

THE
GEORGIA BENCH AND
BAR

VOLUME I

THE DEVELOPMENT OF GEORGIA'S
JUDICIAL SYSTEM

By
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CHAPTER XXI

The Establishment of the Court of Appeals: The Completion of the Structure

Georgia's judicial establishment has grown with the State. From the first, it was intended by those in authority that ample facilities should be provided for the administration of justice according to law. It is true that under the Trustees, there appears to have been some instances of tyrannical conduct on the part of the magistrates, but no cases of actual corruption on the bench. It is also recognized that it was rather a crude arrangement and bad for our courts in the first twenty years of the colony's existence, but it must be remembered that our population for the most of that period was numbered merely by the hundreds, and that there was small likelihood of any civil cases of importance to arise; and besides, at that early day the province was in reality but a mere military colony without any but the most limited civil government, with the whole thing under the immediate eye of the benevolent Oglethorpe. That the Courts under the laymen, as provided for by the Trustees, administered their duties rather crudely, and offer us at this day much room for laughter at the expense of the magistrates, was not because there was any lack of purpose to set up a judiciary that would satisfactorily function; for, as we have seen, this was one of the first things to which the Trustees gave thought and attention—even before the first emigrants embarked.

But when the crown took charge of the colony in 1752, the improvement was speedy and effective, and served well the colonists. As Georgia grew, the judicial system expanded to meet the needs; and if under the first half of her Colonial experience, the courts fell behind the other departments in

efficiency, the excellency of the judiciary and the entire system was universally recognized after the charter was surrendered to the crown. The king's ministers realized that if the colony were to prosper, the courts must command the confidence of the people, justice should be speedily and impartially administered by those capable from training and experience to occupy the bench, under a system of laws and procedure that was workable. And all this was provided, and the courts ran smoothly until the Revolution.

The Revolutionists continued during the war practically the same system; and immediately thereafter amplified it somewhat; and as our population increased, and our needs grew, so did our judicial system.

First the Chief Justices, and the Assistant Judges, the latter laymen; then the dropping of the laymen assistants; and a court held by a Superior Court Judge alone; the increase of the circuits; the creation of inferior nisi prius courts; the establishment of the Supreme Court, its later enlargement; and the provision for a Court of Appeals, followed in a few years by the doubling of its membership. As our needs have increased, so has our judicial machinery. Sometime these have not come as quickly as some have desired—notably the Supreme Court—but when our people are made to see the need of additional facilities for meting out justice, these are supplied. The creation of numerous City courts, many additional circuits from time to time, the enlarged membership of the Supreme Court, and finally the appearance of our Court of Appeals all go to demonstrate this truth.

~~The Court of Appeals of Georgia was established because it was an absolute necessity. For years, the Supreme Court Justices had been overburdened with work. The lawyers of the State, who knew of this condition of affairs had for some time tried to create enough sentiment over the State to bring relief. The Georgia Bar Association with seriousness, energy and determination took hold of the matter, and made known to the people at large the true situation. Two Supreme Court Justices had only recently sacri-~~

~~fixed their lives on the altar of unremitting toil. Another had just resigned on account of ill health brought about by overwork.~~ Many cases were about to be affirmed by operation of the provision in our Constitution that commanded that they be heard and decided at least during the next term after the one to which they were returnable. The Association at its annual session in 1906 heard Honorable Andrew J. Cobb, then a member of the Supreme bench, give an intimate account of the real situation that confronted the court. Up to the first day of July 1906, that court had disposed of 704 cases since the preceding first day of October, which meant that since the beginning of the preceding October term it had disposed of nearly as many cases as were brought to the two terms of the court two years before that date. The Court was faced with the prospect of beginning the October term, 1906, with three hundred cases behind, and with entering on the following March term with 500 or 600 cases brought over from the preceding term. Judge Cobb made it plain that it would only be a matter of twelve months before the time would have arrived when, by reason of the Constitutional provision above referred to, judgments would be affirmed by operation of law, without being considered at all by the court of review. He urged the establishment of a Court of Appeals. ~~The Association appointed a strong Committee, and made what would now be called a drive to get a measure through the General Assembly in the form of a proposal to amend the Constitution so as to create a Court of Appeals.~~ Distinguished lawyers proposed bills, some of which were introduced. The general trend of all legislation designed for the relief of the Supreme Court was towards the establishment of a supplemental court for the correction of errors. Some suggested that the cleavage in jurisdiction between the proposed court and the Supreme Court be fixed by the amount of money involved in the suits. Others thought that the new court should be fashioned somewhat after the Circuit Court of Appeals of the United States. Still others suggested a modification and combination of these two plans. But Governor Terrell was the one who

in his message to the General Assembly formulated the plan which was finally adopted. The cardinal feature was the avoidance of conflicting precedents by the two tribunals, which was accomplished by the declaration that the opinions of the Supreme Court were binding on the Court of Appeals as precedents.

The General Assembly in July 1906 prepared an amendment to the Constitution creating the Court of Appeals of Georgia, limiting the jurisdiction of the Supreme Court to civil cases originating in the Superior Court, or carried thereto from the Court of Ordinary, and in all cases of correction of a capital felony; and to the determination of questions certified to it by the Court of Appeals; giving to the last named court jurisdiction of all other cases. ~~This amendment was ratified on October 3, 1906, and the Court of Appeals came into being on October 12, 1906.~~ The Amendment was practically self-executing. The election for Judges of the Court of Appeals held on November 6th of the same year resulted in the choice of Honorable Benjamin H. Hill of Fulton County, Honorable Richard B. Russell of Jackson County and Honorable Arthur G. Powell of Early County. The Judges so elected met at the capital on January 2, 1907, and organized the court. Judge Hill was designated as Chief Judge. Mr. Logan Bleckley was elected Clerk, and Mr. William E. Talley was appointed Deputy Clerk. Mr. J. H. Pittman was elected Sheriff for a term ending October 1, 1907, and Mr. P. W. Derrick was elected sheriff for a term of four years from that date. The reporter was Mr. George W. Stevens, Mr. John M. Graham being the assistant reporter. On January 7, 1907, the court adopted rules, strikingly similar to those then in force in the Supreme Court. The first case heard was that of Hunter v. Lissner, from Glynn Superior Court, argued on January 8th and decided on January 11, 1907.

From the beginning the Court of Appeals has sat for argument in the afternoon, in the same room where the Supreme Court. Its practice and procedure are quite similar to that of the Supreme Court.

The first change in the personnel of the Court occurred in January 1912, when Judge Powell resigned to re-enter the practice, his successor being his former law partner, Judge J. R. Pottle. Judge Hill resigned on November 1, 1913, and was succeeded by Judge L. S. Roan, and Judge Russell became Chief Judge. In February 1914, Judge Pottle resigned and Judge Peyton L. Wade was appointed in his place. Judge Nash R. Broyles succeeded Judge Roan in November 1914. On June 6, 1916, Judge Robert Hodges succeeded Judge Russell, who had resigned, and Judge Wade became Chief Judge. Judge Hodges died on December 12, 1916, and the vacancy was supplied by the appointment of Judge O. H. B. Bloodworth on January 1, 1917.

~~On August 19, 1916, the General Assembly proposed an Amendment to the Constitution further limiting the class of cases over which the Supreme Court is given jurisdiction, and enlarging that over which the Court of Appeals has jurisdiction; providing at the same time for increasing the number of Judges of the Court of Appeals.~~ The people at the polls ratified this Amendment and the same General Assembly enacted a law approved August 19, 1916, adding three more judges to the three already composing the court, and providing specifically that the Court sit in two divisions, and that each division hear and determine, independently of the others, the cases assigned to it. The three new Judges were Honorable Walter F. George, Honorable Roscoe Luke and Honorable William F. Jenkins, who took their seats January 1, 1917. The next change that occurred was in the fall of 1917 when Judge George was named to fill a vacancy on the Supreme bench, and Judge Frank Harwell was made his successor on the Court of Appeals. Judge Alexander W. Stephens succeeded Judge Harwell on November 21, 1918. Judge Wade died on August 29, 1919, and Judge Charles W. Smith was named by the Governor in his place. At that time, Judge Broyles became Chief Judge and Judge Jenkins, Presiding Judge of the Second Division. Judge Benjamin H. Hill went on the court again November 15, 1920, succeeding Judge Smith. Judge Hill died in 1922, and Judge R. C. Bell was appointed to the vacancy.

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Content of Act/Resolution

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA. 1893.

Part I.--Public Laws. TITLE III. CONSTITUTION.

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Sequential Number: 013

Short Title: INCREASE IN NUMBER OF JUSTICES OF THE SUPREME COURT.

Law Number: No. 194.

Full Title: An Act to amend paragraph 1 of section 2 of article 4 of the Constitution of this State, so as to increase the number of Judges of the **Supreme Court** of this State from three to five, to consist of a Chief Justice and four Associate Justices.

SECTION I. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same, That the Constitution of the State be amended by adding after the words "Chief Justice," in the second line of the first paragraph of section 2, article 4 thereof, the words "and four Associate Justices," in lieu of the words in said line "and two Associate Justices," so that said paragraph, when amended, shall read: "The **Supreme Court** shall consist of a Chief Justice and four Associate Justices. A majority of the court shall constitute a quorum."

[Sidenote: Number of Justices increased to five.]

[Sidenote: Paragraph of constitution as amended.]

SEC. II. Be it further enacted, That whenever the above proposed amendment to the Constitution shall be agreed to by two-thirds of the members elected to each of the two Houses of the General Assembly, the Governor shall, and he is hereby authorized and instructed to cause said amendment to be published in at least two newspapers in each congressional district in this State for the period of two months next preceding the time of holding the next general election.

[Sidenote: Publication of proposed amendment.]

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SEC. III. Be it further enacted, That the above proposed amendment shall be submitted for ratification or rejection to the electors of this State at the next general election to be held after publication, as provided for in the second section of this Act, in the several election districts of this State, at which

reach a just result, and that the loser may not seem to be too hastily condemned.

Second hearings are commonly allowed. Such reviews take various forms. Rehearings before the same forum or before another, new trials *de novo*, and reviews of the record only, are in use.

No human right, perhaps, is more universally and highly prized, than the right to be fully and fairly heard. No matter what the law, or the judgment is, the losing party always feels wronged, if he does not realize that he has been allowed a free and patient hearing. When conscious of a calm and fair audience, and a due consideration of all his facts and arguments, almost any man will bow, however reluctantly, to the justice which condemns him.

The foregoing considerations may seem general; but they are fundamental to our subject, and all that I shall say rises out of them. In view of them, the rules of law administered in the Courts ought to be uniform throughout the State. To meet a different standard of rights and duties, or a different construction of the law, upon entering a county separated from one's own by a mere imaginary line, or upon each appearance before a new Judge, confounds all judgment by the people, as to the effect of their conduct and mutual engagements; disconcerts reasonable expectations, encourages bad faith, excites disrespect for government, drives the timid to deceit and the bold to violence, and tends to the destruction of society.

But the minds of Judges differ, by nature and by education. Legislatures are continually making new statutes. In the ever restless whirl of the inventive world, new contingencies and conditions arise. No two men, looking from the same official plane, but under varying circumstances, can be expected to see the paths of justice always alike. When a large State must be sub-divided into various judicial districts, presided over by a score, or more, of Judges, of like jurisdiction, great diversities of rulings will prevail.

To remedy this evil, the higher class of Appellate Courts is established. One tribunal for the correction of the errors of all lower ones, is expected to bring all the districts and counties as near to uniformity as possible.

Learning, ability and integrity are seldom wanting upon so exalted a Bench. But these important qualifications must be exercised rightly, and so as to be generally recognized. Else such a Court will fall far short of its greatest attainable usefulness. We shall briefly suggest some of the particulars from which such a failure may result.

It is the glory of all free Courts to hear with patience. Without respectful attention to the arguments of counsel, the Circuit Judge will soon earn the reputation of superciliousness, which is nigh of kin to injustice, and will hurry into many blunders of law. Even those members of the Bar who are deficient in reputation and those who lack ability to handle a matter wisely, are entitled to a fair and kindly audience. It ought to be made certain to them and to their clients, that their views are fully understood by the Court. By such a course only can the Judge acquire and maintain the people's confidence in his desire to do justice. By such patience and attention to argument, his rulings will be more deliberate and wise.

But what, in this respect, is true of Circuit Judges, applies, with increased force, to the Justices of the highest Appellate Court. This Court undertakes to review the haste and consequent errors of other Courts. Counsel here may be supposed to have studied the questions involved, and to be able to shed valuable light on their respective claims. Every mind, too, has its own method of traversing and presenting a subject. As a rule, so general as to be almost universal, the Court ought not to interrupt the counsel, or seek to force upon him a mode of analysis not natural to himself.

Often than otherwise, time itself will be saved by permitting the advocate to work out his brief in his own way. Of course, extreme and persistent irrelevancy, or unmerciful and intolerable repetition, must be checked. But such emergencies are not very common. It is impossible that any man, however learned and acute, can be ready to catch up, upon a hasty reading of the record, all the questions involved. Counsel ought to be, and commonly is, more familiar with the facts and the law of his side of the case, than anybody else. True, it is often very tiresome to the Judges. They are men, and sometimes need mercy at the hands of pertinacious counsel. But, nevertheless, a lack of patience to hear is a reproach which cannot but depreciate a Court in the estimation of the public, and greatly diminish its usefulness.

The preparation of the opinions of the highest Appellate Court is an affair of very great importance. Every opinion published should clearly and distinctly present the grounds on which it rests. Its consistency with antecedent rulings of the same Court is an important aspect to be presented. How the holding grows out of, or upon what distinctions it departs from, known precedents, ought to be distinctly stated. Unnecessary prolixity of style is censurable anywhere.

clearly refers to the opinions; and to assure its enforcement, seems to demand, that each opinion, after being written, should be so far considered in counsel, as to ascertain, that every part of it is satisfactory to all, who profess to concur. The practice of regular consultation days would seem to be indispensable.

Another point of some importance in the practice of Appellate Courts, is the manner of preparing the syllabus, or head-notes. In some courts, these are written by the same Judge who writes the opinion; and are as much a part of what is agreed in by all the Judges. In such cases, they are the carefully formulated propositions of law, which having been controverted in the case, have been ascertained by the Court. Then, they are a most important part of a decision. True, they are to be received in the light of the opinions by which they are illustrated at large and supported.

In other courts, the head-notes are the work of the reporter.

Some weighty things can be said for and against each of these practices. However, if it could only be made sure that the opinions themselves are entirely the joint opinions of all the concurring Justices, prepared according to the principles suggested above, it would be an affair of comparatively little concern how the head-notes were prepared; provided only, that there should be an announced and uniform practice in regard to it. If the syllabus is to be treated as the abstract formulation of the law called in question and adjudicated in the case, it ought to be prepared as carefully as the opinion and by the same mind. It should be the subject of the same free consultation and express concurrence. But if it is to be left to the reporter, that fact ought to be distinctly announced by a formal rule of the Court. In such an announcement, it would be ascertained that the syllabus is no part of the decision, and sheds no light on the case or questions decided; but that it is a mere index or reference, pointing to the opinions as the only authoritative statement of the law. The Court and the Bar ought to so understand it. Then none would be misled by the head-notes.

When, for lack of uniformity in the practice in this matter, or for want of assured information from the Court, as to the rank of the head-notes, uncertainty is allowed to rest upon this matter, much evil results.

Under the practice of head-notes by the reporter, some very awkward things appear. Sometimes, they are alike unjust to counsel, to the Court below and to the Appellate Court. Propositions are dis-

tingly and solemnly announced in the syllabus, and published to the world as the points decided in the case, when such propositions are the most truisms of the law, which, for generations, no lawyer or judge has questioned. Yet the Court below is said to be "reversed" in regard to them. They are commonly propositions, either stated or implied, in the opinion, as fundamental principles from which are derived inferences and deductions as to the questions which are disputed. Nothing is fit to appear as a syllabus except some proposition, which was questioned in the case, and judicially ascertained by the Court. In order to guard against such absurdities, and to aid in securing a proper use of the decisions, we confess to a preference for head-notes, prepared by the writer of the opinion, and carefully considered and concurred in by the Court. But, if the other practice is to prevail, we insist that a rule of the Court ought formally to announce that fact, and that the head-notes are no part of the decision.

As a slight consideration on this subject, I will merely state, that all over the country it is common for the Bar and the public to judge of the style of composition and thought of each Judge delivering an opinion by the head-notes published in the newspapers and advance pamphlets. If such head-notes are not his work, he is misjudged.

Again, looking from the practice of Appellate Courts in general, to that of the Supreme Court of Georgia, we observe that our Code (§4270) seems to require that the head-notes should be prepared by the Judge who prepares the opinion. That Section says: "No decision shall be delivered *ore tenus*; but the same shall be announced by a written synopsis of the points decided." What is here required is a "synopsis of the points decided." Clearly, what was not in dispute is not decided. No other head-notes can be needed, but this "synopsis." In announcing the decision, the Judge, not the reporter, does so announce it by such "synopsis." The reporter's business is to publish that only. It is authoritative as law, and ought to be as carefully studied and accurately expressed into abstract formulation, and as much the fruit of deliberate consultation, as any matter emanating from the Bench.

The foregoing views, except where expressly applied to the Supreme Court of this State, are strictly general, fitted to no particular locality or tribunal. In our subsequent practical suggestions we shall look more to the relief and improvement of our own highly esteemed and venerable Appellate Court.

Whenever any of these objectionable practices prevail, its prevalence

is mainly due to the fact that the Judges are overburdened with work, and seem to themselves obliged to adopt labor-saving methods. They have not time to listen patiently to argument. They lack time to investigate thoroughly each of the cases, great and small, which crowd upon them. To consult fully, and to write accurate and scientific opinions, in so many cases, is, especially, too great a burden.

For remedy of an overburdened Court, different measures may be suggested. First, five Judges can more easily and better prepare the opinions than three. Second, it might be enacted that no opinion need be prepared, and no report published in book form, except in the following cases, to-wit: 1st, Where a new trial is granted (for the guidance of the Court below;); 2d, Where a former decision is reviewed and reversed; 3d, Where a majority of the Judges in council will resolve that a new question is involved, or that the cause, by reason of its uncommon importance, demands a written opinion. In all other cases, let a mere judgment be rendered.

The result of this last practice would be a great lessening of the writing labor of the oppressed Judges. True, those cases only in which opinions were written and published, would be commonly regarded as authority. This would be no evil, as applied to a tribunal so old as our Supreme Court. Considering our seventy-two large volumes of opinions already in print, and an average of about two per year constantly coming, it could not be matter of complaint against the plan proposed, that precedents would not be manufactured sufficiently fast. We have certainly reached a period and a state of law ascertainment, when most of the cases decided by our Court involve no questions, but such as a candid lawyer and intelligent, not blinded by fees, would pronounce to be already *res adjudicata*. Opinions issued under this plan would be more scientifically prepared, and rank higher as authority.

To effect such a change in the practice of our Supreme Court, it would be necessary to repeal some provisions of the Code. The Section already quoted requires the "written synopsis" described in every case; and Section 4271 declares: "The Court shall decide all questions presented in the record of each case carried up to it for review."

Instead of these rules, I propose, with the three exceptional classes of cases above described, a mere announcement of the judgment, which shall be permanently preserved in the minutes of the Court, and sent down by the usual Remittitur.

As a third measure of relief to the Supreme Court of Georgia, dis-

allow exceptions in *certioraris* and appeal from Justice's Courts, except where a constitutional question is involved. Such cases receive, in the Superior Court, a degree of attention equal to their magnitude. There is furnished rehearing, and careful review of the first trial, and of the second or third. Why not let that be to them the end of litigation?

By such measures, or some better, the Supreme Court of Georgia needs to be unburdened. The learned and venerable men, who now and commonly occupy that Bench, ought to be thus facilitated in giving to the public the full benefit of their wisdom and talents. And to these measures the allowance of adequate compensation by which they will be both aided and stimulated to the most faithful exertions, and by which that Bench may be always able to command the services of the best and most enlightened men.

In concluding this unsystematic sketch of a subject, very unattractive to the writer, and, I fear, uninteresting to my hearers, permit me to give a brief outline of the practice of the Supreme Court of the United States, with respect to some of the points above presented.

Before argument, no case is assigned to either Justice. All feel equally bound to attend to all the questions. Each is furnished with a printed brief and a printed copy of the record. Each is expected to examine the record, and form his own opinion of the questions before any formal consultation. Every Saturday a conference is held. Every case is taken up in the order in which it was argued, and is freely discussed among the Justices. If either Justice desires further time for consideration, the case is postponed. When all are ready to pronounce, a vote is taken. The case is decided by not less than a majority of a quorum. The vote is recorded. Commonly, on the night following the consultation day, the Chief Justice designates the Justices who are to write out the respective opinions. Subsequently, each opinion is read in full before a consultation meeting, and criticized and amended until satisfactory to all, who concur in the judgment. In cases of great difficulty, the author of the opinion is sometimes requested to have it printed and distributed among his colleagues. After that, it is again discussed and perfected, in full counsel. The reporter only is responsible for the head-notes. But every proposition set out and maintained in the opinion is the mind of the Court, and can be so trusted by all.

This course of practice, as to decisions and opinions, is the simple and natural one, and it seems to us to be the only fair and wise one.

It is true that business seems to accumulate on the dockets of that Court. But its jurisdiction is so extensive—we have so vast a country, and so complicated interests, enterprises and relations to review before that tribunal—that none need be surprised at not receiving an early hearing there. Perhaps some remedy for the delay may yet be devised. But for ourselves, we confess to a higher admiration for thorough and scientific work, even if necessarily slow. We would seek remedy for delay by any other means than such as would lower the standard of judicial work.

Begging indulgence for the crudities and dullness of this paper, I submit it in obedience to your appointment, trusting that it may, at least, serve the purpose of getting the subject assigned to me before this enlightened Association, and of eliciting from others something more valuable.

THE JURY SYSTEM.

AN ADDRESS

DELIVERED BEFORE

THE GEORGIA BAR ASSOCIATION,

AUGUST 5TH, 1885,

By SAMUEL HALL.

More than thirty years ago, James Fenimore Cooper, in his much admired delineation of the "Ways of the Hour," pointed out some of the abuses incident to the trial by jury, and suggested remedies for their correction. He asserted that "a strange indifference existed as to the composition of juries;" and in his view, "the institution itself, so admirable in a monarchy, was totally unsuited to a democracy." "The very principle," he says, "that renders it so safe where there is a great central power to resist, renders it unsafe in a state of society in which few have sufficient resolution to attempt even to resist popular impulses." "A hundred instances," he declares, "might be given in which the juries of this country are an evil." One or two of which he specifies: "In trials between rail road companies and those who dwell along their lines," he says, "prejudice is usually so strong against the former, that justice for them is nearly hopeless." In certain parts of the country, the juries are made the instruments of defeating the claims of creditors who dwell at a distance, and are believed to have interests opposed to the particular community where the debtor resides. This is a most crying evil, and has been the source of many and grievous wrongs. Whenever there is a motive for creating a simulated public opinion by the united action of several journals, justice is next to hopeless, such combinations rarely, if ever, occurring in its behalf. In cases that are connected with the working of political schemes, and not unfrequently in those in which political

George Hillyer: Mr. President and Gentlemen of the Bar Association: It is proper for me to state that the report I am about to submit is the product of the joint action of the committee, but as to some of the propositions the committee were not unanimous. They are inserted upon a vote of a majority of the committee, but the entire committee unite in the report at the will of the majority; that is, that portion of the committee who took part in the deliberation. I did not mean to intimate that there was a difference of opinion as to all of the propositions, for as to many the committee were unanimous. (See Appendix 3.)

The President: Gentlemen of the Association, you have heard the report.

A. C. King: I move that the report be received and stand for consideration at the proper time, and in its proper order. Carried.

