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A HISTORY OF THE COURTS OF GEORGIA
FROM THEIR GENESIS
TO THE PRESENT

by
William L. Martin, III
Clerk/Court Administrator
Court of Appeals of Georgia

On June 9, 1732, King George II, king of Great Britain, granted a charter of the colony of Georgia to James Edward Oglethorpe and a board of 21 trustees, who established the colony in 1733 in what is now Savannah. The original territory extended from the Atlantic ocean to the Mississippi river including the land now the states of Alabama and Mississippi. The charter was surrendered by the trustees to the crown in 1752, to King George III, making Georgia a royal province. Georgia was originally chartered as a buffer between South Carolina and Florida. In the 1700s, the two greatest naval powers, and hence, military powers in the world were Great Britain and Spain. Spain was colonizing Florida and Georgia was set up to stem the encroachment of Spanish colonies into the more settled British colonies in North and South Carolina.

When Oglethorpe settled in Georgia in 1733, he brought with him judicial officers, who were called bailiffs. They wore purple gowns trimmed with fur. These judges were evidently open to graft and bribes and brought disrepute to the office of judge. It has been said that Oglethorpe had only two rules when he established the colony in Savannah, no rum and no lawyers. This was thought to be the reason that the State Bar of Georgia generally goes to Savannah to hold its annual convention bar meeting.

After the charter was surrendered to George III, the royal government established courts of "judicature" in Georgia in 1754. These included a general court which was held four times a year for the transaction of civil business and a court of "session of oyer and terminer in general gaol delivery" to be held twice a year for the consideration of criminal matters. The judges consisted of a chief judge and three assistant judges, one of whom was called the senior judge. The chief judge was appointed by the king and served at his pleasure at a salary of 500 pounds. The assistant judges were appointed by the Governor and served without salaries, except upon the death or in the absence of the chief judge. These judges served on both the civil and criminal court. The general court held all sessions in Savannah.

On April 15, 1776, the provincial Congress adopted temporary Constitution for Georgia which provided for a chief justice and two assistant judges, an attorney general, a provost marshal and clerk of the Court of Session. These officials were appointed by ballot of the Congress and served at the pleasure of Congress. The Court of Sessions, (the civil court) and the court of oyer and terminer,(the criminal court), were held on the first Tuesdays in June and December using the existing rules and procedures.

In 1776, Georgia declared its independence from the crown, and by the Constitution of February 5, 1777, provided that there should be established in each county a court to be called a superior court, to be held twice a year, with the court consisting of the chief judge and three or more justices residing in the county. In the absence of the chief judge, the senior justice on the bench would act as the chief justice with the clerk of the county, the attorney for the state, sheriff, coroner, constable and the citizens of the county serving as jurors. The remnants of the provincial courts carried over in the Constitutional Court until about 1782.

An act of March 1, 1778, created circuit courts and titled them superior courts with justices in each county whose duties it would be to assist in holding courts, issuing writs and other processes triable in the courts. An act of August 5, 1782, provided the courts of justice for the trial of all criminal matters carried on in the name and on behalf of the state were declared to be henceforth opened, meaning, that until that time, the judicial proceedings were not necessarily open to the public, but only to the parties, jurors and officials actually involved in the prosecution of the cases.

From 1777 through 1789, the chief justice and other state house officials were elected annually by the House of Representatives. The Constitution adopted on May 6, 1789, which

became effective on the first Monday in October following the adoption, provided that a superior court should be held in each county twice in every year and the judges and the attorney general should have salaries which should not be increased or diminished during their continuance in office and that they should hold their commissions during terms of three years. That superior courts meet twice a year has held over for two hundred years. Many of the smaller circuits in the state still have terms of court twice a year. On December 23, 1789, the legislature reorganized the superior courts to replace the chief justice and assistant judges with two superior court judges, divided the counties of the state into the eastern and western judicial districts, and fixed the times for holding court to twice a year in each county. It placed the office of attorney general in commission by dividing the duties between two persons styled the attorney general and solicitor general (one to attend the eastern and the other the western district) to exercise the function of their office jointly and severally, prosecuting all delinquents for crimes and offenses cognizable under the authority of said court and all civil actions in which states should be concerned, and giving his or their advice and opinion in writing, if required, on questions of law to the Governor and other officers touching on any matters

that might concern their departments. Hence, the attorney general opinions of today sprang from the Act of December 23, 1789.

