.e.). Citing <i>Johnson v. Darr</i> in a quote from <i>Second Injury Fund v. Keaton</i> .

1975	<p>Texas Indus. Acc. Bd. v. Indus. Found., 526 S.W.2d 211 (Tex. App.—Beaumont 1975, pet. denied). “We are not to look to the consequences of our action here in limiting the application of the Act to the exact words of the Act,” citing <i>Johnson v. Darr</i> and remarking: “This decision is the only one in our jurisprudence decided by an all-woman Supreme Court of Texas, a panel appointed by Governor Neff which sat during the early months of Governor Miriam A. Ferguson’s first term of office.” <i>Id.</i> at 218, 221 n.9.</p> <p>Lewisville State Bank v. Blanton, 520 S.W.2d 607 (Tex. App.—Waco 1975), rev’d 525 S.W.2d 696 (Tex. App.—Waco 1975). “The registration statutes do not apply to equitable titles, and thus the equitable title of plaintiff is superior to judgment liens held against W.H. Blanton,” citing <i>Johnson v. Darr</i>. <i>Id.</i> at 608.</p>
1981	<p>Jensen v. Bryson, 614 S.W.2d 930 (Tex. App.—Amarillo 1981, no pet.). “The [recording] statute partially abrogates the common law rule that a lien creditor is confined to the interest of his debtor in the land at the time of levy; but, because the statute is a legislative creation in derogation of the common law and equitable principles, its application is limited to its exact words[,]” citing <i>Johnson v. Darr</i>. <i>Id.</i> at 933.</p>
1984	<p>Milberg Factors, Inc. v. Hurwitz-Nordlicht Joint Venture, 676 S.W.2d 613 (Tex. App.—Austin 1984, writ ref’d n.r.e.). “[T]he assignment of interest was not subject to real property recording requirements because Hurwitz’ interest was personalty, not realty[,]” citing <i>Johnson v. Darr</i>. <i>Id.</i> at 616.</p>
1985	<p>Tex. Dept. of Pub. Safety v. Wiggins, 688 S.W.2d 227 (Tex. App.—El Paso 1985, no pet.). “An expunction proceeding is civil in nature rather than criminal, with the burden of proving compliance with the statutory conditions resting solely with the petitioner[,]” citing <i>Johnson v. Darr</i>. <i>Id.</i> at 229.</p>

1986	Tex. American Bank/Levelland v. Resendez, 706 S.W.2d 343 (Tex. App.—Amarillo 1986, no pet.). Stating “[S]ection 13.001 [of the Texas Property Code] (formerly article 6627) is a legislative creation in derogation of the common law and equitable principles and must be strictly construed,” citing <i>Johnson v. Darr</i> . <i>Id.</i> at 345.
1990	Gibraltar Sav. Ass’n v. Martin, 784 S.W.2d 555 (Tex. App.—Amarillo 1990, writ denied). Stating “[t]he statute partially abrogates the common law rule that a lien creditor is confined to the interest of his debtor in the land at the time of levy[.]” citing <i>Johnson v. Darr</i> . <i>Id.</i> at 557.
1999	Gaona v. Gonzales, 997 S.W.2d 784 (Tex. App.—Austin 1999). “Because it is in derogation of the common law and equitable principles, the recording statute must be strictly construed”[.]” citing <i>Johnson v. Darr</i> . <i>Id.</i> at 786.
2003	Hellmann v. Circle C Props. I, Ltd., No. 04-03-00217-CV, 2003 WL 22897220 (Tex. App.—San Antonio 2003, pet. denied) (mem.). Citing <i>Johnson v. Darr</i> for the proposition that “Texas courts have uniformly held that the recording statutes do not apply to equitable titles; therefore, the absence of any instrument recording AIP’s equitable interest does not affect the priority of the parties’ liens or make AIP’s interest in the real property void under section 13.001 of the Texas Property Code.” <i>Id.</i> at *7.
2014	Drake Interiors, LLC v. Thomas, 433 S.W.3d 841 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Citing <i>Johnson v. Darr</i> for the proposition that if a lien attaches to property, the lienholder may acquire an interest “no greater than that held by the judgment debtor.” <i>Id.</i> at 847.
2016	Hankins v. Harris, 500 S.W.3d 140 (Tex. App.—Houston [1st Dist.] 2016, no pet.). Citing <i>Johnson v. Darr</i> for the proposition that a lienholder “acquire[s] an interest [in the property] no greater than that held by the judgment debtor.” <i>Id.</i> at 145.

Year	Texas Attorney General Opinion
1969	Tex. Att’y. Gen. Op. No. M-507 (1969). Attorney General Crawford C. Martin cited <i>Johnson v. Darr</i> in Opinion No. M-507 (Nov. 6, 1969) for the proposition that when “a right is solely and exclusively of Legislative creation, and does not derive its existence from the common law or principles of equity, and creates a new right by statute, the courts will not extend the application of the statute, but will limit its application to the exact words of the act.” <i>Id.</i>