The President: The next is a "Symposium on our Judicial System: Is it defective? If so, wherein?" The first participant in this symposium is our distinguished brother, Judge Turnbull, of Rome. (See Appendix 4, A.)

The President: The next is J. J. Hunt. Is Judge Hunt present?

J. J. Hunt: Mr. President, I have made no preparation on any symposium on this subject, and therefore have none to present.

The President: Very well. Judge Sweat will please take the stand.

J. L. Sweat: Mr. President, my paper is in the form of a letter addressed to the Secretary of the Association, and I will read it just as I have written it. (See Appendix 4, B.)

The President: The next is Judge Gober.

The Secretary: Mr. President, I have a letter from Judge

Gober telling me that he is holding Cobb Superior Court to-day and is prevented from attending.

The President: Judge Bowers is the last on the list.

The Secretary: Mr. President, Judge Bowers has sent me his paper, with the statement that it is impossible for him to come. Shall I read it?

The President: Yes.

The Secretary then read the paper. (See Appendix 4, C.)

The Secretary: Mr. President, those are the names of all the gentlemen who did me the honor to accept the invitation; that is, those are all the acceptances which I have received. I beg to say now that some other gentlemen invited on either this or some other symposium may have sent acceptances which have not reached me; and I ask, if there be any such present, that they feel no hesitation in giving their names to me or to the President.

The President: The last on the list is Judge Bower. If there be any other gentlemen of the bench present who have been notified to participate in this symposium, and have not been heard from, they will please announce themselves, and we will hear now whatever they have to read or say on the subject; and I will add that as Judge Hunt is present and has not prepared a paper, he will be heard from orally, if he will grant us the pleasure of hearing him; so with any other judge of the superior or city court who may be present. (A pause.) There is no response; so we will proceed to the regular order of business.

Samuel Lumpkin: Mr. President, I had the honor to receive one of those invitations from our Secretary, and replied to him that owing to the pressure of official work it would be impossible for me to contribute to this Association anything of value. I therefore do not rise now for the purpose of making a speech, or entering upon any discussion of the several questions which have been mentioned or suggested by the contributions that have been

made to this order of our business. But, if I am in order, I rise simply to make a request of the members of this Association which I trust they will regard. I have been profoundly gratified, gentlemen, by the unanimity which seems to prevail among all the members of this Association, and, as far as I am advised, among the members of the Bar of Georgia generally, in favor of the proposed constitutional amendment to increase the number of Supreme Court Justices from three to five, but it will not suffice that we, as members of the legal household, agree upon this among ourselves, and desire to see enacted into our constitution this unquestionably essential and vitally important amendment. The request I have to make is this: that each and all of you will take a personal interest in this question and work for its adoption among your respective people; and the kind of work that I take the liberty of suggesting is simply to educate the public upon the importance of this amendment. I have an abiding faith in the people of Georgia doing the right thing when they know what it is. They have unhesitatingly in the past through the Legislature, whenever there appeared to be a need of a new judicial circuit, granted it; they have established city courts in all the places that have called for them; they have established county courts; and I have not the slightest doubt but that they will grant us this needed amendment if they only know the merits of it, and they will understand the merits of it if the members of this learned Association, and the members of our profession generally, will undertake, upon all fitting and proper occasions, to instruct them upon this question.

If you will pardon me, I will mention briefly an incident that came within my personal observation. It happened some two or three years ago, when I was visiting in another circuit. I was attending the Superior Court of Taliaferro county, a county where the population is as true and good people as I ever came before. During some lull in the proceedings,—the grand jury were there, and it was a representative body of men, representing as fairly and fully as

possible the intellect and intelligence and the virtue of that good county,—it chanced, in a little conversation we were having, that some member of the jury asked me what I thought of the amendment to add two judges to the Supreme Court. Before answering his question I thought I would test the party, and I said: "Gentlemen, before I say anything about this I would like to know what you think." It took the vote of the body, and they were unanimously opposed to it; and they were good men. After that I undertook to give them the leading reasons why this amendment should be adopted. I gave them a simple presentation of the actual truth of the case, which I need not go over now, because you understand it; but after that talk they were unanimously in favor of it;—I polled the body. If this work is done, it must be done by the heart and will of our brethren. This is what I arose to say, and I will feel gratified if the members of this Association will pay some attention to this request, and help us out by contributing to this work among our respective people. [Applause.]

The President: Gentlemen, the subject upon which the symposium was held is open now for discussion by any and all members of the Association in five-minute speeches. We invite you,—I do, as President, invite you all for expressions of opinion upon what you have heard read or thought of yourselves.

N. J. Hammond: Mr. President, I desire to add one word to what Judge Lumpkin has said, purely of a practical nature. Not only do communities need education on the subject, but they need actual help in a certain way on election day. If gentlemen interested in the election will have printed upon the tickets the proper approbation of the amendments, very many persons will vote for them who never would take the pains to write them out. I do not know but perhaps the number of candidates is increasing so largely that they will print the tickets, but whether they do or not, somebody ought to do it.

A. W. Smith: Mr. President, without rising to discuss the question, but following up the suggestion made by Judge Lumpkin, and as a practical suggestion on the subject, I move the appointment of a committee of three to prepare a brief statement as to the merits of the question involved in this proposed amendment of the Constitution, and disseminate it through the press in the State of Georgia, and through that means undertake to reach a number of people that could not be reached otherwise perhaps. I am informed by the Secretary, however, that that is not now in order, but will be later on.

The President: I will announce to the Association that three judges, Turnbull, Sweat and Bowers, have exhausted this subject, and we will now proceed to something else. The first business in order is the motion of Mr. Smith. Has that motion a second, that a committee of three be appointed to prepare information and look to its circulation among the people with regard to the reasons and propriety of the constitutional amendment about the Supreme Court? Is there any second to that motion?

Several members seconded it simultaneously.

Walter B. Hill: Mr. President, before that motion is put to the house I desire to state for information, that there is a special committee which has already been raised by this Association for the purpose of presenting a report to this body, which will deal with the very facts contemplated by the motion now before the house. It is a motion that was passed, I believe, at the meeting last year at Rome, that a committee consisting of the ex-Presidents of the Georgia Bar Association should prepare a report upon the question of the condition of the Supreme Court with reference to the embarrassments now attending the administration of justice by that court, on account of there being but three members of the court. I am informed that the President of that committee will report to-morrow, and I merely say by way of information that, if this motion

is deferred until that time, very probably the Association will see whether or not this special committee has not already got together the very data which are contemplated by the motion now made.

A. W. Smith: I withdraw my motion for the present, Mr. President.

The President: The motion is withdrawn.

George Hillyer: Mr. President, I did not read the resolution on that subject in the report I made a while ago, as I did not bring it from the office. I have prepared another one which I beg to read and refer it to that committee. The resolution is this:

Resolved, That the pending amendment to the Constitution of this State, by which it is proposed to increase the number of judges from three to five is wise and proper, and should receive the indorsement and support of the people at the approaching election.

I move that this resolution be referred to the committee on this subject.

Alex C. King: Mr. President, I would like to call the attention of gentlemen of the Association to the fact that in the order of business, which will probably be reached this afternoon, there is a special place for the introduction of all resolutions and motions. There is later on a place for consideration and action upon all resolutions and motions. The idea of the Executive Committee in preparing this order was to enable the Association to get the advantage of such information as the reports might contain before acting upon the different resolutions which might be submitted; and in order that the subjects which we will deal with may be all before this Association, so that we may deal with them all together, and perhaps get a more intelligent understanding thereby, I therefore suggest to Judge Hillyer that he introduce his resolution and let it lay on the table.

George Hillyer: I will give it that direction.

lieve the salaries of our judges should be increased. We want an able and stable judiciary. Good lawyers, as a rule, cannot afford to go upon the bench and remain long. Experience and training upon the bench are essential to a thoroughly efficient judiciary. I do not advocate a change of the term of office, but with ample salaries the judges could afford to remain upon the bench as long as they might be deemed worthy and deserving of election, and not be forced to the necessity, because of the meagerness of salary, of resigning and resuming the practice of their profession after enjoying the honor and distinction of the bench for a brief season.

C

BY JUDGE BOWER.

Our judiciary system is defective. In treating this subject as briefly as required in this article, I must necessarily deal more with facts and assertions than with reasons, at the risk of appearing somewhat dogmatic, trusting to an enlightened and learned bar to apply the reasons from the standpoint of their respective personal experience and observation.

1. The first defect would be remedied by increasing the Supreme Court to five judges.

2. The compensation for all judicial officers should be commensurate with the responsibility of their position and the character of their work, and sufficient to enable the State to secure the best talent and qualifications and to justify the officer in devoting his whole time and talent to the service of the State, even though he be encumbered with a family to support.

RELATION TO CIVIL PROCEEDING.

(a) All suits in all courts should be filed thirty-five days and served thirty days before court, and pleas filed ten days before court, and judgment in unlitigated and trial in litigated cases had at the first term, subject to the laws of continuance.

In brief, all parties to have time to prepare their cause or defence before the first term of the court.

(b) Motions for new trial should contain nothing but so much of the actual history of the trial of the case as movant depends upon to gain a new trial, omitting all contentions, insistence and argument of movant. As an illustration: if any portion of the charge of the court is assigned as error, merely state as an error that portion of the charge, but not incorporate in the motion the reasons why the movant insists that it is an error; don't encumber the record with reasons, but let them be discussed and amplified, if necessary, in the verbal argument before the court on the hearing of the motion. If error is assigned on any ruling of the court in admitting or rejecting evidence, let the ruling be stated without comment and without movant's reasons, as his comments, reasons and arguments can be effectually made before the court on the hearing of the motion. This practice would reduce the expense of records, and would prevent the objectionable mixing together of the history of the trial and the contentions and insistence of movant.

(c) Bills of exception based on motions for new trial should only contain the assignment of error in granting or not granting the motion for new trial, omitting all reasons, contentions, insistence, arguments and special assignments of error, as all this can be as effectually done in the argument of the case before the Supreme Court, there being for reference the motion for new trial, the brief of evidence, the charge of the court, and the balance of the record, or a sufficiency of each and all for the purposes of the presentation. The same economy of expense of record and lessening of confusion would apply to this as to motions for new trial.

(d) Bills of exceptions, where there has been no motion for new trial, should only clearly and succinctly state the error committed by the court complained of, and not characterize it; and omit all comment, contention, insistence, argument and special assignment of error, with reasons, etc., as all this can be done in the argument before the Supreme Court, who are supposed to

have the whole history of the case and the record thereof, or so much of it before them as will enable them to determine the questions.

(c) Charters should be granted at chambers, at the time and place advertised to be granted; in practice there is rarely one contested. This proceeding does not contemplate that the citizens of the county in which the application is made will be any more defendants than the citizens of any other county in the State. And charters which are usually granted as a matter of course need no special judicial solemnity.

(f) The law that requires judges to previously write out their charges on request should be repealed, for the following reasons: 1. A stenographic report of the charge would practically secure a correct version of the whole charge, and might as safely be relied on for this purpose as it is now relied on to secure a correct brief of the vital testimony in the case, which testimony is, perhaps, as important to the rights of litigants as the charge of the court. 2. This requirement might be considered in the nature of an insinuation against the judiciary. 3. It is an inconvenient practice. 4. A previously written charge can never give that full measure of justice to citizen of State as a verbal charge delivered by a judge that is filled with the inward spirit of the case from a comprehensive view of the whole evidence and law and argument of counsel. My experience is that the charge of the court is more perfected by a close attention to the argument of the counsel on both sides than by anything else. Therefore, the practice of writing out the charge during the argument, thereby being prevented from giving close attention to the argument, detracts much from the charge.

(g) The bail remedy in trover cases ought to be abolished. There seems to be no consistency in imprisoning a citizen for not delivering up some insignificant article of personal property borrowed, in a State whose laws prohibit imprisonment for the non-payment of the largest debt for money borrowed.

CRIMINAL MATTERS.

1. The mode of trial of criminal defendants of the same grade should be uniform in all courts. Now in a county court tried before six jurors, and in the superior court before twelve jurors for the same offence.

2. Certain statutes, prescribing punishment for, to wit: See Code 4323, Murder; 4350, Rape; 4399, 4401, 4403, Cattle and Hog Stealing and Unlawfully Marking and Branding, should be so amended that the judge, in pleas of guilty, would have the same discretion in sentencing to the lowest penalty that juries now have on the trial. Pleas of guilty cannot now be entered in these cases unless the defendant is willing to undergo the maximum penalty.

3. Confinement in the common jail should be abolished as a punishment for crime. The jail should only be used for the detention of prisoners either before conviction, who are by our law presumed to be innocent citizens, or after conviction are known to be guilty. It is inconsistent to give a citizen presumed by law to be innocent the identical treatment you have prescribed as a punishment for the guilty. Besides, it is expensive to the counties to punish guilty men by boarding them in jail. The statutes that need amendment on this subject are: See Code 4360, False Imprisonment. See 4370, Shooting at Another. See 4587, Fraudulently Obtaining Credit. 4600, The Wrongful Sale of Mortgaged Property. 4605, Destroying Books and Papers. 4481, Attempts to Rescue, and perhaps others.

The balance of this paper may not be strictly in line with the subject, but its close relation might justify it being appended.

The punishment for the following crimes should be reduced, to wit: See 4367, 4368, Kidnapping, now four to seven years in the penitentiary, should be one to seven. See 4424, Larceny after Trust, now one to five, should be within the discretion of the judge to inflict misdemeanor punishment under sec. 4310. Secs. 4443, 4454 and 4442, Forgery, should be reduced in the minimum to one year, and also in discretion of the court to punish



L. J. Adams

REPORT

Of the ELEVENTH ANNUAL MEETING of the

GEORGIA BAR ASSOCIATION,

Held at ATLANTA, GA., JULY 31 and AUG. 1, 1894.

EDITED BY JOHN W. AKIN, SECRETARY.

ATLANTA, GA.:
THE FRANKLIN PRINTING AND PUBLISHING Co.
GEO. W. HARRISON, State Printer, Manager.
1894.

George Hillyer: Mr. President and Gentlemen of the Bar Association: It is proper for me to state that the report I am about to submit is the product of the joint action of the committee, but as to some of the propositions the committee were not unanimous. They are inserted upon a vote of a majority of the committee, but the entire committee unite in the report at the will of the majority; that is, that portion of the committee who took part in the deliberation. I did not mean to intimate that there was a difference of opinion as to all of the propositions, for as to many the committee were unanimous. (See Appendix 3.)

The President: Gentlemen of the Association, you have heard the report.

A. C. King: I move that the report be received and stand for consideration at the proper time, and in its proper order. Carried.

The President: The next is a "Symposium on our Judicial System: Is it defective? If so, wherein?" The first participant in this symposium is our distinguished brother, Judge Turabull, of Rome. (See Appendix 4, A.)

The President: The next is J. J. Hunt. Is Judge Hunt present?

J. J. Hunt: Mr. President, I have made no preparation on any symposium on this subject, and therefore have none to present.

The President: Very well. Judge Sweat will please take the stand.

J. L. Sweat: Mr. President, my paper is in the form of a letter addressed to the Secretary of the Association, and I will read it just as I have written it. (See Appendix 4, B.)

The President: The next is Judge Gober.

The Secretary: Mr. President, I have a letter from Judge

Gober telling me that he is holding Cobb Superior Court to-day and is prevented from attending.

The President: Judge Bowers is the last on the list.

The Secretary: Mr. President, Judge Bowers has sent to me his paper, with the statement that it is impossible for him to come. Shall I read it?

The President: Yes.

The Secretary then read the paper. (See Appendix 4, C.)

The Secretary: Mr. President, those are the names of all the gentlemen who did me the honor to accept the invitation; that is, those are all the acceptances which I have received. I beg to say now that some other gentlemen invited on either this or some other symposium may have sent acceptances which have not reached me; and I ask, if there be any such present, that they feel no hesitation in giving their names to me or to the President.

The President: The last on the list is Judge Bower. If there be any other gentlemen of the bench present who have been notified to participate in this symposium, and have not been heard from, they will please announce themselves, and we will hear now whatever they have to read or say on the subject; and I will add that as Judge Hunt is present and has not prepared a paper, he will be heard from orally, if he will grant us the pleasure of hearing him; so with any other judge of the superior or city court who may be present. (A pause.) There is no response; so we will proceed to the regular order of business.

Samuel Lumpkin: Mr. President, I had the honor to receive one of those invitations from our Secretary, and replied to him that owing to the pressure of official work it would be impossible for me to contribute to this Association anything of value. I therefore do not rise now for the purpose of making a speech, or entering upon any discussion of the several questions which have been mentioned or suggested by the contributions that have been

made to this order of our business. But, if I am in order, I rise simply to make a request of the members of this Association which I trust they will regard. I have been profoundly gratified, gentlemen, by the unanimity which seems to prevail among all the members of this Association, and, as far as I am advised, among the members of the Bar of Georgia generally, in favor of the proposed constitutional amendment to increase the number of Supreme Court Justices from three to five, but it will not suffice that we, as members of the legal household, agree upon this among ourselves, and desire to see enacted into our constitution this unquestionably essential and vitally important amendment. The request I have to make is this: that each and all of you will take a personal interest in this question and work for its adoption among your respective people; and the kind of work that I take the liberty of suggesting is simply to educate the public upon the importance of this amendment. I have an abiding faith in the people of Georgia doing the right thing when they know what it is. They have unhesitatingly in the past, through the Legislature, whenever there appeared to be a need of a new judicial circuit, granted it; they have established city courts in all the places that have called for them; they have established county courts; and I have not the slightest doubt but that they will grant us this needed amendment if they only know the merits of it, and they will understand the merits of it if the members of this learned Association, and the members of our profession generally, will undertake, upon all fitting and proper occasions, to instruct them upon this question.

If you will pardon me, I will mention briefly an incident that came within my personal observation. It happened some two or three years ago, when I was visiting in another circuit. I was attending the Superior Court of Taliaferro county, a county where the population is as true and good people as I ever came before. During some lull in the proceedings,—the grand jury were there, and it was a representative body of men, representing as fairly and fully as

possible the intellect and intelligence and the virtue of that good county,—it chanced, in a little conversation we were having, that some member of the jury asked me what I thought of the amendment to add two judges to the Supreme Court. Before answering his question I thought I would test the party, and I said: "Gentlemen, before I say anything about this I would like to know what you think." It took the vote of the body, and they were unanimously opposed to it; and they were good men. After that I undertook to give them the leading reasons why this amendment should be adopted. I gave them a simple presentation of the actual truth of the case, which I need not go over now, because you understand it; but after that talk they were unanimously in favor of it;—I polled the body. If this work is done, it must be done by the heart and will of our brethren. This is what I arose to say, and I will feel gratified if the members of this Association will pay some attention to this request, and help us out by contributing to this work among our respective people. [Applause.]

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3. Confinement in the common jail should be abolished as a punishment for crime. The jail should only be used for the detention of prisoners either before conviction, who are by our law presumed to be innocent citizens, or after conviction are known to be guilty. It is inconsistent to give a citizen presumed by law to be innocent the identical treatment you have prescribed as a punishment for the guilty. Besides, it is expensive to the counties to punish guilty men by boarding them in jail. The statutes that need amendment on this subject are: Sec. Code 4360, False Imprisonment. Sec. 4370, Shooting at Another. Sec. 4587, Fraudulently Obtaining Credit. 4600, The Wrongful Sale of Mortgaged Property. 4605, Destroying Books and Papers. 4481, Attempts to Rescue, and perhaps others.

The balance of this paper may not be strictly in line with the subject, but its close relation might justify it being appended.

The punishment for the following crimes should be reduced, to wit: Sec. 4367, 4368, Kidnapping, now four to seven years in the penitentiary, should be one to seven. Sec. 4424, Larceny Near Trust, now one to five, should be within the discretion of the judge to inflict misdemeanor punishment under sec. 4310. Secs. 4454 and 4442, Forgery, should be reduced in the minimum to one year, and also in discretion of the court to punish

APPENDIX 12.

REPORT OF COMMITTEE ON NECESSITY FOR RELIEF OF THE SUPREME COURT.

At the annual session of the Georgia Bar Association, held in Macon in June, 1892, a committee was appointed to consist of the then incoming President and the ex-President of the Association to formulate a paper showing the overworked condition of the Supreme Court of the State, and to have that paper go to the press for publication, so that the work could be made known to the public for their consideration.

This report, which is now about to be submitted, is offered to the Association in obedience to the resolution just recited, the committee not being willing that their report should be published to the State as emanating from the Bar Association until it has received its approval.

The Supreme Court of the State of Georgia was created in 1845, and at that time, as now, was composed of three judges, whose duties, under the law, were the same then as now.

Since that time the official work of this tribunal has annually increased, both in the actual labor required to perform the duties and in the responsibilities of the duties themselves. This general statement, while not effective except to the judges themselves and those who perform professional duties in the courts, can certainly be made most startlingly impressive when the details of the changes which have occurred are succinctly presented.

In 1845 the number of counties in the State of Georgia was ninety-three (93); to-day there are one hundred and thirty-seven (137) counties, an increase of more than forty-seven per cent in the actual number of counties.

Every county in the State of Georgia is a source from which litigation can and does ultimately find its way into the Supreme Court. There were only ninety-three of these sources when the court was originated, and there are now one hundred and thirty-seven of those same sources carrying business, work and responsibility to the judicial center of our system. In this regard it must also be born in mind that, in addition to the vast increase in the number of sources from which judicial work necessarily flows to the Supreme Court from the increase in the number of counties, there is also another source which adds labor to the Supreme Court. We have in this State a number of courts, now amounting to seventeen, known as city courts, now organized, from which bills of exceptions lie directly to the Supreme Court, and in addition to this, the Legislature has lately placed it in the power of any county in the State, within certain limits expressed, to organize a city court, and from time to time these city courts are organized, all of them being so constituted that bills of exceptions lie directly therefrom to the Supreme Court. So that in addition to the increase in the number of counties, the increase in the number of city courts must of necessity practically double the number of sources from which litigation must inevitably flow into the Supreme Court.

In 1856 the assessed value of property in Georgia was \$495,478,045, of which \$223,939,723 was slave property.

In 1893 the assessed value of property in Georgia was \$452,644,907, this last valuation, of course, including no slaves. The excess, therefore, of property exclusive of slaves in 1893 over the period referred to is nearly \$200,000,000, involving possessions of all character of property other than slaves, and the labor and intricate work in connection with this vast increase in the amount of property necessarily imposes a vast increase in the amount of work upon the court, adds largely to the actual number of cases involving this property, and more than doubles this variety of litigation concerning this large property.

In 1848 the number of miles of railroad in this State was 605, embracing five railroads. In 1894 there are in the State of

Georgia 5,225 miles of railroad owned by more than fifty different railroad corporations. These vast enterprises have involved the courts in the use of time and judicial labor more than any other class of persons, natural or artificial, and by reason of the peculiarity of the litigation imposed an incalculable amount of labor upon the Supreme Court, not only on account of the immense sums involved in the litigation, but also on account of the difficulties of the questions presented, both at *nisi prius* and in the Supreme Court.

In 1845 the number of judicial circuits were eleven. In 1894 they are twenty-three in number. The number of judicial circuits has more than doubled, the number of counties has been increased by more than forty-seven per cent. and ——— city courts have been added, all constituting sources from which judicial labor inevitably falls upon the shoulders of the Supreme Court, still composed of only three judges.

In 1845 the population of Georgia was as follows, to wit: white, 459,559; slaves, 314,766. The census of 1890 gave 1,837,000, and it can be safely estimated that since that time the population of Georgia has so increased as to render the population reached the figure of 2,000,000.

In 1845 slaves could not litigate; now all persons can litigate. From the point of population the sources of litigation, therefore, have increased from the organization of the Supreme Court to this time more than four hundred per cent. and nearly five hundred per cent.