An act of December 23, 1791 provided for more speedy determination and orderly conducting of all the causes in the superior court and provided that at the first meeting, the judges of the superior courts with the attorney general and solicitor general should frame a set of rules of proceedings and practice for all parties, practitioners, and others which should be the same in all counties and which should not be altered but at a meeting of the judges and the attorney general or solicitor general. So since 1791 we have had the uniform rules of the superior courts and the practice and procedure has been the same in every county since.

In 1793 the United States Supreme Court decided the case of Chisolm v. Georgia which held that a state may be sued in the Supreme Court by an individual citizen of another state. The decision bred mistrust in the appellate courts and led to the adoption of the 11th Amendment which was ratified on February 7, 1795. The 11th Amendment says:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state."

In 1796 the state adopted the first real judiciary act which became effective in 1797. It provided that three superior court judges be immediately elected at an annual salary \$1,400 each, the state be divided into three judicial circuits of certain named counties and that the judges meet at Louisville on the second Tuesday after each respective circuit court for the purposes of forming rules for the governing of the court, determining such points of law that might be reserved for argument that might require uniform decision and for giving their opinion on such constitutional and legal points this may be referred for their consideration by the executive department. In other words, after the superior court judges went out into the circuits and tried their cases, they met in Louisville, at the time the capitol of Georgia, and met in what is essentially a banc meeting as a Supreme Court to reconcile conflicting opinions and to establish rules and procedures for the court.

The Supreme Court of Georgia was not created until 1845, so the superior courts had the duty of being the trial court and reconciling conflicts in the law, while establishing the rules of the court,

and I would imagine, the rules of practice of the bar. Until the creation of the Supreme Court, the only recourse parties had in the trial court was to ask the trial court to reconsider its earlier decision on granting a new trial. What might be the rule of law in one particular circuit might not necessarily be the rule of law in the adjoining circuit, and there was no central authority to act as a clearing house to resolve the disputes and inconsistencies.

The first two circuits created, the eastern circuit and the western circuit, were created on December 23, 1789. The eastern circuit consisted of the following counties: Burke, Camden, Chatham, Effingham and Glenn. The following counties were added to the circuit later after being carved out of the existing counties or Indian territory: Screven, Bryan, McIntosh, Bullock, Wayne, Montgomery and Tattnall.

The western circuit which was also created December 23, 1789 consisted of: Franklin, Greene, Richmond, Washington and Wilkes. The following counties were added later from existing counties or other territories: Columbia, Elbert, Hancock, Montgomery, Oglethorpe, Warren, Jackson, Lincoln, Clarke, Baldwin, Madison, Gwinnette, Habersham, Hall, Walton, Rabun, Fayette, Henry, Newton, Cherokee, White, Banks, Oconee and Barrow.

The third circuit, the Middle Circuit, which was created on February 23, 1796 consisted of Burke, Columbia, Jefferson, Montgomery, Richmond, Screven, Warren and Washington. The following counties were added later: Tattnall, Wilkinson, Emanuel, Bullock, Johnson, McDuffie, Glascock, Jenkins, Toombs and Candler. The first judge of the Middle Circuit was James McNeil who served from February 20, 1796 to February 22, 1796. I am not really sure why Judge McNeil served for three days but either it was a ceremonial appointment or he needed it to fill out a pension. The Middle Circuit, which included Jefferson County, wherein the capitol, Louisville is situated, had as it next two judges, William Few, one of Georgia's signers of the United States Constitution who served from 1796 to 1799 and George Walton, one of Georgia's signers of the Declaration of Independence, who served from 1799 until his death, February 2, 1804. George Walton also served as the first judge of the western circuit from 1789 until 1792 when Washington, Richmond, Columbia and Montgomery counties moved from the western circuit to the middle circuit.