The first volume of Georgia Reports contains ninety-three cases, of which eight were criminal cases, four were ejectment cases, two were trover cases, five were will cases, five were corporation law cases, thirty-nine were commercial law cases, three were damage suits, nineteen were against administrators and executors, one *mandamus*, three appeals, and three against sheriffs.

Volume 90 of the Supreme Court Reports of the State of Georgia contains one hundred and forty-seven cases, covering thirty-three criminal cases, eight injunction cases, five ejectment cases, four will cases, five corporation law cases, forty-two com-



mercial law cases, thirty-seven damage suits, five suits against executors, one *mandamus*, one receiver's case, and one insurance case.

Your committee has taken the two extremes, the first volume and the ninetieth, for the purpose of illustrating the vast difference in the character of the litigation, and your committee does not hesitate to say that more than fifty per cent. of the cases decided in the 90th Georgia involve matters of decidedly great labor to the court, and more than double the labor and more than double the work involved in deciding the cases in the 1st Georgia, or in any volume of Georgia Reports up to the thirtieth.

Your committee has prepared a tabulated statement of each tenth volume of the Supreme Court Reports from its organization to the present time, and it requires only a cursory glance of that tabulation to discover how, year by year and decade by decade, judicial responsibility has been augmented and aggravated, both by the actual increase in the number of cases, and the novelty and vexatious character of the questions presented for decision.

The Southeastern Reporter, Volumes 1 to 18, contains 3,050 Georgia cases, decided by three judges; 1,036 Virginia cases, decided by five judges; 710 West Virginia cases decided by four judges; 2,199 North Carolina cases, decided by five judges; 1342 South Carolina cases, decided by three judges.

By comparison, each judge in Georgia has decided 1016 $\frac{2}{3}$ cases; in Virginia 207 $\frac{1}{3}$ cases; in West Virginia 177 $\frac{1}{3}$ cases; in North Carolina 439 $\frac{2}{3}$ cases; and in South Carolina 447 $\frac{1}{3}$ cases.

During the period covered by these Reports, the Supreme Court of Georgia averaged about five (500) hundred cases per year, not including those withdrawn, dismissed and settled, nor cross-bills, which would make the average still greater, and in the language of one of the judges of the court, "the business is still increasing."

With these facts before the people of Georgia, how can any citizen loyal to the best interests of his State, loyal to the advancement of her honor and the perpetuity of her institutions, hesitate to assume the position that something should be done

to relieve this overburdened and hard-pressed branch of our government. The people should no longer appeal for a change; they should demand it.

Your committee has, to this point, simply discussed the labor which has been imposed upon this court. It is useless to say that the court is overworked. It is a fact that the court is overworked. It is equally a fact that no three men under the sun can perform this work in the way the Constitution of our State intends the labor of this court to be performed.

This committee and the writer of this report entertain the highest regard personally and professionally for the members of this court, and what this committee says, or shall say, upon this question, is said for the honor of the court and to bring to its relief the establishment of the amendment to the Constitution now being discussed, by which its labors may, to some extent, be more satisfactorily performed to the court, to the people, and to the honor and dignity of the profession of law.

So immeasurably has the labor of this court been augmented, that the court frequently is forced simply to decide cases without giving opinions therefor. No court can survive which simply decides without opinions on which its decisions are based. The discontinuance of the practice of giving reasoned opinions is justly regarded as one of the worst innovations of the servile judges of the Stuart period. Lord Bacon declared that the judges should produce the reasons of their sentence openly and in full audience to the court.

Sir Edmund Burke, in his report of 1794, declared the importance of giving reasons for the opinions of the court.

Lord Clarendon declared the same thing, and Lord Broome said, "that, with an enlightened bar and an intelligent people, the mere authority of the bench will cease to have any weight at all if it be unconnected with argument and explanation."

Our court, which we love, which we honor, which we venerate as one of our noblest institutions, cannot hope to command the respect and the authority to which it is justly entitled, if, by reason of its oppressive and multitudinous labors, the judges

have not the time to render the reasons for their opinions. The mere decision of a case without the reason for it, "serves more to vex than to enlighten."

The poet, in his description of hell, says, "Chaos umpire sits, and by decision more embroils the fray by which he reigns."

Not only are the judges prevented from rendering reasons for their decisions, but the vast number of cases, daily, weekly, monthly and annually reported, crowding the libraries of the lawyers and the courts, add immeasurably to the already augmented labors of the court. These reports not only embarrass the court by requiring the time and attention to read them, but the reading of these cases takes away from the court the opportunity to perform certain other duties, and has a tendency to induce the court to cut off oral arguments at the bar.

Lord Coke said, "No man alone, with all his uttermost labors, nor all the actors in them, can attain unto a right decision; nor any court without solemn argument, where I am persuaded Almighty God openeth and enlighteneth the understanding of those desirous of justice and right."

One of the most profound of American lawyers and philosophers, Judge Dillon, says, in his latest work on the "Laws and Jurisprudence of England and America," that "He verily believes this to be true," and condemns likewise the practice of presenting cases on printed briefs. He distrusts the soundness of the decision of any involved or complex case submitted wholly upon briefs. This custom has grown into practice by reason of the tremendous augmentation of labors upon the court. To form some idea in this regard, it appears that in the eighty-eighth volume of the New York Reports the number of cases cited by counsel was 5,037. A single case reported in Volume 97 of the same reports shows that counsel on two sides cited 285 decisions.

In the first eighteen volumes of the "American and English Encyclopædia of Law" there are 830 complete treatises containing 603,551 citations; but it will serve no purpose to proceed further with statistics of this character. They are simply start-

ling, and no human mind, in the ordinary discharge of official duties, embarrassed by labors, embarrassed by duties which cannot be performed, can hope to compass these stupendous varieties of subjects with any degree of satisfaction to itself or the public.

There is but one way by which these difficulties can be overcome. It is now open to the people of Georgia, and that is by increasing the number of judges, so that a division of official duty can be had by which the work now imposed upon the three men can be divided amongst five.

Other suggestions might be made, but your committee, desiring to present practicable suggestions, has confined itself to matters about which there can be no dispute, and which must appeal, by reason of the facts stated, to the most partial mind. Your committee is satisfied that if these facts and these figures are submitted to the plain and honest intelligence of the people of Georgia, that people will respond with alacrity to the demand which these facts and figures make upon them, and they will give to the court that which it needs, additional members, that it may perform its duty as the Constitution requires and as the civilization of our people has the right to expect.

Not many months ago some workmen, digging in the earth in the south of France, discovered a pot of ancient gold coin which subsequent study determined had been struck to commemorate the victories of Roman Legions, our Carthaginian invaders, nearly twenty-five centuries ago. The heads and inscriptions on the coins were preserved entire, and their value as historical guides is declared to be inestimable in recovering that information hitherto regarded as lost.

Let us in honesty and vigor of purpose so work and move together, that the people may strengthen the judicial arm of our State to fix an ineffaceable impression upon American civilization, that neither time nor the changes of empire can readily destroy to leave it a blank in the world's history.

The bust outlasts the throne,
The stamp Tiberius.

11 GA Bar Association Reports 1894 Meeting

“Do we need more Judges on the Supreme Court”

Do We Need More Judges on Supreme Court?

At the October election the people will vote on a proposed amendment of the Constitution, increasing the number of Supreme Court Judges from three to five.

Is this a good thing for the people as a whole?

What are the facts? By them let this question be decided. The people will vote right if they know the facts.

The more work there is to be done, the more workmen there should be to do it. The more cases there are to be decided, the more judges there should be to decide them.

The two great causes of litigation are population and property. The following parallel columns will show a comparison between the causes and sources of litigation in the Supreme Court at the time of its creation, and those existing now:

IN 1846.	IN 1894.
Number of Counties and Superior Courts, 93.	Number of Counties and Superior Courts, 137. Increase, 47 per cent.
Number of City Courts, none.	Number of City Courts, 17.
Total courts from which cases went direct to Supreme Court, 93.	Total courts from which cases go direct to Supreme Court, 154. Increase, 66 per cent.
Number of Judicial Circuits, 11.	Number of Judicial Circuits, 23. Increase 110 per cent.
Population, excluding slaves (who could not litigate) 459,559.	Population estimated, 2,000,000 (in 1890 it was 1,887,000).
Georgia citizens who could litigate—only whites—.....	Georgia citizens who could litigate..... ALL; both white and black. Increase in population sources of litigation, 335 per cent.

Figures showing the assessed value of property in 1845 are not at hand, but the following comparison between 1856 and

that trial and carry the case directly by an appeal to a special jury. Experience showed that the operation of that change in the law worked badly in the very particular we are speaking of.

Prior to that, and in the early history of Georgia, from the Judiciary Act of 1799 and down to 1843 or 1844, the State of Georgia had been without any court of last resort at all, and our people lived under it happily, and we lived under it with success and satisfaction in nearly all, or quite all, the circuits; and the great reason of it was, in those earlier days, and in the first forty or fifty years of the State's history, there was one trial on the law and fact before a petit jury, and then another trial on law and fact before a special jury. The special jury was made up of the most intelligent and upright citizens of the county, and the oath they took was in all cases, both equity and common law, to find their verdict upon the evidence introduced before them and the opinion they entertained upon the evidence introduced before them and the equity of the cause; and it was a principle universally recognized and administered, that in an appeal trial a wide grasp of authority was exercised by the special jury; and generally litigants, and parties concerned, and public opinion sanctioned the decision of the special jury upon an appeal trial where there had been a second hearing on the law and fact. Now, if the people of Georgia were content to live for nearly fifty years without any Supreme Court at all, it must be that the cases requiring a further investigation before a court of last resort would be few in number; and I believe, with a degree of firmness that amounts almost to faith, that if, without any constitutional amendment, and without the burdensome effort of having another election before the people, there was the right of appeal, with power to hear cases on the law and fact from a petit to a special jury, the tendency would be very great in the direction indicated, and I believe the percentage would be inconsiderable in which litigants and public opinion would fail to sanction the decision of such an

appellate tribunal. If I understand this system, the idea is, that when a case is tried before a jury, when the parties have heard one another's witnesses, when each has seen the other's hand and looked into the other's case, and he knows his own case, and the adversary's case, and the case is put on paper and taken up to another tribunal who has the same power to look into and to decide the case on the law and fact that the first jury had, there is a very high degree of probability that in almost all instances litigants would be content with the decision, and as in these early forty or fifty years of experience litigants and public opinion would be satisfied with the decisions. But as this scheme contemplates, if the nature of the controversy be such as that it depends upon some great question of law, or some constitutional question, the litigant has the right to go by the question of facts and appeal directly, or by writ of error, carry the case directly to the Supreme Court on matters of law.

Under that system I referred to a while ago, after we got into the way of having appeals by consent, cases went more rapidly to the Supreme Court.

There was another check, and a very powerful one, in that day (but I do not intend to propose it here), and that was, when a case was carried to the Supreme Court the plaintiff in error had to pay the costs in the court below and the court above too, and there was a restraining influence in that direction, and a very strong one; and as Mr. Harrison suggests, the bill of costs was very much larger then than now; but I suppose there is such a drift of sentiment in the other direction, it would be hardly practicable to apply that as a remedy. Since appeals from one jury to another were abolished under the Constitution of 1867, we now have but one jury trial, so that the younger members of the Bar, and gentlemen present who never practiced under that system, will see the very strong analogy between what is here proposed by this system and what we had by the old practice, with the single difference that here the appellate tribunal consists of say

three judges, trained and experienced in the law, to pass upon the law and the facts. I do not hesitate after thirty odd years observation of this matter, to give my testimony in favor of the plan proposed as most feasible. It is in reach of legislative action without a public election. I do not think there is any other way to get along with it with the Constitution as it now stands. That is my own notion, and I understand the Chief Justice to agree with me. There is an express power to create other courts, and this is one of them to come in under that provision. The constitutional right to a writ of error is pointed out in the Constitution. A writ of error lies from the superior court and the city courts by name. There is no provision for this writ of error from these intermediate courts.

The President: I am afraid myself, if we should establish a court of that kind and leave it to the election of the attorney who represents the case, or to the party who wants to carry the case up, we would have a court with no business. Nearly every lawyer would take his case to the court of last resort. That is simply an impression of mine which might not work out in practice. I would like to suggest this to the committee we have proposed to raise: We have tried twice to get a constitutional amendment for increasing the number of judges, but have failed. The point I want to suggest is whether or not we could get an amendment to the Constitution in general terms allowing the legislature more discretion on this subject. In a short amendment simply give the Legislature such power as might be necessary, in such a way as might be deemed best to relieve the Supreme Court. Perhaps some general amendment of that kind might be accepted by the people with more complacency than if we proposed to increase the number of judges.

Mr. Harrison: I beg to offer an amendment to the original motion raising the committee of five, to the effect that the President of the Association be *ex officio* chairman of that committee—that the present chairman of the Association, Mr. Fleming, be *ex officio* chairman of the committee.

Mr. W. R. Hammond: I want to say a word before that motion is put, please. I desire to make a suggestion which may, or may not, be of value. I have not sufficiently considered it in my own mind to be certain whether or not it is a good one. It strikes me as being a very good thing to establish this intermediate court of appeals consisting of three members, and that it would be a good thing to let all cases, where it is desired to review the verdict of the jury on questions of fact, to require those cases to go to that court of appeals, and to let parties go from that court on questions of law to the Supreme Court, and all cases where parties do not desire to review the verdict of the jury, but simply desire to review a law question, to go directly to the Supreme Court. It seems to me that that would accomplish the good results that Judge Hillyer has so clearly and ably set forth under the old system of appeals. Where a party is dissatisfied with a verdict, let him go to an intermediate court of appeals on the law and the evidence in the case, and if any error of law is committed by the intermediate court of appeals, let him go to the Supreme Court on that error of the law. If he desires to go to a higher court on a question of law, and not for the purpose of attempting to review the verdict of the jury, let him go immediately and directly to the Supreme Court of the State.

The President: Is it your opinion that we could compel them to take that route?

Mr. W. R. Hammond: I think so. It would not take away the constitutional right of any man to go to the Supreme Court. I do not know that that opinion is worth much, because I have not had time to digest it in my own mind. Just give a party the right to go from the intermediate court to the Supreme Court on a question of law. After the intermediate court of appeals has passed upon the verdict in the case and said the jury were right upon the evidence, the Supreme Court would not pay any attention to whether that verdict was contrary to the evidence or not. Practically there would be no difficulty

on that point, but it seems to me it would relieve the Supreme Court very much to have a second hearing before a court of that character on questions of law and fact. The constitutional right to go to the Supreme Court would be fully preserved by allowing an appeal from that court to the Supreme Court.

Mr. Slaton: Mr. President, It seems to me that the plan suggested by Judge Hammond is subject to this objection: The Supreme Court of the United States has frequently said (and so have nearly all the States, as I understand it), that even though there should be some error of law, that if it is apparent that that error of law could work no change in the final result, then that would be no good cause for reversing; and in nearly every case, as nearly all lawyers know, one of the main grounds on which a hope for a new trial is passed is that the verdict of the jury is contrary to the evidence. Now, where you have that question, would you have an intermediate court of appeals to pass upon the question and decide that it is not contrary to the evidence, and then let it go to the Supreme Court and let the Supreme Court pass on the question of law? Suppose you should at once on a question of law take the case to the Supreme Court and there should be some inadvertence in the charge of the superior court and the Supreme Court says, "We cannot look to the facts in the case——"

Mr. W. R. Hammond (interrupting): My idea is that it goes to the court of appeals on the law and fact where the law is involved, not that they pass on fact alone, but on questions of law and fact.

Mr. Slaton: Then the court of appeals would be overburdened and have the same difficulty now that the Supreme Court has. In a great many instances cases are taken up to the Supreme Court in which the only hope is that questions of fact may be passed on, particularly in that class of cases to which my brother Hammond (J. A. Hammond) refers, cases which he pronounced trifling and improperly brought, and yet cases in which juries, under

the charge of the court, have seen necessary to find a verdict under their oath. Now, the other feature that Mr. Hammond suggests about contingent fees seems to me peculiar. It seems to me peculiar that he should suggest that remedy for relieving the Supreme Court when he says he might be hurting himself by it, because he may not always represent the clientele he now represents. It is my opinion that the Supreme Court would be greatly relieved, if in those cases damages should be imposed whenever the cases are taken up apparently for delay, where the only question to be determined is that which is to be left to the jury alone, which are questions of fact, where it appears that plaintiffs have been delayed in the recovery of verdicts, because the other side can take cases up at will. In those cases an imposition of damages would relieve the Supreme Court; and that is a far better remedy than trying to cut off contingent fees. As I understand it, there is hardly a State in the Union where they do not have contingent fees. I talked with a Tennessee lawyer about it, and when he was asked what the law of Tennessee was about it, he said the law did not allow contingent fees, but the way the lawyers in Tennessee did was to charge an amount which they thought would be a certain proportion of what they ought to recover, and if they chose to lessen that fee upon recovery they could do it. It is my own individual opinion that the only way to relieve the Supreme Court is by an increase in the number of judges, and I think, as the chairman has well suggested, that if the question should be proposed to the people in another shape, that would meet with the approval of the voters who have been educated largely on this subject.

Mr. Meadow: Mr. President, it strikes me that the nearest solution of this trouble that I can see is to establish the right of trial by another jury, and do away with the right to appeal to the second jury by consent, and have a trial by a first and second jury before a case can go to the Supreme Court. That would deprive nobody from

cannot have a writ of error to the grant or refusal of a motion for a new trial to the Supreme Court of the United States. We all know that is the law, and if we had that same rule operating in our State practice, I believe it would greatly stay the flood that pours into the Supreme Court, and that would be perfectly fair, perfectly right.

Why not make a lawyer bottom his bill of exceptions upon exceptions noted at the trial? If that was done, it is my opinion that a great number of cases would never find their way to the Supreme Court. Make a motion for a new trial within the discretion of the court—and that is what it ought to be. Give him the power to grant or deny a motion for a new trial, and when that power upon the part of the court who tried the case is exercised, then the litigant has the right to a writ of error based upon exceptions noted at the trial. I have no time to develop the details of that idea, which would, of course, expand into a system. It would be heroic as a remedy. It would be a radical change, and we have got to have a change; we cannot progress without it; but to simply add another story or another tier upon our structure would simply lead us into more confusion and into more error.

One other thought: My particular objection to the present plan of a proposed court is that the suitor is not compelled to go to that court, and you have no power under your present Constitution to compel him into that court, because the Constitution of the State of Georgia declares that the Supreme Court shall grant writs of error to the superior court and the city court. That being true, I venture the opinion, that upon an investigation of the law and the reasons of it, you could not take away from a man in Georgia the right to a writ of error from the Supreme Court. That is his right.

In addition to that the Supreme Court is limited in its power. It could not grant a writ of error to this intermediate court, because the language is to the superior court and city court and other like courts. So it is lim-

ited to the superior and city courts; consequently, the intermediate court which has been suggested is one which is not compulsory, and if it makes a mistake the Supreme Court could not grant a writ of error.

Judge Lumpkin: I agree with you that right there lies the whole trouble; but I want to ask you a question about another matter, and ask you if you have thought of it: Could not that flood you speak of be stopped up by limiting the jurisdiction of the Supreme Court to cases involving not less than \$500?

Mr. Dessau: I was coming to that. Do I understand you to be of opinion that that power can be exercised by the Legislature without amendment to the Constitution?

Judge Lumpkin: That is what I want to ask you; I have never studied that.

Mr. Dessau: I have studied that very seriously. It is barely possible that an act could be framed which would carry that into effect, but it is my honest opinion it would be a very difficult thing to do, and probably the court would not be able to sustain an act of that sort. We are trying now to suggest a plan which can become operative without the necessity of additional constitutional interference or amendment. It is very difficult to get the Constitution amended on the subject of the judiciary. I have got my hobby about that. I believe when the people of Georgia have the power to elect judges themselves, then they will amend the Constitution; but now we cannot get it. Therefore, I beg to call the attention of that committee, whoever may compose it, to the idea which I have suggested, that an amendment to the law with regard to motions for new trials will take out of the Supreme Court more than fifty per cent. of the business that is there, and curtail the labor of that other fifty per cent. fifty per cent. itself. I have seen the judges of the Supreme Court with a record that would probably take them seven days to read, and the only question in it

Mr. Harrison: Now I move that Mr. Perry be requested to file his paper with the Secretary at any time before the Secretary prints the report of this session, to be printed in the report, if he sees fit to do so.

The President: Then we leave it to his choice as to whether he will hold the paper until the next session?

Mr. Harrison: Certainly. That is the object of the motion.

The President: If there is no objection, I will consider that motion adopted unanimously. The only other head of business we have now is unfinished or new business.

Mr. Harrison: I would like to make a motion (and I will put it in the form of a resolution which I will hand to the Secretary if it is adopted) that all delinquents be reinstated upon payment of dues for the current year and for the past year; that is, on payment of ten dollars a delinquent member may be reinstated. It has been my observation since I have been in office that the interests of the Association will be much enhanced by that course.

Carried.

The President: Is there anything further? If there is no further business the Association will stand adjourned without a day.

Adjourned.

12 GA Bar Association Reports 1895 Meeting

Symposium on "Relief of the Supreme Court of Georgia: Is the Remedy one or more
Intermediate Courts?"

APPENDIX 10.

RELIEF OF THE SUPREME COURT OF GEORGIA
IS THE REMEDY ONE OR MORE INTER-
MEDIATE COURTS?PAPER BY
W. W. GORDON, JR., ESQ.,
OF SAVANNAH.*Mr. President :*

The Supreme Court of Georgia is overburdened with work. Every case originating in our inferior tribunals, with few exceptions, may be taken to Atlanta, there to be passed upon by our Supreme Court of Judicature.

The question for discussion is whether a system of intermediate courts is the proper remedy for the present evils.

The character that these intermediate courts would assume may be gathered from certain proposed legislation.

Two bills have been formulated: the one looking to the establishment of a Supreme Court Commission; the other contemplating a Court of Appeals.

The Supreme Court Commission is to consist of three members. The functions of this court are to be similar to the duties of a special master. It will go over the testimony, sift it out thoroughly, append its opinion and pass the record on to the Supreme Court for its decision.

Now, while this will tend to lighten the labors of the Supreme Court, it will hardly fail to cause dissatisfaction to the members of the bar. Even at present, it is possible for some of the material facts in a case to be overlooked by our Supreme Court, and some, through oversight of counsel, etc., fail to reach the court; and, if another tribunal is interposed between the trial court and

the Supreme Court, in order to afford the latter a clearer insight into the case, the effect will be quite the reverse. It will be found that this new lens, instead of illuminating the case, will show the evidence up in such a light that neither the attorneys, the litigants, nor the witnesses themselves will be able to recognize the facts that have controlled the court's decision.

The Commission of Appeals in New York State, which this commission is said to resemble, had the same power of review and of final decision possessed by their Court of Appeals; but this could not be effected in Georgia without a change in our Constitution, which this bill does not contemplate.

The other bill, mentioned above, proposed to relieve our Supreme Court by erecting intermediate courts where certain classes of cases should have final review.

A state of affairs similar to our own existed in the Supreme Court of the United States. Business was congested and the court was unable to make headway, owing to the new cases multiplying more rapidly than the old cases could be disposed of.

The remedy sought was the establishment of the Circuit Courts of Appeal. These courts are said to have checked, in a measure, the business flowing to the Supreme Court, and have contributed to relieve the labors of the Supreme Court justices.

With this precedent probably in view, a bill was introduced into the last legislature, in its amended form, entitled: "A bill to establish district courts of appeals in this State; to define their jurisdiction; to provide for the procedure therein, and for the compensation of their officers; to exclude bills of exception to the Supreme Court in certain cases, and for other purposes."

This bill is similar, in many respects, to the Barrow bill, published this morning, October 3, 1895; but, as I never saw the latter until to-day, I am unable to discuss its particulars in this paper.