As early as February 1797, judge shopping became a concern. An act of the legislature of that year provided that the three superior court judges should preside in each circuit alternately so that no two terms shall be held by the same judge in the same circuit successively. Again, it

provided that the judges and the attorney general and solicitor general meet annually at Louisville on the 10th of July to form rules for the operation of the courts, and that the judges report every case of a capital nature which should be published in one of the public gazettes within 60 days after trial. It appears that the legislature first directed a case count a little over 200 years ago.

Georgia adopted another Constitution on May 13, 1798 that provided the judges of the superior court should be elected for three year terms and that the state's attorney general and solicitor general should be elected by the legislature for three year terms, that their salary should be adequate to their services and not increased nor diminished during their tenure in office, and that the court should sit in each county twice every year. In 1801, the legislature repealed the law requiring the judges to meet annually at the seat of the Governor to determine such points of law which might be reserved for argument and provide that all cases brought in the superior courts, in either of them, where the judge thereof should be interested, three more justices of inferior courts should preside at the trial. Hence, the first rule on recusals and disqualifications.

In 1806, the legislature authorizes the judges of the superior court to alternate in their districts and an act of the legislature in 1835 provided for four year terms for the judges of the superior

courts. A similar act passed for the state's attorney and solicitors in 1841 and provided they be appointed by the General Assembly and commissioned by the Governor. Another act in 1841 required that the judges of the superior courts write and place upon the minutes of their courts the decisions in full in cases of motions for new trial, whether rejected or granted, and upon all cases of judgment upon writs of certiorari, mandamus, habeas corpus and demurrer and upon motions in arrest of judgment, it further provided that the decision should be furnished to the Governor who was required to cause them, when of general interest to the people, to be properly collated, indexed and printed in pamphlet form in editions of 500 copies.

In 1835, an amendment to the 1798 Constitution created the Supreme Court of Georgia. However, no enabling legislation was passed until the Act of December 10, 1845. The court which consisted of three justices was organized in 1846, some 70 years after Georgia had become a state. The first three justices were: Joseph Henry Lumpkin, the first chief justice of Georgia. Chief Justice Lumpkin was born in Oglethorpe county in 1799, admitted to the bar in 1820, served two terms in the General Assembly, (1824 and 1825) and was appointed by the General Assembly to the Supreme Court for a six year term. During his time on the state's highest tribunal, he also served as

professor of law at the University of Georgia. Chief Justice Lumpkin was a profound student of the Holy Bible, a firm believer in its Divine origin, and a devout Christian. His opinions are replete with a reference to the Bible and reflect a deep and abiding faith. All of the written opinions of Chief Justice Lumpkin are found in the first 35 volumes of the Georgia Reports.

The second justice of the Supreme Court was Hiram Warner, who was born in Hampshire County, Massachusetts in 1802 and came to Georgia at the age of 19 to teach. While teaching, he also read law and was admitted to the bar in the Fall of 1824. He settled in Crawford County, Georgia and served in the legislature from 1828 until 1831. In 1832 he moved to Talbot County and became the first judge of the newly created Coweta Circuit in 1833, serving until 1840. He served in the Supreme Court until 1853 and in 1855 was elected to Congress serving until 1860 when he became a member of the Secession Convention. After the war he was appointed to the bench of the Coweta Circuit in 1866 and served until 1867, when he accepted the appointment of chief justice of the Supreme Court, succeeding Chief Justice Lumpkin.