This bill provided as follows:

There were to be five district courts of appeals, and these district courts were to be made up of the several judicial circuits in the State. The judges of the superior and city courts

within these circuits were to compose the district court for the district.

The judges of the "first district court of appeals" were to meet four times a year at Atlanta; the judges of the second district were to meet at Athens; the judges of the third district were to meet at Savannah; the judges of the fourth district were to meet at Columbus; and the judges of the fifth district were to meet at Macon.

Thirty days after the passage of the act, these courts were to be convened by the superior court judge, senior in commission, who was to be *ex officio* the Chief Justice of the district, and when convened, the dates for the commencement of the four terms to be held by them every year were to be established.

The clerk of the superior court of the county where the district court should sit was to be the clerk of that court, and the sheriff of that county was to be the sheriff of the district court.

These courts of appeals were to have jurisdiction to hear and determine all appeals from the superior and city courts of their respective circuits from any final judgments or decisions of those courts on motions for new trial; on the granting, or refusing to grant, or dissolving injunctions; on the appointment, or refusing to appoint, or setting aside the appointment of receivers; on rules against officers of court; on all *certiorari* causes; and from the decision of any case in which the district courts of appeals had jurisdiction no bill of exceptions should lie to the Supreme Court of Georgia, except as elsewhere provided by the bill.

Upon any final decision in any cause whereof jurisdiction was given to the courts of appeal, either party dissatisfied could appeal within ten days, and the appeal was to be heard at the term next after the appeal was docketed with the clerk of the district court of appeals. Upon the hearing of the appeal, the clerk was to transmit the record, together with the *remittitur*, to the clerk of the court from which the case came.

The district courts of appeals were to have like power to mould a final decree of judgment as is now conferred by law upon the Supreme Court in any cause, and no bills of exception from the

decisions of the district courts of appeals would lie to the Supreme Court of Georgia.

On motion for new trial, any party appealing to the court of appeals was deemed to have elected between the appeal upon his grounds for new trial and the right to have a bill of exceptions upon the same errors of law to the Supreme Court; except in any case wherein there should be drawn in question by the pleadings in the cause the constitutionality of any statute of Georgia or of the United States, and in any case where capital punishment should be involved; and, in such cases, upon the return of the *remittitur*, a bill of exceptions could be taken to the Supreme Court upon the specified errors of law.

Parties were to have the right to a bill of exceptions to the Supreme Court of Georgia upon errors duly alleged in all cases not enumerated above, to wit: decisions on motions for new trial, injunctions, etc.

The judges of the district courts of appeals were to formulate the rules which should govern their courts.

Each case was to be decided by a majority of the court, the judge who tried the case below not presiding. Should the court be equally divided, the decision would thereby be affirmed.

When the decisions of any two district courts were at variance on the same question, parties could have a writ of *certiorari* to the Supreme Court to determine the law upon such question. And there was to be the penalty of damages and dismissal, if it appeared that the cause was brought for delay and the decisions were uniform.

The judges were to be paid by the treasurer of the State, four cents per mile as mileage and four dollars per day for their services. Provision was made, also, for the clerks' and sheriffs' costs.

Such is the outline of one of the bills which contemplate the establishment of the courts of appeals.

An intermediate court, as provided for by this bill, is objectionable to me for many reasons.

It is based upon an apparent similarity in the conditions that existed in the Supreme Court of the United States and in our

own Supreme Court; but it should be borne in mind that there was nothing to hasten the work of the honorable justices of the Supreme Court of the United States, who might hold up their decisions so long as they pleased; whereas, in Georgia each case must be decided at the first or second term after the writ of error is brought to the Supreme Court.¹

There being this substantial difference in their respective regulations, it is doubtful whether the same remedy would suffice for both.

The judges of the superior and city courts will object, undoubtedly, to the extra demands upon their time with no additional honor, and with such small compensation for the attention they would have to bestow upon the cases.

The terms of the Supreme Court commence, nominally, in October and March; but, as we all know, it is uncertain when each circuit will be reached; hence, with five new district courts claiming final jurisdiction upon various matters, and with each court holding four terms in each year, upon dates designated by the five different chief justices, there will arise twenty terms of court likely to conflict with the assignments of the Supreme Court. Exceptions *pendente lite*, such as exceptions to the overruling of demurrers and the denial of motions for nonsuit, would find their way to the Supreme Court, while exceptions to the grant or refusal of a new trial, etc., would go to the district court of appeals; and, thus, the two courts, upon practically the same state of facts, might announce very different rules of law and promote endless confusion.

But the main objection to this new system is due to the probability that litigation will be delayed. It is true that the bill attempts to remedy this feature by providing penalties for frivolous appeals; but, not only cases involving constitutional questions and capital punishment would have the opportunity of going to the court of appeals, then back to the lower court and thence up to the Supreme Court, but, also, in other cases, the scheming advocate would perceive in this new court new openings for his dilatory tactics.

¹ Code 1882, §5134, §5135.

It is undeniable that that system of laws is the best where justice is administered with the least delay consistent with an intelligent decision.

But any amount of delay, especially in criminal matters, is better than, on the one hand, a total *disregard* of the law, as by the myrmidons of Judge Lynch, or, on the other, the *abuse* of the law, as by Robespierre, who said of France, "This government represents the sure and rapid march of justice: it is the thunderbolt hurled by the hands of Liberty against crime. The justice of the people must not be impeded by forms."¹

Now, it cannot be said that in Georgia justice is impeded by forms. Our pleading and practice is very liberal, and special pleading is unknown. Nor are the decisions of the cases unduly delayed by our Supreme Court.

It is admitted, however, that, to secure opinions worthy of our court, some relief must be afforded to the judges from the enormous pressure that the Constitution has imposed upon their present limited number.

It has been stated, as coming *ex cathedra*, that the actual decision of any case is simple, compared with the time and labor consumed in writing out the opinion to sustain that decision.

And yet all of us, the attorneys, the judges, and the parties litigant, feel that the *reasons* for the decisions should be known and published as a guide by which to decide legal questions arising in the future. For, as Lord Coke has said, "We know the law, when we apprehend *the reason* thereof."²

The relief that some of the judges of the Supreme Court have suggested has been to divide their labor by increasing the number of judges from three to five.

None can be better informed as to the necessities of the situation than the members of our Supreme Court, who are the greatest sufferers by the present inadequate system, and their appeal should be heeded. The amendment to our Constitution failed by such a small margin at the last general election that it will surely be carried the next time, and the effort, at least, should be made.

¹ Memoirs of Barras, vol. 1, pp. 248, 249.

² Coke on Littleton, ed. 1738, p. 395.

I am opposed to the intermediate courts. They do not offer the proper remedy for the evil. We should have the Supreme Court of the State to pass upon our cases and decide them finally.

We want a court where the prestige of nearly fifty years of honor and usefulness adds weight and dignity to its decisions, impresses on its members lofty ideas of their responsibilities, and preserves for the litigants a corresponding care, intelligence, and conservatism. We want justice in its purest form from Georgia's highest tribunal.

And what is justice?

A judge of the United States Supreme Court has answered, in the words of Sidney Smith: "Truth is its handmaid; freedom is its child; peace is its companion; safety walks in its steps; victory follows in its train; it is the highest emanation from the Gospel; it is the attribute of God."¹

And where would we seek it?

From that court which, from its organization in 1846 down to the present day, has won and maintained the confidence and respect of our entire people.

From that court, whose decisions rise before the admiring gaze to form one grand, harmonious system of jurisprudence.

From that court which, knowing neither rich nor poor, the powerful nor the weak, which, recognizing no distinctions of class or color, with patient, steady, and impartial hand, metes out equal and exact justice to all men.

¹Mr. Justice Brown's Address to the Yale Law School, 1895.

12 GA Bar Association Reports

1895 Meeting

“Is the Remedy one or more Intermediate Courts?”

APPENDIX II.

RELIEF OF THE SUPREME COURT OF GEORGIA: IS THE REMEDY ONE OR MORE INTER- MEDIATE COURTS?

PAPER BY
JOS. HANSELL MERRILL,
OF THOMASVILLE, GA.

Involuntarily and without thought I answer, No. I suppose because I am constitutionally opposed to trying a case more than once. Trying a case a second time is as bad as reading a novel a second time; all the keen interest aroused by studying a new question, and expecting and experiencing surprises, is exhausted with the first trial; a second trial is drudgery, a third punishment.

But a second thought suggests that the intermediate court or courts would be the last resort for most cases taken there, and but few of them would get beyond it for the third hearing, so the punishment would come only occasionally, perhaps not oftener than we deserve to be punished, if not for the particular case, then on general principles. Its function would be to reduce the width and the number of the avenues leading to the Supreme Court.

I have undertaken to learn what experiments have been made on this line by other States, and have been surprised to find it a very common expedient.

Massachusetts tried the intermediate court in the shape of one somewhat similar to the United States Circuit Courts, presided over by single members of its Supreme Court, but has gradually changed its character and jurisdictions till it has about dropped into innocuous desuetude (if I may borrow the immortalizing phrase of His Excellency Grover Cleveland), its functions being absorbed on the one hand by the lower, and on the other by the higher, court till their system is about the same as ours.

Indiana has five districts and in each an intermediate, called "appellate," court, with five judges each, which has jurisdiction to the exclusion of the Supreme Court in a number of cases of minor importance, exception being made where the constitutionality of a statute, State or Federal, or the validity of a municipal ordinance is involved; and of all suits in equity; and where the title to real estate is involved. This system has been in operation there about four years and is well thought of by at least some members of the bar.

In Michigan the Bar Association in 1891 appointed a committee to devise some method relieving the Supreme Court. The committee reported in favor of an intermediate court, but as this required an amendment to the Constitution the Association recommended an increase in the number of judges which might be done without such amendment. They failed, however, to get either measure passed by the legislature.

Texas has a system of five Supreme Judicial District Courts with three judges each, to which appeals lie in all civil cases from the lower courts, and whose decisions are final except on questions involving constitutional or statute law, or where the decision is in conflict with some prior decision of the Supreme Court, or there is a conflict between districts, or the decision is not by a unanimous court, or where the amount exceeds \$2,000. They have also a separate Supreme Court for criminal business.

In New York they have had under the old constitution an intermediate court, and under the new one, which goes into effect the first of next January, they have modified it, retaining, though, its principal features, which is the strongest indorsement of the system of which I know. Their court of last resort is known as the "Court of Appeals," while the higher courts of original jurisdiction, corresponding to our superior courts, are known as "Supreme" Courts. These are to have a large number of extra judges, and from it is made up an appellate division of the Supreme Court, having four departments and sitting in different parts of the State. It requires five of these judges to constitute a court, and appeal from a unanimous decision is allowed in very few cases. The "Court of Appeals" under the new system will

be a *sanctum sanctorum*, so well hedged about, the avenues of approach to it so well guarded, that the cases that pass its portals will be few in number and far between—the road, like the one "by wisdom pointed out," showing "but here and there a traveler." The decisions emanating from the deep recesses of its great learning, conceived with fullness of time and freedom from multiplicity of distractions, will no doubt be regarded with the veneration accorded the ancient oracles of Delphi.

In addition to these and similar plans in other States, we have the example of the general government in the new intermediate court recently established by it, which I understand has received a very cordial welcome from the bar.

I have stated what I have been able to learn about these other courts rather than theorize, because I thought since experience is the best school, the nearer approach we can get to it the more certain will be our learning, and that the experience of others is the nearest possible approach to this best of schools for us.

In the face of all these examples of great States and small States, of old States and new States, and of the general government itself, which should combine the best ideas of them all, I feel that it is presumptuous in me to offer objections to the system, but I see what are to my mind unanswerable arguments against it, and another path which I think leads more directly and certainly out of the woods and to a rather better spot in the clearing. I beg leave, then, to present in a few words the other method which I think superior to the intermediate courts, and to call attention to the objections to the latter by way of contrast to the advantages I think possessed by the former.

The plan which commends itself to me is to have two branches of the Supreme Court, one for civil business and one for criminal cases and cases arising from torts, which would be about an equal division of the work.

I believe this would be more satisfactory to the bar and the people, because each would be a court of the last possible resort, the highest court provided for the trial of cases. No matter how careful the provisions for stopping certain cases in the intermediate courts, there will ever be struggles to carry numbers of them

to the Supreme Court, and consequently a large number of cases for it will be made on the questions arising from constructions of the statutes restricting the right to take cases up. This will give rise to endless arguments and countless trials which will settle nothing except the right to go to the Supreme Court. Litigants who consider great interests at stake, lawyers who consider great questions involved, will ever be striving to have decisions settling them from the highest court in the land, and without them will never be satisfied.

Then again it would be a much less expensive system; which fact would make it easier to put into operation, as the people are ever alarmed at the thought of expenses of government being increased. It would necessitate the creation of but a single court of three or five judges, whereas it would be necessary to have from three to five intermediate courts of at least three judges each, and the salaries would probably be the same in one as in the other.

Again, it would enable the judges of each court to devote themselves to an especial branch of the law, which would enable them to "drink more deeply of the Pierian spring," and decide with more unerring certainty the cases brought before them. Lawyers who devote themselves exclusively to one branch always attain greater prominence in it than those who do a general practice, just as do physicians who devote themselves to a special line.

Judging by our experience with one court of three judges, it would seem that these two courts, with five judges each, could manage fully double the present volume of business without being overworked or getting behind, and that they would have time to give due consideration to all cases, and give us in their decisions, instead of brief head-notes only, full and elaborate reasoning; and the Supreme Court of Georgia might once more occupy the prominent position among the sisterhood of States that it once held when its justices were not so crowded with work, that haste to get through the docket in the prescribed time dominated all other considerations.

Either plan would necessitate an amendment to the Constitu-

tion, so they would be equally difficult, on that score, to put into operation. While there is authority, perhaps, under the Constitution to create new courts, there is also a right to litigants to carry all cases from the superior and city courts to the Supreme Court for the correction of errors, and without the restriction of this right the intermediate courts could give no relief to the Supreme Court.

As I see it, then, the question between these two plans is one of expense of operation and satisfactory results, with the odds all on the side of the two Supreme Courts for the different branches of law. But I fear that the people will never consent to the extra expense of either till forced to it by the Supreme Court getting behind so that they will have to wait—and wait—for the determination of their cases.

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Content of Act/Resolution

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA. 1895.

Part I.--Public Laws.

TITLE II. CONSTITUTION.

1895 Vol. 1 -- Page: 15

Sequential Number: 008

Short Title: CHANGING ORGANIZATION OF THE SUPREME COURT, ETC.

Law Number: No. 186.

Full Title: An Act to amend the Constitution of the State by adding a new paragraph to article 6, section 2, to be known as paragraph 8, so as to change the organization of the **Supreme Court**, to increase the number of associate justices, to provide for elections by the people, and for other purposes.

SECTION I. Be it enacted by the General Assembly, That the Constitution of this State be amended by adding a new paragraph, to be known as paragraph 8 of section 2 of article 6, which shall read as follows:

[Sidenote: New paragraph to be added to sec. 2, art. 6.]

The **Supreme Court** shall hereafter consist of a Chief Justice and five associate justices. The court shall have power to hear and determine cases when sitting, either in a body or in two divisions of three judges each, under such regulations as may be prescribed by the General Assembly. A majority of either division shall constitute a quorum for that division. The Chief Justice and the associate justices of the **Supreme Court** shall hereafter be elected by the people at the same time and in the same manner as the Governor and the State house officers are elected, except that the first election under this amendment shall be held on the third Wednesday in December, 1896, at which time one associate justice shall be elected for a full term of six years, to fill the vacancy occurring on January first, 1897,

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by the expiration of the term of one of the present incumbents, and three additional associate justices shall be elected for terms expiring, respectively, January 1st, 1899, January 1st, 1901, and January 1st, 1903. The persons elected as additional associate justices shall, among themselves, determine by lot which of the three last mentioned terms each shall have, and they shall be commissioned accordingly. After said first election, all terms (except unexpired terms) shall be for six years each. In case of any vacancy which causes an unexpired term, the same shall be filled by executive appointment, and the

person appointed by the Governor shall hold his office until the next regular election, and until his successor for the balance of the unexpired term shall have been elected and qualified. The returns of said special election shall be made to the Secretary of State.

[Sidenote: Number of justices.]

[Sidenote: May sit in a body or in two divisions.]

[Sidenote: Quorum.]

[Sidenote: Elections to be by the people.]

[Sidenote: Time and manner of.]

[Sidenote: First election under this amendment.]

[Sidenote: Terms of Justices then chosen.]

[Sidenote: Allotment of terms.]

[Sidenote: Subsequent elections.]

[Sidenote: Vacancies.]

SEC. II. Be it further enacted, That whenever the above proposed amendment to the Constitution shall be agreed to by two-thirds of the members elected to each of the two houses of the General Assembly, and the same has been entered on their journals, with the yeas and nays taken thereon, the Governor shall, and he is hereby authorized and instructed to cause said amendment to be published in at least two newspapers in each congressional district in this State for the period of two months next preceding the time of holding the next general election.

[Sidenote: Provisions as to adoption of this amendment.]

[Sidenote: Publication of amendment.]

SEC. III. Be it further enacted, That above proposed amendment shall be submitted for ratification or rejection to the electors of this State at the next general election to be held after publication, as provided for in the second section of this Act, in the several election districts of this State, at which election every person shall be qualified to vote who is entitled to vote for members of the General Assembly. All persons voting at said election in favor of adopting the proposed amendment to the Constitution shall have written or printed on their ballots the words "For **Supreme Court** amendment," and all persons opposed to the adoption of said amendment shall have written or printed on their ballots the words "Against **Supreme Court** amendment."

[Sidenote: Election as to adoption of amendment.]

[Sidenote: Qualifications of voters.]

[Sidenote: Ballots.]

SEC. IV. Be it further enacted, That the Governor be, and he is, hereby authorized and directed to provide for the submission of the amendment proposed in the first section of this Act to a vote of the people as required by the Constitution of this State in paragraph 1 of section 1 of article 13, and by this Act and if ratified, the Governor shall, when he ascertains

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such ratification from the Secretary of State, to whom the returns shall be referred in the manner as in cases of elections for members of the General Assembly to count and ascertain the results, issue his proclamation for one insertion in one of the daily papers of this State, announcing such result and declaring the amendment ratified.

[Sidenote: Governor to provide for submission of amendment.]

[Sidenote: Executive proclamation of result.]

SEC. V. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same

are, hereby repealed.

Approval Date: Approved December 16, 1895.

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1902 Meeting



N. J. HAMMOND.

REPORT
OF THE
NINETEENTH ANNUAL SESSION
OF THE
Georgia Bar Association

HELD AT
WARM SPRINGS, GA.

ON
July 3rd, 4th and 5th, 1902.

EDITED BY
ORVILLE A. PARK
SECRETARY

ATLANTA, GA.
THE FRANKLIN PRINTING & PUBLISHING CO.
1902

drim be adopted by the Association. The motion is before the house for discussion.

Mr. Park : I do not wish to discuss the motion, but I wish to make this statement. Our Committee on Interstate Law for four or five consecutive sessions has recommended the passage of this Negotiable Instruments Act. Every member of this Association who has investigated it has recommended its passage.

Mr. Meldrim was called to the chair.

The Second Vice-President : The question is upon the report. Are you ready for the question ?

The report was adopted.

Vice-President Meldrim : The next matter is the report of the Committee on Judicial Administration and Remedial Procedure. The report is by Dean Morris.

Mr. Morris : Upon receiving notice of my appointment as chairman of this committee last autumn, I addressed a letter to the various members of the committee asking for suggestions and promising to put them in the report. I received a suggestion from one member which is in this report. Not hearing from them I took the liberty of writing this report myself. I submitted copies to the members of the committee, and it had the effect of calling forth objections from all of them. (For the report see Appendix H.)

Vice-President Meldrim : You have heard the report. What is your pleasure to do with it ?

A motion was made that the report be received.

The motion received a second and was adopted.

Vice-President Meldrim : The next matter is a symposium, "The Judicial System of Georgia." Papers by Judges Cobb, Barrow and others, followed by a discussion. I understand that is the program, Mr. Secretary.

The Secretary : Yes, sir ; that is the program.

Vice-President Meldrim : The first paper is by Judge Cobb of the Supreme Court. (For Justice Cobb's paper see Appendix I.)

Mr. Miller : I move that the Secretary be instructed to have the address of Justice Cobb printed and mailed to each member of the Legislature at least thirty days before it meets in October.

Mr. Lawton : I would suggest that as the whole matter is up for discussion on the subject, it would be better to postpone any action.

Vice-President Meldrim : For that reason the chair asks if you desire to press the motion now.

Mr. Miller : I will withdraw my motion.

Vice-President Meldrim : The next paper is by Judge Barrow of the Eastern Circuit.

Mr. Barrow : I take it for granted that it will not be disputed by anybody that our Supreme Court is at present badly overcrowded. It is not due, I feel sure, to any want of ability or industry on the part of the members of the court; but it is attributable to the immense business turned into that court from 137 superior courts, 136 meeting twice a year and one meeting three times a year, and to that is added all the city courts which have a constitutional right of writ of error to the Supreme Court. In thinking about this matter, at the request of some friends of mine with whom I have talked it over, it has occurred to me that perhaps the most practical way of dealing with this difficulty is by an intermediate court. I took the liberty of preparing a bill which I submitted to the Secretary of the Association, and the outlines of which I will briefly state. I have not reduced anything but the bill to writing, and the suggestions which I wish to make, and which I am requested to make, must necessarily and will be given in a plain sort of way.

The scheme which suggested itself to my judgment was to create an intermediate court between the city and superior courts and the Supreme Court, and it was termed in this bill the "District Court of Appeals." There were to be three of these District Courts of Appeals in this State. The first district to be composed of the counties

comprising the Eastern, the Atlantic, the Brunswick, the Southern, the Albany, the Middle, the Pataula and the Southwestern Circuits. The second district to be composed of the counties comprising the Augusta, the Northern, the Ocmulgee, the Oconee, the Macon, the Chatahoochee and the Flint Circuits. The third district to be composed of the counties comprising the Western, the Northeastern, the Blue Ridge, the Stone Mountain, the Atlanta, the Cherokee, the Rome, the Tallapoosa and the Coweta Circuits. This is as near as practicable an equal division of the State as to territory. It is not an equal division as to the amount of business, but it will be found, I think, to adjust these districts so as to give to each as far as practicable the same amount of business on account of the cities being situated so as to put at least two in one district. Now right there I diverge from a recommendation I made in the draft of the bill. As the bill was drawn these courts were to be presided over by judges of the superior and city courts alternating. I am satisfied that was a mistake. That was done to avoid the expense of the nine judges who would be new officers. It was provided in the bill that the judges of the superior and city courts alternate in presiding over that court, but in lieu of that I think it would be far better, far wiser, far more satisfactory, to have three judges appointed for each district who shall be judges of the District Court; give them long terms and let them be appointed by the Governor with the consent of the Senate. Now it was provided in this bill as to the places where the courts would sit and as to the time in which they would sit. The District Court for the first district shall sit in Savannah, Thomasville and Albany, at least once or twice in each year; that the District Court for the second district shall sit in Macon, Augusta, Columbus and Griffin, at least once, if not more, in each year; and that the District Court for the third district shall sit in Athens, Atlanta, Rome and Newnan, once in each year, if not more.

Now as to the question of relief. It is difficult, if not impossible, to give any good reason why the judgment of one court for the correction of errors occurring on the trial should be reviewed by another court for the correction of errors. If the District Court of Appeals grants a new trial in a case, the case goes back to the city or superior court, and when the new trial is finally had and the case is finally closed, it can go to the Supreme Court from the final judgment of the District Court of Appeals. Why should a case be taken from the District Court of Appeals to the Supreme Court, taking up the time and labor of the Supreme Court when a new trial has been granted by the Court of Appeals? That is one branch of business that is kept away from the Supreme Court. Why should a misdemeanor case, either where the crime charged was a misdemeanor, or the jury recommends that it be punished as for a misdemeanor, why should that go beyond one court for the correction of errors? Surely, all will agree that when a misdemeanor case has been passed on one time by the trial court and reviewed by a court for the correction of errors, the defendant must be content with the decision. Why should appeals from justice courts be reviewed three times? They are tried in the justice court, they are tried in the superior court, and when they are reviewed by the District Court of Appeals, why shouldn't they stop there? It will be difficult to give any good reason why cases originating in the justice court and taken by *certiorari* to the superior court should go beyond the District Court of Appeals where the judgment rendered in the superior court can be reviewed, and why the parties should have the right to burden the Supreme Court with a review of that case. It is tried by the justice of the peace, by a jury in the justice court, by the judge of the superior court and then by the District Court of Appeals; and why should they have the right to have the case reviewed by

three courts for the correction of errors? Why should interlocutory orders, the granting and refusing of injunctions, the granting or refusing of receivers, go any further than the District Court of Appeals until after final judgment in the case, if the case is one which is finally entitled to go to the Supreme Court? If an interlocutory order is granted, granting or refusing an injunction, or granting or refusing a receiver, it can be promptly taken to the District Court of Appeals for review, but it cannot go to the Supreme Court. Would it not be wise and money-saving to stop all interlocutory orders granting and refusing injunctions and granting and refusing receivers in the District Court of Appeals? The party would be permitted to except, to file exceptions *pendente lite* in that court, so when the final judgment is rendered, and the case is finally carried to the Supreme Court from the District Court of Appeals, the appellant could carry up all errors committed, wherever committed, whether in the district court or the superior court. Let the right of exceptions *pendente lite* be had in the district court as well as in the superior court, and then when the final judgment is rendered, when a man has no other right of trial in the superior court, he can carry up all the errors committed on the trial, provided that it is not a misdemeanor case and provided it is not an appeal from a justice court.

His honor, Justice Cobb, has told us of the mass of business that overwhelms the Supreme Court. If we stop these appeal cases, misdemeanor cases and preliminary orders, it will take away half the business of that court. But suppose it will not cut it down one-half, but cut it down one-third, there will still be enough to keep that court very busy. The number of cases has increased and will continue to increase, and in two years there will be twelve hundred cases there if the present rate of increase continues, and the court will be unable to decide them unless this District Court of Appeals or some intermediate tribu-

nal is established. If these three District Courts are held annually in the different cities in Georgia, half the business of the Supreme Court will be taken away, the burden will be taken off these judges, and they will not only be able to dispose of the cases in that court, but will be able to do justice to themselves, the lawyers of Georgia and the trial courts.

Now the provisions of the bill as to the right of appeal, as to the procedure, are simple, very simple. The case is tried in the District Court of Appeals on the original record with a brief of the evidence approved by the judge and sent to the District Court of Appeals by the clerk, and from the District Court of Appeals to the Supreme Court. There is nothing for the appellant to do except to file a statement with the court that he desires an appeal, and the record is sent up. There are no difficulties, no complications, no intricate pieces of machinery. He simply announces that he desires an appeal.

This statement is made, as I say, without having been put in shape, and without having so much as read this bill over in two or three months. It seems to me that there is practically no doubt that the establishment of these three courts in different districts respectively will relieve the Supreme Court, nor as to the necessity of that relief. One word, gentlemen, in conclusion, and I will leave the subject with others who are more familiar with its details. Judge Cobb never spoke a truer word in his life than when he said the difficulty of this question and bringing it to a settlement does not rest with the Supreme Court. It does not rest with the legislature primarily. It does not rest with the people. It rests with you and with every member of the bar in this State. (For the bill presented by Judge Barrow see Appendix J.)

President Battle resumed the chair.

The President: The next paper is by Judge Nottingham of Macon.

Mr. Nottingham: For the first time I have just learned

that I was expected to prepare a paper upon the subject now under discussion. About a month ago the Secretary informed me that to me among others had been assigned a part in the discussion of the question now before the Association. At that time I had no expectation of being able to attend, and not until an hour before I left for Warm Springs had I the least idea I could attend. What I say to you, necessarily on the spur of the moment, must be largely by way of apology. Now the attitude of shirking any duty, whether assigned or assumed, is distasteful to any one, but there is to me another position that is more distasteful still; that is an attempt or endeavor to instruct or entertain so intellectual and cultured a body as the Bar Association of Georgia without careful preparation upon the subject to be discussed. Therefore I will just say a word or two to you, gentlemen.

Several years ago, some five or six years ago, through the Bar Association, attention was attracted to the crowded condition of the Supreme Court docket. They agreed that not only were the judges of that high tribunal the hardest worked men and the most niggardly paid, but they endeavored to make the people of the State at large realize the difficulties under which the members of the Supreme Court were laboring. An addition of three members was given to the court by constitutional amendment. There has been, as shown by the admirable paper read by Justice Cobb, a rapid and wonderful increase in the number of cases taken to the Supreme Court. Since the addition of three members to that court, as I understand from the paper just read (the figures the paper has given), the average has been seven hundred cases per term; that will be more than one hundred to each member of the court. With the present rate of increase there will be twelve hundred cases within a year or two, and how are they going to hear and decide them? Why, gentlemen, such labor put upon these judges means that it is an absurdity to expect them to consider carefully—to consider

and decide each case. It is a burden that ought not to be put upon a citizen of Georgia. It is not wise. It is not just. The subject is a burning one to the judiciary of Georgia, and it is necessary for us to do something to bring about harmony and orderly methods, and to relieve the Supreme Court. The subject is a pressing one which the Georgia Bar Association has to grapple with. It involves every county within the jurisdiction of this State. The question of vital importance as I understand it, in this discussion, is incorporated in the conclusion of the subject "and to relieve the Supreme Court." The suggestion made by Judge Cobb that a committee should be raised strikes me as an admirable one. It should be appointed as early as practicable, as promptly as the President of the Association is able to appoint the committee; a committee not so large as to be unwieldy, but sufficiently small that each member may feel the responsibility of his duty. That committee should have before it the admirable paper of Justice Cobb. It seems to cover every phase of the subject. Also the paper which Judge Barrow presented, but did not read, and suggestions from all the members of the Association. That committee should be given plenary power to draw up a constitutional amendment and to recommend to the legislature anything to bring the desired relief. Now the increase in the number of cases in the Supreme Court is due to one or two natural causes, and to the increase of courts in the State from which bills of exception lie to the Supreme Court, in the last few years,—the establishment of numberless city courts. It is this policy of conferring this jurisdiction on these courts that permits the carrying up of these little 2x3 cases that take up the time of the learned justices. I say it is trifling with justice. It seems to me to be foolish to permit the carrying of certain classes of misdemeanor cases to the Supreme Court; cases where a man is guilty of a misdemeanor beyond a doubt, and yet he has the right to take that case through the various

courts to the Supreme Court. I was informed by one of the learned judges of our Supreme Court that they are now considering a case to decide whether or not the defendant shall pay to the plaintiff the fabulous sum of six dollars. Isn't it out of reason for that case to go to the Supreme Court of Georgia? The court over which I have the honor to preside spent two days recently trying a case involving ten dollars, by reason of the decision of the Supreme Court within the last two years taking away from the justice of the peace jurisdiction in cases of bail trover. Two days spent with two panels of jurors, costing forty-eight dollars a day, in trying a ten-dollar cow case, and that case can be taken to the Supreme Court. These little five- or ten-dollar cases under our present system are tried in the justice court before the justice of the peace, by a jury in the justice court, then by the judge of the Superior Court and finally by the Supreme Court. It does seem to me to be out of all reason.

It does seem that every member of this Association must realize that these gentlemen are overworked, and that they should have the sympathy and support of every member of this Association in the effort to bring to them the necessary relief.

The President: The next is a paper by Mr. F. A. Hooper.

Mr. Hooper did not respond.

The President: Next is the paper of Mr. W. K. Miller. (For Mr. Miller's paper see Appendix K.)

Justice Lumpkin: Would I be in order now to ask a few minutes' indulgence?

Mr. Lawton: The matter is open for discussion.

Mr. Lumpkin: I do not desire to offer a motion, nor to make a speech, but I simply wish to make a few suggestions to the Association by way of bringing down to an issue the particular business that I naturally am disposed to consider, the main part of the subject under discussion.

The President: It is directly in order. It is the subject before the Association.

Mr. Lumpkin: I will detain you but a few minutes. I do not suppose that any gentleman here will consider that I am criticizing the admirable paper which has just been presented by my associate on the bench. It tells the whole story, and so clearly and carefully covers the ground that I think it may be assumed that there is pressing need of relief for the Supreme Court of a part of the burden they are laboring under for the reasons pointed out. It would be foolish for me to undertake to add anything to the reasoning or facts stated in Judge Cobb's paper. You will readily observe at once the two central ideas; one I have just laid down, the absolute necessity of relief, and the other is the method of bringing about that relief. I do not deem it profitable for me to discuss the details of any plan or plans. I have no doubt that the bar of Georgia, with its great influence, and this great assembly solidly pledged to some plan will bring about the relief that must inevitably come. I think that paper suggests the most practical way to get at it; that is, that the President of this Association should appoint a committee; a committee large enough to represent the different phases of litigation and all the different kinds of lawyers irrespective of the business they engage in, yet small enough to be effective. The scheme, you observe, provides for the formulation of some plan, and further provides that it should be transmitted to every lawyer in the State, and gives him an opportunity to be heard on the question, and finally the committee presents some plan to the General Assembly. The Association should see to the appointment of the committee and trust to the wisdom of our President to give us the right sort of a committee. Then I appeal to that committee in advance to take this subject up at once and to enter upon its work, and when this committee formulates its suggestions and finally makes a last draft of the bill, I have no doubt that the Governor of the State, in view of its im-

portance, will call the attention of the General Assembly to it in his message, and there are many good lawyers and able men who will put this legislation through. We can go a step farther than that. It will take months to bring about the needed changes; we will have to have more or less changes in the Constitution. We can get this bill before the next General Assembly and get the Legislature to pass it, making the necessary changes in the Constitution, and then we will have to go before the people in the different counties and get them to adopt it.

Now, what I beseech you is to provide for the appointment of this committee, and I would take the liberty of suggesting that their report be printed and mailed to each member. This matter can be looked after by the committee; that they send to each member of the Legislature and to each lawyer, not only a copy of Judge Cobb's paper, but also a copy of the report of the committee and the proposed bill and amendments.

Mr. Meldrim: Before my friend finishes, I would like to ask if he has considered the question of how many should be on that committee.

Mr. Lumpkin: I had in mind several plans if they met with the approval of the bar.

Mr. Meldrim: How many? One from each congressional district?

Mr. Lumpkin: That would not be too many.

Mr. Merrill: As Judge Lumpkin did not like to make a motion, I move that the President of the Association be requested to appoint a committee as outlined by Judge Cobb in his paper, to carry out these ideas; the committee to consist of eleven as suggested.

Mr. Dessau: I desire to amend that motion. I think, Mr. President, that the suggestion to have one from each congressional district is probably wise. I had in my own mind the appointment of one from each judicial circuit. I do not know but what that would make too many, so I am rather of the opinion that one from each congressional

district would probably be better. However, I will offer an amendment. I desire to amend the motion to make the committee composed of one from each congressional district and two from the State at large, and that the President of this Association be *ex officio* Chairman.

Mr. Merrill: I accept the amendment.

Mr. Dessau: My motion, Mr. President, is that the man who will be president at the time the committee is appointed be chairman.

Mr. Nottingham: I desire to offer another amendment, which I suppose will be accepted; that is, that the President for the ensuing year appoint that committee at his leisure, and that he do so as early as practicable.

The President: Does the gentleman accept the amendment?

Mr. Merrill: Yes, sir.

Mr. Miller: I desire to offer a further amendment, and that is, that this committee be delegated power to have such information as it may deem proper to print furnished to each member of the Legislature; the bill as they finally agree on it and any other information that they think proper to distribute among the members of the Legislature; that they be delegated the right and power to have that work done.

The President: The appointment of this committee is an important matter, and the resolution should clearly define its duties. It is important that the resolution as passed be in proper shape, and if it meets with the approval of the Association, I will appoint Mr. Merrill and Mr. Dessau to draft that resolution and present it to the Association this afternoon.

Mr. Harris: I make that as a resolution.

The President: It is moved and seconded that Mr. Merrill and Mr. Dessau be appointed a committee to draft a resolution and submit it to the Association this afternoon.

The motion was adopted.

Mr. Miller: I renew my motion made earlier in the day

that the paper of Judge Cobb be printed and that the Secretary be directed to mail a copy to each member of the Legislature. I think that ought to be done; that a copy ought to be mailed to each member of the Legislature with such other information as the committee may be able to give it. I think it ought to go to the members of the Legislature with the bill read by Judge Barrow. It may be introduced at the next session of the Legislature. Whether it is the bill adopted by the committee of this Association or not, it is possible that it may be introduced, or a bill on the lines suggested by Judge Barrow, and in that event it should be before the Legislature.

Mr. Meldrim: I would suggest to my friend Mr. Miller (I agree with him fully), that if this committee is to be raised, upon that committee will devolve the duty of sending out a proper report to the members of the Bar throughout the State, as well as presenting the final result of their labors to the Legislature, and would it not be better to confer upon that committee this general duty and not confine it so exactly, but say that paper or so much of it as they may deem necessary, together with their suggestions, in the form of a report.

Mr. Miller: I will withdraw my motion.

Mr. Lumpkin: I move that Brother Miller be added to that committee with Brother Dessau and Brother Merrill to straighten out that resolution.

The President: I will add Mr. Miller to that committee.

The Secretary: As it is a quarter to one o'clock, and there are certain miscellaneous matters before the Association, I move that the remainder of the program be deferred until this afternoon.

Motion adopted.

The Secretary: The President has handed me a list of the following committees, which I will now read:

Committee on Nomination of Officers: A. P. Persons,

Chairman; Joel Branham, J. Hansell Merrill, W. K. Miller, S. B. Adams.

Committee on Registration of Land Titles: Washington Dessau, Chairman; T. A. Hammond, Warner Hill, Henry R. Goetchius, Sylvanus Morris.

Délegates to the American Congress of Tuberculosis: W. E. H. Searcy, Jr., Chairman; B. S. Miller, John W. Bennett, W. W. Bacon, Jr., W. A. Charters.

Mr. Dunham: The topic under discussion, just acted on, has reached that stage that I think we all ought to be perfectly free and not throw any bouquets at each other. We all recognize that the Supreme Court business has grown to that extent that it makes it embarrassing sometimes for the court. I am quite sure that the personnel of that court is of such a high moral character, that if they are forced to make case decisions, and not given time to give the consideration necessary to reflect credit upon their knowledge of the law and the standing of the bench, they would not hold the position. We all recognize that it is necessary to make some changes in our judicial system, and we are all willing to do anything we can, and in some way we ought to make our position known. I do not approve the motion to appoint any committee, no matter from whence, or however wise its members may be, which is delegated with power to draft a bill to submit to the representatives. They ought to make their report to the Association. The bill, when drafted, ought to be submitted to the Association. The influence of the Bar Association is very great, and if we are to preserve it we should be very cautious; so I hope that the matter will be seriously considered after the report of the committee has been made, and I think the committee should not be delegated the power to frame a bill and draft resolutions for us. Their report should be made to this body, and this body should accept it or reject it, and indorse it and advocate it before the Legislature if we accept, or modify it if we disapprove it.

19 GA Bar Association Reports 1902 Meeting

“The Judicial System of Georgia: Its Defects; what Changes are Necessary to Bring about a more harmonious and orderly system and to relieve the Supreme Court”

The Georgia Bench and Bar

Chapter 21

“The Establishment of the Court of Appeals: The Completion of Structure”

APPENDIX I.

THE JUDICIAL SYSTEM OF GEORGIA: ITS DEFECTS; WHAT CHANGES ARE NECESSARY TO BRING ABOUT A MORE HARMONIOUS AND ORDERLY SYSTEM AND TO RELIEVE THE SUPREME COURT.

PAPER BY
JUSTICE ANDREW J. COBB
OF THE SUPREME COURT OF GEORGIA.

While the subject selected for discussion involves the entire judicial system of the State, I shall confine myself to that part which relates to the Supreme Court.

Any alterations required to bring about a more harmonious and orderly judicial system necessarily involves the court of last resort, and while all of the amendments may not have for their primary object the relief of this court, any change which will bring about harmony and order will tend to that result.

The phraseology of the subject would indicate that it was no longer an open question that there was a necessity to relieve the Supreme Court. Are we justified in assuming that this is no longer an open question? Can we profitably devote ourselves to the discussion and determination of what changes should be made in the organization or jurisdiction of the court until the conditions are shown to be such that the people of Georgia can be brought to the conclusion that the interests of the public demand that the laws in reference to the court should undergo modification? The people will never be so satisfied until they see the bar of the State united in opinion on the subject. Opposition to any proposed amendment of the law by even a small

minority of the bar, composed of members of influence and ability, would probably result in a defeat of the measure.

It is therefore important that at the outset of a movement to bring about a change of the law for the purpose above indicated those who believe that such a change is wise or needful should be in a position to maintain successfully this contention.

It is perfectly natural that the judges of the court should be the first to apprehend that the mass of business before it is such as to seemingly interfere with a proper disposition of the cases in the time prescribed by law. While this fact may be ever so apparent to the judges, it must not be expected that the people, or even the bar, will be ready to accept as conclusive the mere opinion of the judges, unsupported by the facts upon which it is based. The unwillingness to accept and act upon such an opinion is not to be attributed to any want of confidence in those expressing it, but rather results from the fact that human experience has demonstrated that the most conscientious sometimes fail to see that their apparent interest in the public welfare has for its foundation a desire prompted primarily by personal considerations. The facts upon which the opinion is based should be submitted to the bar, and if the members of the bar upon these facts reach a similar conclusion, it is more than probable that upon a proper presentation of these same facts to the people or their representatives the necessity for relief will be recognized.

It is of course impossible to present in the limited time set apart for this discussion all the facts that could be collated for the purpose of showing that there is some change in the law needed to enable the Supreme Court to maintain completely and perfectly its usefulness and efficiency. Attention will now be called to some of them.

In 1890, 517 cases were returned to the two terms of the court; 399 were disposed of by judgments of affirmance or reversal; and 148, or about twenty-seven per cent., were withdrawn or dismissed.

In 1894, 723 cases were returned; 626 were disposed of by judgments of reversal or affirmance; and 97, or about thirteen per cent., were withdrawn or dismissed. The decreased percentage of withdrawals and dismissals during this year is, to some extent, to be accounted for by the passage of the acts of 1892 and 1893 (Civil Code, §§5536, 5569), regulating the practice in the Supreme Court.

In 1897, which was the first year after the number of justices was increased to six, 876 cases were returned; 755 were disposed of by judgments of affirmance or reversal; and 121, or about fourteen per cent., were withdrawn or dismissed.

In 1901, 991 cases were returned; 898 were disposed of by judgments of affirmance or reversal; and 93, or a little less than ten per cent., were withdrawn or dismissed. 590 cases were returned to the October term, 1901, and on June 16, 393 cases had been returned to the March term, 1902. Before the present term is closed the aggregate number of cases returned to the two terms will exceed 1,000. Of the 983 cases which are already on the dockets, 66, or a little less than seven per cent., have been withdrawn or dismissed. Of those remaining, in 136 the record is silent as to the amount involved; 324 involve over \$500; 52 involve between \$250 and \$500; 88 involve between \$100 and \$250; 54 involve between \$50 and \$100; 52 involve \$50 or less, and of this last number twenty are cases against railroad companies for killing cattle, in which the railroad company is plaintiff, in error. 201 are criminal cases, and of this number 83 are cases involving offenses below the grade of felony. On June 16 there were on the dockets undisposed of 179 cases, and there will probably be returned to the present term about twenty more cases, which will make the number necessary to be decided before the term closes about 200. It is hardly probable that the work of the present term will be completed before August 15.

The following shows by terms the number of cases in which opinions were filed as well as those in which head-notes only

were written, from the March term, 1893, to and including the March term, 1901, a period of eight and one-half years, or seventeen terms.

	Opinion Cases.	Head-note Cases.
March term, 1893	167	142
October term, 1893	101	80
March term, 1894	147	253
October term, 1894	117	92
March term, 1895	228	180
October term, 1895	128	83
March term, 1896	201	237
October term, 1896 } to Jan. 1, 1897 }	57	86

(The foregoing terms are reported in the Georgia Reports, beginning with 91 Ga., p. 333, and ending in the 100 Ga., p. 105.)

	Opinion Cases.	Head-note Cases.
Jan. 1, '97, to March term, '97	39	11
March term, 1897	376	131
October term, 1897	167	92
March term, 1898	339	123
October term, 1898	209	52
March term, 1899	272	153
October term, 1899	229	179
March term, 1900	271	183
October term, 1900	219	152
March term, 1901	263	143

(The cases decided from January 1, 1897, to the October term, 1901, will be found reported in the Georgia reports, beginning with 100 Ga., p. 105, and ending with the 113 Ga.)

On January 1, 1897, the court was reorganized under the constitutional amendment of 1896, increasing the number of justices from three to six.

During the period beginning with the March term, 1893, and ending December 31, 1896, a little less than four years, 2299 cases were decided, 1146 opinions were filed, and in 1153 cases head-notes only were written.

During the first two months' existence of the reorganized court, from January 1, 1897, to the March term, 1897, 50 cases were decided and 39 opinions written.

From the beginning of the March term, 1897, to the end of the October term, 1900, exactly four years, 3147 cases were decided, 2082 opinions were filed, and 1065 cases were decided on head-notes.

In the latest published Georgia Report (113), which contains all the cases decided during the March term, 1901, there are 263 opinions and 143 head-note cases.

It is apparent that the number of cases required to be decided is each year steadily increasing; this increase resulting from two causes, the total number of cases returned becoming greater and the number withdrawn or dismissed less.

During the four years immediately preceding the reorganization of the court opinions were filed in less than fifty per cent. of the cases decided, and at the March term, 1894, opinions were filed in less than thirty-seven per cent.

During the four years immediately following the reorganization of the court opinions were filed in more than sixty-six per cent. of the cases decided, and at no term were the cases in which opinions were filed less than fifty-seven per cent.

From 1897 to 1901 the court has each year been in session continuously from the first Monday in October until the latter part of July, and in several years an adjournment was not had until nearly the middle of August. The working hours of the court for hearing argument and consultation have been, since October, 1897, from 9 A.M. to 1 P.M. and from 3 P.M. to 5 P.M. in the fall and winter, and 6 P.M. in the spring and summer. These hours, however, do not represent all the working hours of the justices. The individual justice, when engaged in

the preparation of opinions, does not confine himself to these hours, and at this time, as well as when engaged in consultation, often finds it necessary to extend his hours of work beyond those above named. These hours of work are very different from those of the King's Court in England, at least at one time in English history. "You are to know," said Fortescue, the chancellor of Henry VI., "that the judges of England do not sit in the King's Court above three hours in the day, that is, from eight in the morning till eleven. The courts are not open in the afternoon. . . . The judges, when they have taken their refreshments, spend the rest of the day in the study of the laws, reading of the Holy Scriptures, and innocent amusements at their pleasure. It seems rather a life of contemplation than of much action. Their time is spent in this manner free from care and worldly avocations."

From October, 1898, until February, 1900, all the justices presided in every case. The accumulation of business compelled the court to abandon this plan and hear arguments in division. Under this system the division which hears the argument, or to which the case is submitted, examines the record and agrees upon a tentative decision, and the justice to whom the case has been assigned makes another examination of the record and writes an opinion, which is read to all the justices. If the division which has determined the case is satisfied that the opinion submitted properly deals with the case as shown by the record, and all the justices agree that the law of the case is correctly set forth, the opinion is filed. If the opinion is not satisfactory to all the justices present, the case is re-examined by them. It is not uncommon for this examination to result in another opinion being prepared, or the one first submitted being substantially changed. It is and has been the earnest purpose of all the justices to avoid, as far as possible, decisions by a divided court; and when such a result seems probable, cases are often re-examined by all the justices again and again. When, however, a decision by a divided court is inevitable, one of the justices writes an opinion

expressing the views of the majority, and the dissenting justices, if there is more than one, agree which one shall express their views.