The third original justice of the Supreme Court was Eugenius A. Nisbeth who was born in Greene County in 1803. He was admitted to the Bar in 1823, studied law in Connecticut. He was

electd to the State Legislature in 1825 and served until 1837. In 1838 he was elected to Congress but resigned in 1841 in his second term. He served on the Supreme Court from 1845 until 1853 when he returned to the private practice of law. He was a member of the Secession Convention which assembled in January of 1861 and was chairman of the Committee which reported the Ordinance of Secession. He represented Georgia in the provisional Congress of Confederate States.

In 1847 the legislature provided that the judges of the superior court authorized by law to establish, in convention for such purposes, (the first Superior Court Judges Conference?) rules of practice for all superior and inferior courts of the states, and all rules of practice for said courts prescribed by any other authorities were declared inoperative a second attempt, to provide, uniform rules for the superior courts. In 1850 the legislature made it unlawful for judges of the superior courts to express an opinion to or in the hearing of the jury relative to the guilt of the accused and provided that in case of such violations the supreme court should hold the verdict to be reversed and grant a new trial with such directions as they might lawfully make.

In retaliation, an Act of January 12, 1852 made it unlawful for the General Assembly to elect or appoint the whole or any portion of the judges of the superior courts and provided that the citizens

of each judicial circuit or district elect one superior court judge. In 1855 the legislature provided for the election of the state's attorneys and solicitors by vote of the people.

In 1860, the legislature provided that judges of the superior courts in all cases of felony, or in the final appeal trial all civil cases tried before them, give their charges to the jury in writing and that it should be error for any judge to give any additional charge other than that written out and read.

In 1879, the legislature provided that in counties in the state having a city with a population of 10,000 or more, two more judges of the superior court might preside en banc, or said courts might be held in two or more sections at the same time by different judges in separate rooms in the courthouse under such regulations as the judge of the circuit, or in his absence the senior judge in commission by direct. In 1897, the legislature provided that judges of the superior court and solicitor generals be elected by electors entitled to vote for members of the General Assembly as a whole of the whole state and that General Election not exceed the expiration of respective terms. This provision in the law lasted until 1960s so that superior court judges ran statewide, even though they only served in their particular judicial circuits.

By 1890, the press of business in the Supreme Court was such that the Supreme Court asked the legislature, and the State Bar, which was created in 1883, to support the creation of a Court of Appeals. This ideal was discussed both at the State Bar meetings and in the legislature for several years until the Constitutional Amendment passed in 1906 authorizing the creation of the Court of Appeals. On November 6, 1906, of sixteen candidates, the three receiving the most votes which formed the first bench of the Court of Appeals of Georgia, were Arthur G. Powell of Blakely, Georgia, (the founder of the prestigious Atlanta law firm, Powell, Goldstein, Frazier and Murphy) Benjamin H. Hill (son of Georgia's United States Senator Benjamin Harvey Hill) and Richard B. Russell, (father of Senator Richard B. Russell, Jr.) were elected and made up the first Court. The Court elected Benjamin Harvey Hill as its first chief judge and convened at the State Capitol on January 2, 1907.

The Supreme Court and the Court of Appeals met on alternate days for oral argument in Room 341 of the State Capitol in what is now the Appropriations Hearing Room. That served as the courtroom for both courts until the Judicial Building was opened in 1956, where the courts continued to sit, unless they have a special setting outside of the capitol site.

The Court of Appeals was created to ease the workload on the Supreme Court. In fact, the workload increased so much on the Court of Appeals that in 1916, the legislature added three more judges. The Court served with six judges, one division hearing civil cases and one division hearing criminal cases until 1960 when the legislature added a seventh judge. In 1961, the legislature added two more judges, for a total of nine judges. Since then all panels have heard civil and criminal cases and the panels rotate yearly. In 1996, the legislature added a tenth judge to the Court, and during the past session of the legislature, it authorized two more judges bringing the total number to 12.

The Georgia Court of Appeals is the busiest appellate court in the country in terms of written opinions per judge per year.

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