The record in each case is closely examined twice. First, by the justices of the division hearing the case, which is always never less than two and generally three; and, second, by the justice who is to write the opinion. If there is any difference among the justices of the division hearing the case, the record is again examined by all the justices present for general consultation.

For many years it has been impossible to hear oral argument in all the cases returned to the October term before the expiration of that term; but until 1901 all of such cases were heard orally during the March term, if counsel desired to be so heard. In 1901 the court felt constrained to withdraw this privilege. In 1902 the court felt compelled to again withdraw this privilege, and in addition to this counsel in cases returned to the March term were requested, so far as they could consistently do so, to submit their cases on briefs. The facts which were thought sufficient to justify this request were set forth in the preamble to the order of March 19, 1902, and were in substance as follows: There were 160 cases of the October term, 1901, yet to be disposed of. The number of cases then on the dockets of the March term, 1902, was 292, which, added to the number of additional cases which would probably reach the court during the March term, made an aggregate of 545 cases to be disposed of between March 19 and the date of adjournment in the summer. Attention was called to the fact that the court reviews by direct bill of exceptions the judgments of 137 superior courts and about 40 city courts.

The highest evidence that the bar thoroughly appreciated the conditions that surrounded the court was that out of 297 cases 256 were submitted on briefs, and in nearly all of the forty-one cases in which oral argument was not waived the counsel interested therein had waived the privilege in other cases, but felt

constrained to insist upon it in some one or more of their cases, on account of the peculiar character of the questions involved.

The generous response of the bar to the request of the court in the order above referred to demonstrates the cheerful willingness of the bar to respond to all proper appeals by the bench where the usefulness of the court is involved.

The right of counsel to be heard orally is an important right and one highly regarded, and justly so, by all counsel who have cases of importance and understand their cases; and a court can ill afford to dispense with oral argument by counsel thoroughly prepared to present a case. I refer to the right of counsel to be heard orally, and I use the word *right* advisedly. If it can not be demonstrated that this right is guaranteed in the constitution, it can certainly be shown that there is, and has always been since the establishment of the Supreme Court, a right under the statutes of the State to be heard orally in all cases that can be so heard during the term to which the cases are returnable.

After the term has expired, however, the right to an oral argument is gone.

It is more than desirable that the business of the court should be such, not only that oral argument may be had in all cases, but also that every case shall be heard by a full bench of six justices, and the record in each case examined in a consultation in which all of the justices participate. The court will never be able to attain its full usefulness until this can be done.

Not only will a state of affairs authorizing this never arise under existing conditions, but, on the other hand, in a few years a portion of the cases of the October term will be heard orally during that term and the remainder go over to the March term. The greater part of the March term will necessarily be consumed in deciding these cases, and at the end of the March term a portion—probably a small portion—of the cases returnable to that term will be heard orally and the remainder go over to the October term for decision. The court will be compelled, as it was prior to 1897, to dispose of cases involving intricate

legal questions by a bare written synopsis of the points decided.

Some cases can be properly disposed of by head-notes. When the case is controlled by well-settled legal principles, or where the evidence is conflicting, and the case is one where the discretion of the trial judge is controlling, it is a waste of time and energy to write an opinion, and all such cases are properly head-note or memoranda cases.

It is to be greatly deplored, however, whenever a court of last resort finds itself confronted with a status where it is compelled to announce its judgment in a case involving novel, intricate or unsettled legal questions in a dogmatic statement, unsupported by reasoning, either original or the result of research. No court, no matter what may be the learning and ability of its constituent members, can long maintain its reputation under such circumstances.

If the court were to adopt the plan of deciding the cases exclusively on head-notes, even then the time would come when all the cases could not be disposed of by the end of the second term, and such as were not decided by that time would have to be stricken from the docket, standing affirmed by operation of law.

If the opinion is entertained by some that the usefulness of the court and the interests of the public demand that some measures should be taken to relieve the Supreme Court, of at least a portion of the business now allowed to come before it, can it be said, in the face of the facts above stated, that this conclusion is altogether unfounded? Are the members of the bar satisfied that some system of relief should be adopted?

If the bar is so satisfied, the next question is of what shall that relief consist?

Numerous suggestions have been made. The number of such suggestions is but evidence of the thoughtful consideration that the subject is receiving. Let reference be briefly made to some of them.

An increase in the number of justices and a consequent increase in the number of divisions of the court has been suggested. Some favor an intermediate appellate court, from which a writ of error to the Supreme Court will lie only in certain cases. Among those who favor this plan there is a difference of opinion as to whether the judges of this court shall be appointed as such, or whether the court shall be presided over by judges of the superior and city courts, and also whether there should be only one of such courts or several sitting in different portions of the State. It has been said that there should be no writ of error to the Supreme Court in misdemeanor cases nor in felony cases where the jury may by recommendation reduce the punishment to a misdemeanor penalty, nor in cases from city courts where less than \$500 is involved, nor in cases originating in the justice's court, nor in cases originating in the court of ordinary where less than \$500 is involved.

Limiting the jurisdiction of the court by providing that no case involving less than a given amount, no matter where originating, shall go to that court unless it involves given questions, is a plan advocated by some.

Permitting oral argument only in cases involving more than \$500 is another suggestion.

Restricting the jurisdiction of the Supreme Court to cases of a certain class, depending upon the character of the questions involved, has also been suggested.

It has also been said that relief to some extent might be had by abolishing the pauper oath as a substitute for payment of costs and requiring counsel for plaintiff in error in each case to certify that the case is not carried up for delay only, and that he believes the assignments of error are meritorious.

Another suggestion is that the law be so changed that in no case where a verdict has been approved by the trial judge shall the question of the sufficiency of the evidence to support the verdict be afterwards inquired into.

Many other suggestions have been made, and others will probably be made during this discussion.

It is not my purpose at this time to advocate any particular line of relief, or to express approval or disapproval of any of the suggestions above referred to or any others that have been or may be made.

The moment the General Assembly or the people, as the case may be, are satisfied that relief is needed, the inquiry will at once be made, What is the character of the relief needed? This question will be addressed to the members of the bar, and an answer from them will be expected.

It will be a waste of time to go before the General Assembly advocating either a statute or a constitutional amendment until the bar of the State are practically united in favor of some plan. The various plans suggested and that will be suggested show a difference of opinion among the members of the bar. No one, it is to be presumed, is wedded to any particular plan.

All plans should be carefully considered and the best selected, if there be such, or one devised by combining two or more, or a new plan evolved from all the suggestions. The bar of the State must go to the General Assembly with no differences of opinion as to the necessity for relief or of the general character of the relief.

How are the bar to be brought together on this subject? Let a committee be appointed small enough to insure active work, but at the same time large enough to be representative of the entire bar of the State, not only territorially but also as to all classes of litigation in the courts of the State. Let this committee, after having requested through the public prints suggestions from all members of the bar, as soon as practicable after the adjournment of the association meet and agree upon a plan and draft a bill to carry the same into effect. Have a printed copy of this bill mailed to every lawyer in Georgia, with a request from the committee that he carefully read the same and forward to the committee by a day stated any suggestions that

may occur to him that would tend to perfect the plan or bring about the desired result. After the expiration of the time given for replies, let the committee meet and consider carefully all the suggestions made, and in the light of the same make a final draft of the bill. After a copy of this final draft has been published, let the committee see to its introduction in the next General Assembly, requesting the privilege to appear before the proper committees in advocacy of its passage.

This committee should be composed exclusively of active practitioners of the law. While the judges might with propriety be called upon for suggestions, and what they say will, no doubt, be considered, the final decision as to what is the proper measure should be a conclusion of the bar, the direct representatives of those whose rights are to be passed upon by the court. The appeal to the General Assembly, and, if need be, to the people, should not be subject to the criticism that it is merely a scheme of the judges to be relieved of labor, in order that they may live at the public expense with less exertion and greater comfort. Let it be made manifest that it is an appeal from the bar in behalf of all who are interested in the enforcement of law and its due administration, to make more perfect and to render more efficient the instrumentalities through which justice is judicially administered.

No public officer has a right to expect or demand ease or comfort while in the discharge of official duty, but the public are interested in not requiring more of an officer than a faithful, diligent and intelligent person holding such a position may be reasonably expected to perform. The bar and the people are more vitally interested in the question under discussion than the individuals who may, for the time being, be the justices. The individuals die or retire and others take their places, but the court overburdened with business still remains, and a court in such a condition, no matter what may be the character, the habits of industry or learning of its members, can never accomplish the

best results, either as to the decision of the particular controversy, or as to the promulgation of the rule for future conduct.

The united appeal of the Georgia Bar, composed as it is of men of character, ability and learning, in behalf of any measure of law reform will not go unheeded, whether it be to the General Assembly or to the people.

APPENDIX K.

THE JUDICIAL SYSTEM OF GEORGIA; ITS DEFECTS;
WHAT CHANGES ARE NECESSARY TO BRING ABOUT
A MORE HARMONIOUS AND ORDERLY SYSTEM, AND
TO RELIEVE THE SUPREME COURT.

PAPER BY
WILLIAM K. MILLER
OF THE AUGUSTA BAR.

Mr. Chairman and Gentlemen:

This Association and the public generally are under an obligation to the Committee on Judicial Administration and Remedial Procedure for its report to this Association of last year. It marks, I believe, the beginning of an agitation in regard to the courts of Georgia which will end in a decided advance in the administration of public justice, and will tend to elevate our courts more and more in the respect and confidence of the people.

The conditions confronting the committee were such that they felt justified in reporting that the courts in Georgia were "without form and void"—were mere "patchwork palaces"—"and without that mutual relation" "that should characterize the courts of a great State." And further, that the unlimited right and repeated appeals permitted in small cases was a waste of judicial machinery, and they accordingly suggested as a remedy, where no constitutional question was involved, a limitation on this power of appeal in civil cases under \$500, so that no case could have but one appellate trial.

Under the action of the Association this report is now the subject of general discussion. In some particulars I am in entire accord therewith, principally as to what is said as to criminal mat-

ters, and that no case should have as a right more than one appellate trial. In other respects I think the report of the committee could be supplemented. Viewing the subject-matter, it naturally divides itself into a consideration of our courts, and of appeals therein in small cases.

First. As to these appeals. The evil to be corrected does not lie so much in the right of appeal, as it does in its excessive exercise—an exercise growing largely out of a want of confidence in the judgment of the lower court. For example, the losing party in a litigated case in a justice court is generally dissatisfied with the decision, and almost always appeals. The pauper affidavit is a convenient plan—even if it does not at times offer an inducement to appeal, for no other reason than to delay the opposite party.

This method of appeal, from both the superior and justice courts, is not sufficiently guarded. True, the losing party in a justice court has to make oath that he does not appeal simply for the purpose of delay, and that he is advised he has good cause for appeal, but he does not have to state by whom he is so advised. Any such appeal should at least be accompanied by the *certificate* of the attorney at law of the losing party, showing upon what ground the appellant was advised he had good cause for appeal. Such appeals should only become operative when sanctioned by the judge of the court to which the appeal is taken. For example, when the appeal *in forma pauperis* is to the superior court, it should not become operative until allowed or sanctioned—as in *certiorari* cases—by a judge of the superior court. A similar appeal or exception to the Supreme Court from the superior court should not be allowed until it receives the approval of the judge of the superior court, or a judge of the Supreme Court.

A REMEDY.

Irrespective of how guarded appeals may be, still one of the *great evils to be remedied* lies in the system giving civil jurisdiction to the justices of the peace. If this jurisdiction were taken away and given to a properly organized county court—such as shall be hereinafter suggested,—I believe that a great advance in the administration of justice would be secured. Certainly the excessive

number of appeals from justice courts would come to an end, and our Supreme tribunal would be relieved accordingly. It is hard to improve upon the common law—the common sense and experience of the Anglo-Saxon race,—and I feel that we have not improved upon it by extending civil jurisdiction to justices of the peace. He was, in times past—what his name implies—an officer to keep the peace. It was an honorable office, and generally held by the foremost man of the shire or county in England. A justice could issue warrants for arrest, etc., but when it came to holding court and trying cases, at least two of the justices were required to be present. For example, among the courts of England directed to be held in each county was the Court of General Quarter Sessions and Appeals. It was held four times a year, and by two or more justices of the peace, one of whom had to be of the *quorum*—that is, noted for his learning and ability. Their jurisdiction extended to the trying of felonies and trespasses. 4 Blackstone's Commentaries, Wendell's edition, page 271, and 13 American & English Encyclopedia of Law, page 10.

If we still retain justice courts and their civil jurisdiction, our system would be much improved if these courts were required to be held by two or more justices, and the concurrence of at least two of the justices as necessary to any decision that might be rendered—with an appeal on questions of law only,—unless the justices could not agree, when the whole case might be appealed to the superior court. If a judgment had to be rendered by two justices of the peace—salaried officers of the county, and not paid by the fees of the litigant,—justice would be more impartially administered. There would be fewer appeals, as the public would have more confidence in the court. When appeals were taken they should be heard without unnecessary delay, but this can never be accomplished so long as the law remains as at present, with appeals returnable to a term of the superior court six months off.

It is still a reproach to the great State of Georgia that its laws are in such a condition that no court can render a judgment upon a promissory note for \$1,000.00 in any county of the State where no city court exists, under six months and twenty days; and this,

when the defendant admits he has no defense. No excuse can be offered to the lay mind for such impotency. This calls for some remedy, and possibly it is included in the suggestion of the committee, that our courts are "without form and void."

Even as far back as the time of Lord Chancellor Burnell, A.D. 1282, when the statutes *de mercatoribus* and Acton Burnell were passed, if the debt was acknowledged before the mayor of the town, upon default in the payment, execution issued immediately, and upon application to the chancellor the goods and chattels, lands and tenements of the defendant would be seized and sold on execution.—Campbell's Lives of the Lord Chancellors, vol. 1, p. 163. Yet, now we have to wait six months and twenty days to get a judgment, and then another month to advertise and sell the property, if any can be found after all this delay.

Second. The courts generally.—Considering the condition of the courts themselves, and their mutual relation to and with each other, are they "without form and void," as reported by the committee? I do not think so. The Constitution, article 6, section 1, Code 5831, provides that "The judicial power of this State shall be vested in a Supreme Court, superior courts, courts of ordinary, justices of the peace, commissioned notaries public, and such other courts as have been, or may be, established by law." Our Supreme Court has said, that "A court is composed of a judge or judges, and subordinate officers. Courts of law usually have a jury to decide questions of fact. It is not necessary, however, that to be a constitutional court, a jury should be provided to determine the facts." *Dunagan v. Stradler*, 101 Ga. 478, citing 72 Ga. 812; 73 Ga. 377.

Under the Constitution we have a Supreme Court for the correction of errors, a superior court of original and unlimited jurisdiction in each county, from which appeals lie in all cases to the Supreme Court, and sundry inferior courts, from whose judgments appeals lie to the superior court and on to the Supreme Court. They have certain relations to and with each other. The Supreme Court can direct the judgment to be rendered by the superior court, and this court has in turn a general supervisory jurisdiction over inferior courts, and can direct the judgment of these courts in sun-

dry cases. Truly, a judicial coterie, which has worked harmoniously. While great improvements could be made in our system, yet it will bear comparison with those of the majority of the States of the Union. The Constitution of the United States, in defining the Judicial Department, provides that it "shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time make and establish." We are all familiar with the scheme of these courts, thus pointed out by the Constitution, and established by Congress, and this scheme has been largely followed by all the States of the Union, and by the State of Georgia.

If our whole judicial system is "a patchwork palace," that requires extensive overhauling, the first thing to be considered is, what kind of a judicial palace shall we construct. Shall it be one that is based on the State or the county as a unit? Shall we follow what I might call the modern English or the American system?

For a thousand years, or more, prior to 1875, there were a great many courts in England exercising concurrent and conflicting jurisdiction. It was at times a very serious question as to when and where the jurisdiction of one commenced or another ended. Accordingly, the English people, in 1875, determined that, instead of having so many courts, they would have only one. Thereupon a statute was passed declaring that all existing courts should constitute a *single tribunal*, known as the Supreme Court of Judicature. This court was divided into two divisions, one Her Majesty's High Court of Justice, and the other Her Majesty's Court of Appeals. The former exercised original jurisdiction, the latter appellate power. The High Court consisted of twenty-one judges—equity judges, common law judges, and judges of probate, divorce, and admiralty. The Court of Appeals consisted of fourteen judges, some of whom were members also of the High Court. This High Court was subdivided into five divisions, corresponding to the previously existing courts of Common Law and Equity. One division was termed the Chancery Division, and was presided over by equity judges. Another was Queen's Bench Division, the Common Pleas Division, the Exchequer Division, the Probate, Divorce, and Admiralty Division. Judges could be transferred from one division

to another. The Act provided that in every civil case law and equity should be concurrently administered, and that equitable rules *should supersede* those of the law whenever there was any conflict between them. Causes could be heard by a single judge. All appeals were heard within the court itself, either by the whole or a divisional court, consisting of not less than three judges. Provision was also made for holding circuit courts throughout the kingdom, as occasion might require. See Chase's Blackstone Bank's ed. 651, n.

The foregoing is a mere outline of the English system of courts, under the Act of 1875, such as I have been able to gather from the limited sources of information at hand. It proceeds upon the theory of one court for the entire kingdom, with subdivisions thereof for different places and character of cases. The State here is the basis and not the county, while with us the county has always been the basis upon which the court of original jurisdiction rested. Suppose some such plan were applied to the State of Georgia. The first thing we would encounter would be a saving in the cost of maintaining our courts, and a consequent lessening of taxation. A superior court in each county is a great expense. With a competent county court, as hereinafter indicated, to determine many of the local matters that would arise from time to time, why should not three or four agricultural counties be grouped together so as to form a district wherein a superior court should sit with original jurisdiction over them all. The expense of attending witnesses could be obviated by submitting causes to referees to find and report the facts.

Further, with a county court in each county, all the superior courts in Georgia could be amalgamated into one superior court, divisions of which could sit at the principal cities and towns of the State, with judges rotating as assigned by the chief justice of the Supreme Court. By such a plan, now that judges are elected by the people, all local influences would be removed. The occupant of the bench would be entirely impersonal. He would be truly a judge to administer the law. Many appeals could be heard by three judges of the circuit bench. They should settle appeals on all ques-

tions of fact, so that the Supreme Court should hear only questions of law. It would be well to carefully consider this plan, and see if we cannot apply some of its good points to our present system.

The eight suggestions of the committee as to civil matters do not tend to improve upon the form of our courts, but rather seek to limit the right of appeal. If these suggestions of the committee should become law, the effect would be:

1. To relieve the Supreme Court from many unnecessary appeals in cases under \$500.

2. To increase somewhat the labors of the superior court judges. These would not be as largely increased as might be imagined, because as matters now stand, the superior court judges have to decide these cases before they can go to the Supreme Court. Their position, however, would be changed in many instances, from that of a *nisi prius* judge to that of a reviewing judge, the latter requiring more study and reflection than the former.

3. To increase the already overcrowded dockets of the city courts with appeals from justice courts, for only in the country counties where there are no city courts could appeals be taken to the superior courts. City courts, with several terms a year, are the outgrowth of the protest against the long intervals between the sittings of the superior courts, and are supplementary to those courts, so as to rapidly dispatch business in cities. These courts have now as much business to dispose of as they can readily undertake, and to further burden them would be to impair their usefulness.

4. To allow cases exceeding \$500 originating in the city court to be there tried and then appealed to the superior court, and then to the Supreme Court, as suggested by the committee, is to give these cases two trials on the facts, besides an appellate trial. This should not be done.

The scheme of the committee leaves the final decision on appeals from the city courts and courts of ordinary in cases under \$500, and in all justice court cases, to one judge of the superior court. I think they ought to be decided by at least two judges. Many cases under \$500 are important, and the well-known attitude of the circuit court judge to *certiorari* cases is such that litigants will not

feel satisfied to submit their final appeal to one judge alone. It is to be borne in mind that the declared purpose of the committee in making these suggestions was not to lessen the labors of the Supreme Court, but rather to save the expense incident to appeals in small cases. This is of minor importance. The people realize the necessity of having fixed and definite laws, and that cases can not always be decided harmoniously and upon proper lines, *unless a certain amount of time is devoted to each case*. They are willing that the Supreme Court should take this time, and accordingly desire to lessen the unnecessary labors of that high tribunal. That is manifested by the recent constitutional amendment increasing the number of judges of the Supreme Court. The people are more interested in the practical and efficient administration of justice than in its cost to each litigant. If our courts seem void or ineffective to the committee, it may possibly grow out of the parsimonious spirit of the past under which they were organized and are now maintained. The form is sufficient, but the provision for maintenance is niggardly. To pay the judge of a great court, one with full jurisdiction over life, liberty and property, less than the salary of an efficient clerk, is to lower its tone and usefulness to society. Things are largely appreciated by what they cost. To make justice cheap and powerless, is to detach from its proceedings and utterances that respect to which it is justly entitled. The people are prepared to remedy all the defects in our judicial system. It is our duty to show them how it can be done, but we should not start by tinkering with the courts, solely to lessen the costs to litigants, but rather to increase their effectiveness, to make each bear its own proper burden, and to save the State and parties litigant from delay, that great inaction which carries with it the danger of the loss of practical justice in each case. Reasonably speedy and exact justice is what the people wish, and any procedure which will tend to accomplish that result is the end to be desired and will be willingly paid for.

Relative to the form of our courts, it might sound better, if we did not have, for example, city courts in some of our larger cities, but had several divisions or departments of the superior court, such

as the criminal and civil, the latter possibly subdivided into law and equity. The present city courts of Atlanta, Savannah and Augusta, and others, are practically nothing but superior courts, without affirmative equity jurisdiction, and we might as well call them superior courts and provide by a general law that, according to the population in any county, there should be as many subdivisions and judges of the superior court for such county as the public business required. Under our present system the *trouble* is not so much with the form, *as with the delay* in getting the machinery of the court—its judicial power—in motion, and in the character of the case that each court is to try. For example, why should the superior court meet only twice a year in each county? While this might have been sufficient fifty years ago, and even now in some few agricultural counties of the State, yet, there is no reason why it should not sit from four to six times a year in the commercial counties. It sits three times a year in Chatham county, which county is now a circuit to itself. Consider a moment. By the Judiciary Act of 1799, the superior courts in Georgia were required to sit twice a year, and for over a hundred years we have made no progress in this particular!

Further, why should the superior courts continue to entertain every kind of case that knocks at their door? It has done this for a hundred years. Is it not entitled to some relief? Could not cases involving under \$500 be tried in some smaller tribunal? I can perceive no reason why they should not, nor why ordinary cases should not be tried at the term at which they are brought, where the defendant has been served fifteen days before. If he needed time to prepare his defense he could get it by making application to the court. Speaking generally, the defendant knows as much about this case before he is served as he does afterwards. If we are to continue to have "terms" in the superior courts, it seems to me that rent cases are no more under the fostering care of the State than any other case of any other litigant, and that no priority or preference should be given in the trial of these cases. As a matter of fact, we have long since progressed beyond the necessity of having any terms at all, except possibly for county organization,

taxation, etc., when the grand jury might meet for such purposes. Why not have the court always open for the administration of justice, rather than theoretically open only for interlocutory equitable relief. Now that all distinctions of law and equity have been abolished, it seems to me that the acceleration of this kind of relief—interlocutory equitable relief—at the expense of others, is unjust.

In making the suggestion that the superior court should sit oftener than twice a year, I of course realize that some one may object on constitutional grounds, but when examined, I submit that this is not prohibited by the Constitution, and that the matter is entirely within the province of the Legislature.

The Constitution of 1877 provides, Code section 5849, that "The superior courts shall sit in each county *not less than twice* in each year, at such times as have been or may be appointed by law." There is no limitation here that the superior court shall sit only twice a year, but that it shall sit *at least twice*, which carries with it the idea that it may sit oftener, if necessary, to transact the public business.

Indeed, in *Boone v. The State*, 86 Ga. 108, the Supreme Court (page 116), in reference to the Act of 1879, touching the jurisdiction and mode of procedure of the superior courts in counties having a city of more than 10,000 inhabitants, and providing that two or more judges of the superior court may preside in banc, or that such courts might be held in two or more sections at the same time by different judges in separate rooms in the court-house or at the county seat, as might be convenient, say, "The Constitution requires *at least two sittings* of the superior court in each county, *but it does not prohibit more sittings to be held*, nor does it prohibit two or more sections of the superior court, presided over by different judges, sitting at the same time where the interests of the public require the same to be done so that justice should not be denied to any one; nor is it unconstitutional because it provides for this scheme only for counties containing large cities, the Legislature having the power to classify in general terms."

Therefore it had been decided that the Legislature could author-

ize the holding of special terms of the court for criminal business. 47 Ga. 553. The uniformity clause of the Constitution, Code, 5859, providing that the jurisdiction, powers, proceedings and practice of all courts, except the city courts, should be uniform, had no reference to the time when these courts shall sit, otherwise every superior court in Georgia might have to sit at the same time. In speaking of this section the Supreme Court say, in 95 Ga. 101, "That clause does not relate to the time and place of holding courts," and again in 102 Ga. 602, when this section was before the court, it was held to relate to uniformity in jurisdiction as to subject-matter and matters of practice, and not to uniformity in jurisdiction over territory. The court say that if this were not true the Legislature had not yet obeyed the constitutional mandate to establish uniformity in the jurisdiction of the courts.

The Code of 1895 further provides, that the superior court shall be held twice every year, at the several times prescribed by law (section 4340), or at such times as are now, or may be, prescribed by the General Assembly (section 4316). If the Legislature were to change these sections so as to remove the implied restriction against holding only two terms of the superior courts, and allow special laws to be passed in each circuit increasing the terms of the superior court in particular counties, or by a general law direct such courts to be held, say four times a year in those counties of the State in which there was a city having a population of over 10,000, the effect of these additional terms would be to do away with much of the present useless and unnecessary delay, and in many counties causes would be so rapidly disposed of as to avoid the expense to the public of continuing city courts. These, in many instances, could be abolished, and their business transferred to the superior court, which could be divided into as many sections as necessary.

Of course the judicial machinery required in such counties as Chatham, Fulton and Richmond, for example, on account of their wealth and population, would be entirely different from those of say Bryan, Forsyth and Columbia; yet the judicial scheme for all six counties would be alike as far as possible. In considering such

a judicial system, it is entirely safe to proceed with each county as a unit. This has already been the rule in Georgia.

The Judiciary Act of 1799 established in each county the superior and inferior courts. This latter court existed from that time in each county of the State until abolished in 1866. This court had jurisdiction over all county and probate matters, and was concurrent with the superior court in many particulars. It had a jury, but could not try cases involving title to land. It was presided over by five judges, the concurrence of a majority of whom was necessary to a decision.

Viewing this court as a State precedent, the good points of which ought to be utilized, and the policy of the State as indicated by the Act of 1879 as construed by the Supreme Court in *Boone v. State*, 86 Ga. 108, I submit the following as an outline of such a system of courts as would overcome some of the defects of the present. This would, of course, require sundry constitutional changes.

1. There should be a County Court in each county in the State, to have jurisdiction of all claims arising *ex contractu and ex delicto*, under five hundred dollars, and of all criminal cases, both felonies and misdemeanors, wherein a jury in that court might under the present law—as suggested by the committee—reduce the charge of felony to a misdemeanor. Such court should consist of one, two, or three subdivisions, and of one, two, or three judges, learned in the law, as the exigencies of the public business, civil and criminal, or population, might require in any particular county. This court should have jurisdiction and control of all county matters. One of the judges should try all civil and another all criminal cases, unless a jury was demanded; which jury should exist as a right in criminal cases, and in civil cases, when such a jury was demanded ten days prior to the trial of the issues of fact in that court. In all cases in which such demand is not made, the judge should try the case on the law and facts. In cases where demands for jury trials were made, a docket should be made up of such cases, and when a sufficient number had accumulated, say ten, such cases should be heard and disposed of, at the close

of the trials for criminal business, or at such other time as the presiding judge might appoint. This court should be always open. Jury cases should be called for trial at least once a month, and continued until the business was disposed of. One of the judges should at stated times and places, as fixed by the grand jury, sit to hear cases at different points in the county. From all judgments there should be an appeal on all questions of law and fact to the other judges of this court, and a judge of the superior court. If in any county such county court had only one judge, then the appeal should be to the judges of the superior court of that circuit in which that county is located, and if there were not two such judges in that circuit, then to the judge of that circuit and such other judges from an adjoining county court as might be designated from time to time by the Chief Justice of the Supreme Court to preside with the judge of that circuit to hear these appeals. This would provide for a reviewing court of three judges, but which could be held by two judges, one the judge of the superior court. Their judgment, or that of a majority, should be final, unless they disagreed when only two were present, or themselves desired to certify the questions at issue to the Supreme Court, or either of them considered that the question involved was of sufficient importance to have the judgment of the Supreme Court thereon, or that the contemplated judgment of the other was contrary to a unanimous decision of the Supreme Court, in which event they should certify the question at issue to the Supreme Court for decision.

2. There should also be in each county a court having the powers of a court of ordinary or probate court, with the administrative jurisdiction now established by law. Instead of being a separate tribunal, this court of ordinary should be amalgamated with the aforesaid county court, and its probate and county jurisdiction conferred on that court. Certainly in the larger counties of the State such county court would then have one, two, and three divisions—civil, criminal, and matters of administration. Also three judges, and all appeals from this court could be heard by the two judges who did not participate in the judgment com-

plained of, and a judge of the superior court. This would constitute the reviewing court on questions of law and fact, whose judgment would be final on all cases involving under \$500. If over, there could be an appeal on the law and facts to the superior court.

3. There should also exist in each county or in a district composed of three or four agricultural counties, a superior or circuit court to be composed of one, two, or three divisions, criminal and civil, as the necessities of any county may require, with unlimited jurisdiction both at law and in equity, as now regulated by law, except that it should not have original jurisdiction of claims arising *ex contractu* and *ex delicto* under \$500, but only an appellate and directory jurisdiction. Such superior court should be always open for the trial of causes. It should not meet at stated intervals or terms as we now have, except in such counties of the State where the business would warrant their sitting but twice a year, but in all counties wherein the population exceeded 15,000 they should be always open, and juries should be drawn to try issues both in civil and criminal cases as often as sufficient issues existed to require the action of a jury. All civil cases should be triable by the judge or the judges alone, unless a jury were demanded ten days before the trial of the issues when made up. The effect of having one or more divisions of the superior court according to the population of each county would be to do away with what are now termed city courts. There could be as many judges as there were divisions of the court, fixed according to population, and these judges could sit alternately from time to time in the several divisions, and also preside in the county courts. They should be required to rotate throughout the State, as prescribed by the Chief Justice of the Supreme Court, and their traveling expenses paid by the State. If a review was desired of any judgment rendered in any division of the superior court, a motion for new trial or rehearing should be made before the entire court, in all civil and criminal cases. This should be heard by at least two judges. If heard by only two and they disagreed, as to the judgment to be rendered, they should request the Chief Justice of the

Supreme Court to designate some other circuit judge to preside with them, and the judgment rendered should be final on all questions of fact, but from their judgment there should be an appeal to the Supreme Court upon questions of law.

4. A Supreme Court with the jurisdiction now established by law as an appellate court for the correction of errors aided by the superior court and county courts as above indicated, and with power to direct and control these courts in all decisions to be rendered.

5. In doing away with the terms of courts in the county and superior courts, each case should be heard and determined by the condition of its own record. All civil cases arising *ex contractu* or *ex delicto*, and the pleadings therein, should be brought in the county now required by law, and in accordance with the practice of the superior court. The petition and process should be served upon the defendant, requiring him to enter an appearance within fifteen days after service, and plead within thirty days. Such pleading might be either a demurrer, plea, or answer, and if the defendant failed to appear judgment by default should be entered against him, if a liquidated demand. If the defendant was not prepared to file his defense within thirty days, then he could obtain thirty days longer upon a certificate by his attorney that such time was necessary to prepare his defense. If he could not prepare his defense within sixty days, he could obtain longer time upon application to a judge of the court, setting out the character of his defense and the reason why he desired further time to prepare the same, when, if the circumstances required it, the judge could give him further time. As soon as a defense was filed, it would stand for trial before the judge or judges unless the facts were in issue and a jury demanded. Within thirty days after a decision was rendered upon an issue of law, an answer should be filed, either admitting or denying the allegations in the petition, or they would be taken as true and judgment entered thereon. When the issues of fact are made up the case would stand for trial before a jury, or before the judges without a jury, according as to whether or not the parties failed to demand a jury.

I am well aware that some of the changes herein proposed might be considered radical, but our present system does not conduce to the practical administration of justice. Our courts should be so organized as to assign to each its share in the administration of the public justice, which should be performed in a prompt and businesslike manner. The delay between the terms, is not only an insurmountable foe to the dispatch of business, but really tends to retard justice in many particulars, and also induces appeals from one court to another. By having appeals on the facts confined to the court itself, by an application for rehearing, before all the judges of the court, possibly other than the judge from whose decision the appeal is made, practical justice can be done, and much delay and expense saved to litigants. If followed by an appeal to the Supreme Court on the law of the case, more than half of the troubles of that tribunal would be eliminated at once. Much of what has been suggested could be accomplished by legislative Act, and without constitutional amendment, such as providing for four to six terms a year of the superior court in counties having cities of over 10,000 inhabitants, wherein such courts could be subdivided into divisions.

We should remember that the principles of justice do not change but their mode of application does—that what was satisfactory procedure one hundred years ago, is not so now—nor are our courts in line with the present American spirit of progress. We should endeavor to have them so administer the law, as to make them the preservers of our constitutional rights and liberties and the suppressors of all lawlessness and vice. To this end this Association should present to the legislature at its next session some definite plan for the reorganization of the judicial department of our State government—such as would give to our courts that energy and vitality necessary to challenge the respect and to hold the confidence of the people.

19 GA Bar Association Reports 1902 Meeting

“A Proposed Act Establishing District Court of Appeals”

APPENDIX J.

A PROPOSED ACT ESTABLISHING DISTRICT COURTS
OF APPEALS.

PREPARED BY
JUDGE POPE BARROW
OF SAVANNAH:

A BILL

TO BE ENTITLED AN ACT TO ESTABLISH THREE JUDICIAL DISTRICTS
IN THIS STATE, AND DISTRICT COURTS OF APPEALS THEREIN, TO
DEFINE AND REGULATE THE JURISDICTION OF THE SAME, AND OF
OTHER COURTS OF THIS STATE IN CERTAIN CASES, AND FOR OTHER
PURPOSES.

Section 1. Be it enacted by the General Assembly of the State
of Georgia, That three judicial districts be, and the same are, here-
by created in this State.

The First District shall be composed of the counties comprising
the Eastern, the Atlantic, the Brunswick, the Southern, the Albany,
the Middle, the Pataula, and the Southwestern circuits.

The Second District shall be composed of the counties comprising
the Augusta, the Northern, the Ocmulgee, the Oconee, the Macon,
the Chattahoochee and the Flint circuits.

The Third District shall be composed of the counties comprising
the Western, the Northeastern, the Blue Ridge, the Stone Mountain,
the Atlanta, the Cherokee, the Rome, the Tallapoosa and the Cow-
eta circuits.

Sec. 2. Be it further enacted by the authority aforesaid, That a
District Court of Appeals be, and the same is, hereby created in
each of said districts, which shall consist of three judges, of whom
two shall constitute a quorum, and which shall be a court of records

with appellate jurisdiction, as is hereinafter limited and established.
The judges of the superior courts and the constitutional city
courts in each of said districts shall constitute the judges of the
District Court of Appeals therein, and three of the same shall be
assigned to hold said courts by such rule and in such order as may
be determined by the judges of that district, as hereinafter pro-
vided; but in case of a failure of one to attend, two shall constitute
a quorum, with full power and authority of the court. The judge
of the superior court oldest in commission of those present at any
term shall be the presiding judge. No judge shall sit in the Dis-
trict Court of Appeals in any case tried before him in the court
below.

Sec. 3. Be it further enacted by the authority aforesaid, That one
term of said District Court of Appeals for the First District shall
be held in each year in each of the cities of Savannah, Brunswick,
Thomasville and Albany. That one term of said District Court of
Appeals for the Second District shall be held in each year in each of
the cities of Augusta, Macon, Columbus and Griffin. That one
term of said District Court of Appeals for the Third District shall
be held each year in each of the cities of Athens, Atlanta, Rome
and Newnan.

Sec. 4. Be it further enacted by the authority aforesaid, That
within ten days after the passage of this Act, it shall be the duty of
the Governor to call a convention of the judges of the superior and
city courts of this State, at the State house at Atlanta, at such time
within thirty days after the passage of this Act as he may design-
ate, and said convention shall make rules of practice in said court,
prescribe the form and style of its seals, and the form of writs, and
the other processes and procedures as may be conformable to the
exercise of such jurisdiction, as shall be conferred upon it by law.
The judges from each district in this convention shall fix the dates
of the terms of said District Court of Appeals in their respective
districts at the places hereinbefore referred to, and report the same
to the convention, by whom it shall be confirmed and entered upon
its minutes; and the terms thus fixed shall be the lawful regular
terms of said courts until changed by law, and shall designate the

three judges who shall hold the first term of said court, after which the court itself shall, before the adjournment of each term, designate three judges who shall hold the next term at the place which shall come next in order according to the regulations of the judges as aforesaid. The minutes of the proceedings of the convention of judges shall be signed by the presiding judge, and upon the adjournment shall be filed in the office of the Secretary of State.

Sec. 5. Be it further enacted by the authority aforesaid, That the clerk of said District Court of Appeals in each district shall be elected by the judges of the superior and city courts thereof, and the person receiving the highest number of votes shall be the clerk. The first election shall be held at the time of the convention of the judges hereinbefore provided for. Subsequent elections shall be held by a convention of the judges of the said superior and city courts of each district, to be held in their districts upon the call of the judge of the superior court oldest in commission at the time therein, at such time and place in said district as he may fix; *provided*, that the same shall be held not less than thirty days before the expiration of the current term. In case of a vacancy, the judges presiding at any term shall have power to fill said vacancy until a special convention of the judges of the superior and city courts can be called by the superior court judge who is oldest in commission in said district. In case of a vacancy it shall be his duty to call a convention of said judges at such time and place, within thirty days after the vacancy shall have happened, as he may designate. The regular term of said clerk shall be six years. He shall give a bond for the faithful discharge of his duties, in such sum as may be required by the rules of the general convention of judges hereinbefore provided for. The sheriff of the superior court of the county in which each of the cities herein named is situated shall be *ex officio* the sheriff of said District Court of Appeals, and it shall be his duty to attend the session of said court, and he shall have power to appoint such deputies and bailiffs as may be provided for by the rules of the judges established for said court.

Sec. 6. Be it further enacted by the authority aforesaid, That the said District Courts of Appeals established by this Act shall

have and exercise appellate jurisdiction to review, by appeal, all final decisions in the superior courts and in the city courts within their respective districts: granting or refusing a new trial; granting or refusing an application for an injunction or a receiver; dissolving or refusing to dissolve an injunction; or discharging or refusing to discharge a receiver; in all cases of *certiorari*; all appeals from justice's courts; and all misdemeanors.

Sec. 7. Be it further enacted by the authority aforesaid, That whenever any party in any case in the superior or city courts, jurisdiction of which by appeal is conferred upon the District Court of Appeals, shall desire to appeal to said court, it shall only be necessary for his counsel to state in writing within ten days after the decision or judgment complained of was rendered, whether in term or vacation, that he desires an appeal to the District Court of Appeals, stating the term to which it is returnable, and present it to the judge of said court, and file it with the clerk; whereupon it shall be the duty of said judge to order the clerk to transmit all the papers in the case to the next term of the District Court of Appeals for that district, which shall be held next after the expiration of twenty days from the date when said application for an appeal is filed in the clerk's office of said superior or city court, or to the next term succeeding that one, if the place is nearer or more convenient, at the option of the appellant. Within five days after such order is signed, the opposite party, or his attorney, shall be served with a copy of the petition for appeal and order of the judge. All cases in the District Court of Appeals shall be heard and determined upon the original papers, and a brief of the testimony adduced upon the trial in said superior or city court, approved by the judge who tried the case. When the decision complained of in said superior court or city court is the granting or refusing of a motion for a new trial, the brief of testimony used on the hearing of said motion shall be sent up without any other or further testimony or brief thereof. In all other cases the appellant shall be allowed to file, and present for approval, his brief of the evidence at any time prior to the first day of the term of the District Court of Appeals to which the appeal is returnable.

Sec. 8. Be it further enacted by the authority aforesaid, That no writ of error shall lie to the Supreme Court of this State from the superior courts or city courts thereof, in any case, jurisdiction of which is conferred upon the District Court of Appeals, but any party shall be entitled to an appeal to the Supreme Court from the decision of the District Court of Appeals, as provided in this Act, in the cases hereinafter mentioned. The right of exception *pendente lite* is not affected by anything herein contained, but when any case in which such exceptions are filed shall be appealed to the District Court of Appeals, they shall be subject to review therein, and if such case shall be appealed to the Supreme Court from the District Court of Appeals, error may be assigned upon the ruling and decision of the District Court of Appeals upon such exception. In cases in which a new trial is granted by the District Court of Appeals, but any other ruling or decision is also made affecting the rights of any party, exceptions to such other ruling or decision may be filed in said District Court of Appeals *pendente lite* within twenty days, and if said case should at any time thereafter be appealed to the Supreme Court, error may be assigned upon said exceptions.

Sec. 9. Be it further enacted by the authority aforesaid, That an appeal shall lie from the decision of the District Court of Appeals to the Supreme Court of this State, in all cases of refusal of a new trial by the District Court of Appeals. Such appeals to the Supreme Court may be allowed during the term, or in vacation, by any judge who took part in the decision, within ten days after the decision is made. The application need only state the case and pray that an appeal be allowed. Within five days after an appeal is allowed, the appellant shall present an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged, and shall specify such parts of the record as are deemed necessary for the elucidation of the errors assigned. If the recitals of fact in the said assignment of error are true, the judge who allowed the appeal shall approve the same, and order the clerk to send up such parts of the record as are therein specified, and such other parts as said judge may consider necessary to elucidate the errors

assigned. All such assignments of error and specifications of record shall be served upon the opposite party, or his counsel, and filed within five days after the same are approved. The appellee may, at any time within five days after the assignment of errors and specification of record are filed, apply to any judge who took part in the decision, and specify additional parts of the record, and said judge shall order the clerk to send up such parts as are thus specified. Both parties may appeal and assign error, and in such cases, only one copy of any part of the record need be sent up. If the judge should decide that the recitals of fact in the assignment of errors are true only in part, he shall, in his order of approval, designate such parts as are true, and they only shall be considered in the Supreme Court. The clerk shall transmit to the Supreme Court a certified copy of the assignment of errors and specifications of record, and order and approval, together with a certified copy of such parts of the record as are specified within fifteen days after the assignment of errors and specifications are filed in his office. In all cases finally determined in the District Court of Appeals, a mandate, or other proper process in the nature of a *procedendo*, shall be issued on the order of the District Court of Appeals to the court below, for the purpose of informing such court of the proceedings and judgment in the District Court of Appeals, so that further proceedings may be had in such lower court as to law and justice may appertain.

Sec. 10. Be it further enacted by the authority aforesaid, That in cases of appeals to or from the District Court of Appeals, where a *supersedeas* is desired by the appellant, the costs must be paid, and a bond taken in the court from which the appeal is taken, with good and sufficient security that the appellant shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal. But in all suits where the property in controversy necessarily follows the suit, as in real actions and trover, and in suits on mortgages, or where the

property is in the custody of the sheriff, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, the costs of the suit, just damages for delay, and costs and interest on the appeal. Judgment may be entered upon the said bonds as under existing laws. If the appellant shall file an affidavit that he is unable, from poverty, to pay the costs or give the bond, and that his counsel has advised him that he has good cause for an appeal, this shall operate as a *supersedeas*.

Sec. 11. Be it further enacted by the authority aforesaid, In case only one judge shall appear at the time and place for holding any term of the District Court of Appeals, he may adjourn the court to any day prior to the opening of the next term of the District Court of Appeals for that district; and if on said last mentioned day two judges shall not be in attendance, the court shall stand adjourned until the next regular term, wherever that may be, and the clerk shall carry all the cases to such place and term, and such cases shall be then and there in order to be heard and determined before the cases returnable to that term. In case no judge shall appear at the time and place for holding any term, the clerk shall adjourn the court from day to day, not exceeding two adjournments, and shall put an order upon the minutes to this effect. If, at the end of said two adjournments, no judge shall have appeared, the court shall stand adjourned until the next regular term, wherever that may be, and the clerk shall carry all the cases to such place and term, and such cases shall be then and there in order to be heard and determined before the cases returnable to that term.

Sec. 12. Be it further enacted by the authority aforesaid, That said District Court of Appeals shall have power, either in affirming or reversing a judgment, to so mould and frame its judgment as to give equitable relief in the case, and do substantial justice between the parties in accordance with the principles of law. In all cases resting in the discretion of the judge below, it shall be the duty of the judges in said District Court of Appeals to review that discre-

tion and exercise their own. No continuance shall be granted in said District Court of Appeals, except for providential cause.

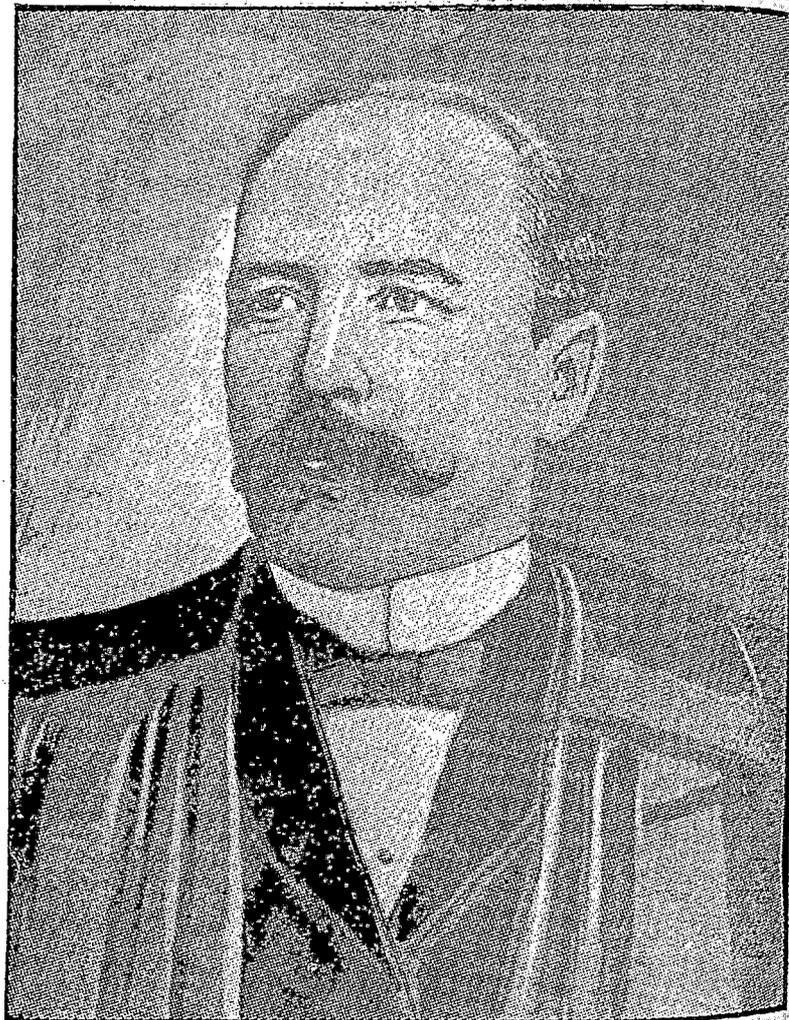
Sec. 13. Be it further enacted by the authority aforesaid, That the clerk of said court shall be entitled to two dollars for each case which shall be docketed in said court, which shall be taxed in the bill of costs. And the sheriff shall in like manner be entitled to one dollar in each case which shall be so docketed. The additional costs allowed the clerk shall be the same as those allowed by law to the clerks of the superior courts for like services. There shall also be taxed in the bill of costs in each case in said court the sum of four dollars, which shall be collected and remitted by the clerk to the Treasurer of this State, to be covered into the public treasury. This four dollars shall be paid in each case to the clerk by counsel for the appellant before the case is argued in said District Court of Appeals, and the counsel for the appellant, as well as his client, shall be liable for said four dollars. It shall be in the power of said District Court of Appeals to cast the costs upon either or both parties in any case, whether the judgment below be affirmed or reversed.

Sec. 14. Be it further enacted by the authority aforesaid, That each judge attending and sitting in said District Court of Appeals shall be paid three cents per mile, by the nearest practicable route from his home to the place where the term is held, and the same returning, and shall also be paid the sum of five dollars per day for each day court is in session and he is sitting. These sums shall be paid at the end of each term from the treasury of this State upon the warrant of the Governor, which shall be issued upon receipt of the certificate of the presiding judge at any term of said District Court of Appeals, under the seal of said court.

Sec. 15. Be it further enacted by the authority aforesaid, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

20 GA Bar Association Reports 1903

Report on Relief of Supreme Court



JUDGE ALTON B. PARKER.

REPORT

OF THE

TWENTIETH ANNUAL SESSION

OF THE

Georgia Bar Association

HELD AT

TALLULAH FALLS, GA.

ON

July 2d, 3d and 4th, 1903.

EDITED BY

ORVILLE A. PARK

SECRETARY

ATLANTA, GA.:

THE FRANKLIN PRINTING AND PUBLISHING CO.
Geo. W. Harrison, General Manager

1903

The President: We now come to the regular order of business, which was suspended by unanimous consent—the report of the Special Committee on Relief for the Supreme Court. The Chairman of the committee desires a full and free expression of opinion on the report of this committee.

Mr. Dessau: Mr. Powell will present the report of the committee.

Mr. Powell read the report of the Committee on Relief for the Supreme Court. (See Appendix F.)

Mr. Miller: I suggest the practical wisdom of laying this report of the Committee on the Relief of the Supreme Court on the table. Of course a full discussion of this report is desired. A bill of this kind is now pending before the Georgia Legislature, and my information is that a large number of the members of that body will arrive on the morning train. I consider it a most important matter and it is desired that as many members of the General Assembly as possible hear the discussion of this report. Of course it will interfere with the program made up by our Executive Committee, but it is the desire of the members of this Association, and perhaps every lawyer in Georgia, that this bill pass the General Assembly. Not only members of our profession will come, but a great many laymen of that body will be here, men who no doubt will make up their minds, after hearing this report thus discussed in favor of the bill. If there is anybody in this hall who has been a member of the House of Representatives, he knows that it is impossible to present to that body, on account of the acoustics of the Hall of the House of Representatives, the merits of a bill of this kind with anything like the effect that would be had from a general discussion before this body. If it can be done, I simply suggest that this report and the discussion on it be deferred until the

arrival of the morning train so that the members of the General Assembly may hear this discussion.

Mr. Hammond: A great many of the members of the Legislature will not be present at the meetings of this Association. They will not be here on business before the Association. They are coming to hear the address of Judge Parker. It is impracticable to take up the report of that committee this afternoon at that session, and it strikes me that it would be better to go on with it now.

The motion of Mr. Miller to lay on the table was lost.

Mr. Miller: I move that the report of the committee be received and adopted.

Mr. Barrow: I am one of those who believe that the measure outlined by the report of the committee is not only wise and salutary, but necessary, and that its provisions are practical. It is my judgment, however, in which I have the concurrence of others, that some changes might be made in the bill which might improve it. In the first place it is suggested that the court of appeals ought not to be confined in its sessions to the capital; it ought to be nearer the people. In other words it ought to be a court more readily accessible to suitors than any court which only meets in Atlanta would be. The second suggestion is that the judges of that court, as long as we are essaying to change a part of the Constitution, ought to be appointed by the Governor instead of elected by the people, and the term ought to be twelve years instead of six. The next suggestion is that it is hardly necessary to retain in the Constitution at all any provision for allowing cases to be taken directly from any city court to the Supreme Court, and that there was really no necessity for taking any case from the superior court directly to the Supreme Court except those involving some provision of the Constitution of the United States or the Constitution of the

State of Georgia, but no case could be taken from any city court directly to the Supreme Court. Then it would be feasible and practicable to fix the limit of cases, the character of cases that go to the Supreme Court from the court of appeals in some other way than by amount. Every small felony under the bill presented by the committee can be taken from the court of appeals to the Supreme Court. Why should they? If a man's life is involved, and the court of appeals affirms the death penalty, that case ought to go to the Supreme Court; but for stealing a hog or any other minor felony, what necessity is there that as a matter of right the defendant should have his trial in the superior court, then have his trial in the court of appeals, and after that have the right to take that case up to the Supreme Court and have the Supreme Court pass upon it.

Mr. Dessau: May I ask a question?

The President: Does the gentleman yield?

Mr. Barrow: Certainly, with pleasure.

Mr. Dessau: I think if you will make a more careful reading of the bill you will observe that felony cases do not go to the court of appeals.

Mr. Barrow: That is where I think they all ought to go except capital cases. I don't think the Supreme Court, if we want to relieve it and make it what it ought to be, a court for the correction of errors of law, a court whose time shall not be absorbed in minor matters, should have to consider these cases. If we want to do this, so long as we are making constitutional law, we can elevate the position of the judges of the Supreme Court to what it ought to be. A man can take capital cases to the Supreme Court and he can take any case that the court will order by *certiorari*, and in any felony case which reached the importance to make it necessary for that high court to review the decision of the court below, why the Supreme Court could send

down its *certiorari* to the court of appeals and have it sent up there.

But there is another objection that seems to me ought to be very carefully considered before we commit ourselves to this bill. I am one of those who believe that the right of appeal to the courts of last resort ought not to be valued in money. There are many who believe, and I am one of them, that a man whose property is of the value of one thousand dollars ought to have the same right to take his case to the Supreme Court from the decision of the court of appeals as if it was ten thousand dollars. I am not speaking of it in any political sense; I am not addressing myself to the question whether it will be popular or unpopular to draw the line on a money value and say that those above may go to the Supreme Court and those below may not. I am addressing myself to the abstract proposition as to whether it is right to do it or not. Suppose it was the most popular thing to say that a little case can not be heard in the Supreme Court, still I would say that the question is whether it is right to draw the line on a money value whether it be in property or in dollars. It is not in accord with anything we, in Georgia, have ever done except in justice courts and some city courts, and in them the remedy was provided by giving them the right of appeal. The provisions in this bill are objectionable on this ground as no case can be taken to the Supreme Court where the amount of money involved falls below a certain sum. I say again I do not believe that it is fair, I do not believe that it is right to say that one suit can be taken to the Supreme Court because it involves a greater amount of money, and another can not because it involves less. A man may have a case in court involving the sum of \$900. He may possess little. It may involve everything he has in the world. In that case may be the deepest, most intri-

cate questions which demand deep research and the highest order of learning which can only be found in the Supreme Court. It is not right to say to him, without regard to the questions involved, that he can not take that case to the Supreme Court.

I am a believer in this court provided by the committee. I think it ought to be pushed. I think it ought to have the hearty support of the Association. Some gentlemen asked me to put these views I have urged in a bill. I did so. I prepared a bill along the lines of the committee's bill, which I think are the correct lines but for the points I have noticed in these remarks. That bill I sent to Mr. Slaton. At the request of some gentlemen I had it printed and forwarded it with the suggestions I had to make, asking that they engraft upon the committee's bill a provision to have these courts to meet in Savannah, Thomasville and Albany, in the first district; Augusta, Macon, Griffin and Columbus, in the second district; Athens, Atlanta, Newnan and Rome, in the third district; these are merely suggestions as to the points; for these judges to be appointed by the Governor and confirmed by the Senate for twelve years; for the Supreme Court to hear no *certioraris*, no appeals from justice courts, no felony cases except where the judgment of the district court of appeals had affirmed the sentence of death, and no cases in which a new trial is granted, or in which any interlocutory hearing which is not a final determination of the case is under review. But without regard to the amount, if a verdict of ten dollars was rendered by the district court of appeals and a new trial was refused, the case would have the right to go to the Supreme Court from the district court of appeals.

As I stated before, I am in favor of the committee's bill. I believe that the line the committee has taken is the right line—of an intermediate court. I think the idea of the bill is the cor-

rect idea. We all know that something is necessary. All I desire to do by making these suggestions, and all that I attempted to do by drawing the bill I sent to Mr. Slaton was to give him some outline of the way in which those who thought the committee's bill might be improved thought it could be improved. I drew the bill to show what I thought should be done, but if I had to vote in the Legislature on no bill at all or the committee's bill, I do not hesitate to say that I would take the committee's bill, but I think it can be improved.

Mr. Dessau: Whatever views the distinguished gentleman from Savannah may entertain are entitled to serious consideration by this Association. There is no gentleman in Georgia, who, by reason of his vast experience, and his commanding influence in the State as a citizen and a jurist, is better qualified to assume positions and maintain them than the distinguished gentleman who has just taken his seat. Coming to the merits of the bill proposed,—but before I enter into any details in reference to it, allow me to try in my humble manner to comment upon these suggestions incidentally—the suggestions offered this morning in opposition to the bill.

The first is that this court of appeals ought to be ambulatory. It should be separated from a permanent domicile at the capital and should travel around the State. That matter received very serious and earnest discussion at the hands of the committee, and it was thought that any proposition to make the court ambulatory would generate rivalry as to the places where the court should be held, and that rivalry would impede the progress of the bill through the various stages of legislation to a perfect law. Besides it was thought, in the opinion of the committee, that it would not be really practicable to have the court ambulatory. So far as the committee is concerned, however, upon that proposition, that is mere detail and would not

affect in any measure the propositions upon which the bill is drafted.

Now as to the second proposition or objection, that felony cases ought not, by reason of being felonies, to proceed directly to the Supreme Court on writs of error, and that the final disposition of minor felonies, as they have been termed, shall be left not to the highest court, but only to the court of appeals. Well, Mr. President, I don't know what it is to pass sentence upon a felon, and up to this time I have fortunately escaped receiving any such sentence, but I do know this, that in the case of a man convicted of crime and sentenced to imprisonment and hard labor there should be an opportunity afforded him according to the American idea of appeals, to have a hearing before the highest court in the State where he was tried and convicted, and therefore jurisdiction was given to the Supreme Court to try felony cases. Now let me show if I can in a word that the objection made by my friend is not a real one. If felony cases, minor felony cases, are to be disposed of by the court of appeals, a provision is inevitable in the law that upon a writ of error, or a certificate by the judge of the Supreme Court, that felony case, be it a minor felony or a major felony, can travel through the trial court, the court of appeals and ultimately to the Supreme Court, so that it occurred to the committee, and I apprehend to every lawyer, to every man, that in the disposition of felony cases there ought to be some distinction between these cases and misdemeanor cases. Consequently the committee undertook to provide for the trial of felony cases by writs of error in the Supreme Court. I think the members of this Association will think that that objection is not one which ought to control the deliberate judgment of this body.

The next objection which my friend makes is that in cases

involving one thousand dollars or less the Supreme Court shall have no jurisdiction. Now, Mr. President, I am afraid that my friend has not considered the bill carefully. He certainly would not wish to create an erroneous impression, therefore I feel that I am correct in this statement. The bill provides that the Supreme Court shall not entertain jurisdiction of writs of error unless the amount in money or value exceeds the sum of one thousand dollars, but, Mr. President, in that same article it is provided that, in any case whenever a judge of the Supreme Court shall so certify, any case may be brought from the court of appeals to the Supreme Court; and whenever the judges of the court of appeals shall so certify, the case shall likewise go from the court of appeals to the Supreme Court without reference to any other limitation. Therefore, a man whose all is wrapped up in litigation, whether it be \$1 or \$999.99, can have his case, if there are in that case questions of sufficient dignity and importance, at last heard before the highest court in the land, and carried to that court upon an examination of the record, so that the poor man has his little given the same rights as the rich man. The small case is taken care of as well as the large one, and calculating the number of trials you ascertain from the bill that the little case, under one thousand dollars, may be tried once in the trial court, once in the court of appeals and once in the Supreme Court, receiving three judicial hearings, whereas the case involving more than one thousand dollars can be tried once in the trial court and once in the Supreme Court, so that upon actual count, numerically the little case has the advantage. We think, Mr. President, that the provision in the bill is in accordance with the established policy of the State of Georgia. If a man goes into the justice court and loses his case, he is entitled on appeal to a trial before a jury in that court. If the jury decides against

him he is entitled to a *certiorari*, then he is entitled to an appeal to the Supreme Court, so that his case has received four considerations at the hands of the court instead of one trial in the superior court and one trial in the Supreme Court. So I think the bill is not open to the objection made by my distinguished friend when he comes to consider it more carefully.

As to the other objection, there is a great division, and I do not wish to be understood as desiring to take up the time of the Association in the discussion of that question. It is a fundamental and general law; men will differ, and that difference of opinion will continue as long as courts last, as to the manner of the selection of the judges; whether they shall be elected by the people or appointed by the executive. So far as the committee is concerned, it is fair to state, it is proper to state, there was a slight difference of opinion among the members of the committee. Two members of the committee were radically opposed to the election of the judges by the people, but all the other members of the committee were insistent on the election of the judges by the people. I desire to state with reference to that part of the bill, that it is the public policy of the State of Georgia, as now declared in our economic law, that the judges shall be elected by the people, and the committee saw no reason why the judges of the court of appeals should be selected in any manner different from that in which the judges of other courts are elected. You will observe that the first selection of judges was left to the Governor. That was done as a matter of economy to the people. The first terms would be so short, only for a period of two years, that it was not thought desirable to involve the State and the people in a contest for the election of five judges for so short a time, and as the bill upon its inauguration into actual practice would be something of an experiment, it was thought wisest to let the Governor appoint the judges

for the first two years and after that time the election of the judges should be left to the people.

There is the suggestion that the term of the judges be made twelve years instead of six. Upon that there was some slight division in the committee, but it was quickly removed, and it was determined that inasmuch as the policy of the State was fully declared in that the judges of the Supreme Court were elected for six years, there was no good reason why the terms of the judges of the court of appeals should be for longer, and consequently the terms were fixed the same as the terms of the judges of the Supreme Court.

Of course upon these details gentlemen will differ, and there is no possible argument, no way of bringing all minds together upon these details, and generally the members of the General Assembly will, in the disposition of matters of this kind, leave them to their individual opinion where they have tried to meet them upon anything like reason and logic.

Now as to the bill as a whole. It ought to be generally acceptable to the people. It ought to be generally acceptable to this Association. It is a working bill; it is a practicable bill. It is a bill which if carried into execution will afford the relief desired to this highest court in the land; laying a line of policy that in the course of a few years should result, I say it with becoming respect, in a great modification of what is now a curse by reason of this state of the law. The proposition was not so much at last to relieve the Supreme Court, although that is the present aim, but in the last analysis the object of this bill is to relieve the people. It is not the court that suffers when an erroneous decision is made; it is not the Court that suffers when it declares one day this is the law and to-morrow is compelled to reverse it. Who is the sufferer? Not the lawyer, but the great mass of the people who suffer by reason of

the uncertainty of the law, and therefore this bill was projected by the committee upon this line, and while it is nominated a bill for the relief of the Supreme Court, it is not less a bill for the protection of the people, and I trust it will receive the endorsement of the Association.

Mr. Barrow: The suggestions made by the Chairman of the committee are in the main suggestions we have approved, but what I said at first, I respectfully submit remains true, that cases involving less than one thousand dollars can only find their way into the Supreme Court as a matter of grace and favor and not as a matter of legal right. I stated in the beginning that it could go to the Supreme Court if the Supreme Court saw fit to send down a *certiorari* or if the district court of appeals saw fit to certify it to the Supreme Court. What I want to see put in that bill is that any citizen may, whose case involves a question of law, take his case to the Supreme Court as a matter of legal right and not as a matter of grace and favor. It is quite true, as my friend says, that he can get a hearing in the Supreme Court if he can succeed in getting his case there. It is not right to put that provision in the bill. I do not desire to make any motion to amend, but it is no answer to the proposition that a man should have the right to take his case to the Supreme Court regardless of amount as a matter of right, to say that he will have the right to carry it there as a mere matter of grace and favor.

Now those with whom I agree have suggested twelve years instead of six because they thought it was an improvement. The fact that at present Supreme Court justices are only appointed for six years is no argument. They ought to be there for twelve years or longer. For the judges of the courts to enter a political campaign before the people every six years is a great calamity; a great calamity to the court for them to

have to canvass the State every two or four years. If we could make the terms of the judges of the Supreme Court twelve years that would be a still further improvement. Why there is no particular sanctity about the present method. It has only been in force two or three years. The Constitution of 1868 provided that the judges should be appointed by the Governor by and with the consent of the Senate. The Constitution of 1877 provided that they should be elected by the General Assembly and that remained in force for awhile and then this change was made providing that they should be elected by the people of the State. This has been modified by the ruling of our Democratic Executive Committee so that we hold a primary in our particular circuit to select our judge, and that is ratified by the general convention. At least the judge of the Eastern Circuit is elected by the people of that circuit. I am elected by the people of Chatham county, and the judge of the Atlantic circuit is elected by the people of Bryan, Effingham, etc. The mode of election as prescribed by our Constitution is not the form pursued in actual practice. They ought to be appointed by the Governor and confirmed by the Senate.

As to felonies, I still think, if we want to raise the Supreme Court of Georgia to that high level where calm, dispassionate judgment can be rendered upon important questions of law, they ought not to be bothered with hog-stealing cases.

The President: I desire to announce the Committee on Nominations. Of course it is desired that they should get together as promptly as possible, probably immediately after the adjournment for the noon recess.

1st District, A. A. Lawrence.

2d District, M. J. Yeomans.

3d District, U. V. Whipple.

4th District, B. S. Miller.

5th District, J. D. Kilpatrick.

6th District, S. A. Crump.

7th District, W. K. Fielder.

8th District, S. H. Sibley.

9th District, No name submitted.

10th District, D. G. Fogarty.

11th District, J. L. Sweat.

State at Large, A. P. Persons.

State at Large, T. B. Felder.

No name having been submitted from the 9th District, under the resolution of the Association, I have appointed Mr. H. W. Hill to complete the committee. Pardon this interruption. Is there any further discussion?

Mr. Powell: I would not say anything further upon this subject, but inasmuch as it has been suggested that there may be a difference of opinion that would be raised hereafter, I have thought it best to suggest to this body that such differences be settled upon this forum, and that so far as this body is concerned whenever we go to the General Assembly with our bill, the Georgia Bar Association go as a unit and not as divided men.

I think that Mr. Dessau in his statement has answered successfully the objections made to the bill, but I will add that if the court is made ambulatory, or to hold sessions outside of the capital, sitting in different places in the State, it is certain to create division, create dissension among the different towns. In my district, Albany, Thomasville and Valdosta would each want to be made the seat of the court and that would create rivalry, enmity and antagonism. Atlanta is the seat of the government and has the facilities for holding courts. The State library affords greater facility for study for the members than is possessed by any other city in the State.

As to whether the judges should be elected by the people, I am one of the minority. I am one of those who think that the present mode of electing judges by the people is a mistake. However, I felt it the duty of every member, in the light of what the people of Georgia had declared, to yield these views. When under our Constitution the question of electing the judges by the people in the form of a constitutional amendment was submitted to the people of Georgia, they adopted it and declared it to be the policy of the State. I regard that a sufficient reason why our views upon that question should be sustained.

The next important question that has been suggested, is the right to take cases to the Supreme Court irrespective of the amount involved in the controversy. Upon that proposition we believe that every man has the right to have his cases passed upon by some court of last resort, but it must be remembered that if a new court is to be made, some division of labor must be made. If every case can go to the Supreme Court then there is no need for this intermediate appellate court. There must be a line of division made somewhere. It may be that the first thirteen letters in the alphabet shall go to one court, and those beginning with the last thirteen go to the other. It has been customary to adopt the dollars and cents basis of discriminating, and this committee found no better basis of discrimination than the amount involved in the controversy. But let it be remembered that this committee did not deprive any man of the right to take to the Supreme Court directly any question which involved his right to his home, his land, his right to any office that he may aspire to, because any question involving the title to land, or title to any public office can go there; his right to his children and the custody of his wife, because every *habeas corpus* case can go there; his right to his liberty, because every felony case can go there. In such cases

a man can go immediately to the highest court without going first through the appellate court. If his case involves less than one thousand dollars, if it involves new questions of law that it would be of advantage to the State of Georgia to have settled, then it may be considered in the Supreme Court.

Mr. Barrow: Don't you think when you look at this matter judicially that that great army of people in this State, white people, who don't own a foot of land, who haven't got one thousand dollars' worth of property all told, who get paid off every Saturday, that they ought to have the right to go there?

Mr. Powell: Suppose he can go there—

Mr. Barrow: There is no reason why a case involving a small amount should not receive the same treatment as a case involving a larger amount.

Mr. Powell: We realize the difficulties—

Mr. Barrow: Take one class of cases that are before me every day, garnishments.

Mr. Powell: If it has in it a question of law, he can take it up and have that question settled in the Supreme Court. If it be a mere question of fact that court ought not to be troubled with the case. We knew that this bill would have to be ratified by the people, and we drew it not as an ideal bill, but we drew it as a practical one; one that would meet with public approval; one that would give back to the people every right that they previously possessed, and one that contained as few objectionable features as possible. Every word of this bill, and when I say every word I say it literally, because it was gone over word by word, was studied, and a single phrase was the subject of an hour spent in debate before the committee. As I said before, if there is a division in this body, let it be debated here and the question definitely settled, and if this committee

has made a mistake, let it be corrected in this Association, and let us not be divided before the General Assembly.

Mr. Barrow: I do not think that I would be doing fair to my own convictions not to raise this objection to the bill, and I offer an amendment to strike out that provision and allow the right of appeal to the Supreme Court in all cases, irrespective of amount.

Mr. Flint: I simply desire to say a few words on a single proposition submitted by Judge Barrow. In the first place, it appears to me that the chief argument in favor of this appellate court, of this intermediate court, is simply, as Mr. Dessau has said, while it relieves the Supreme Court of the immense amount of work thrown upon it, at the same time it relieves the people. Now, Mr. President, the truth about the matter is, and I think it is just as well to meet the proposition fairly and openly, we are compelled to make some distinctions. If Judge Barrow's position is well taken there is absolutely no need for this court. If every case of minor importance, every case involving ten dollars, could go to the Supreme Court under the provisions of this bill, I see no necessity for this court, and I don't believe that we could convince the bar of Georgia and the Legislature of Georgia of the necessity for this intermediate court. That is the proposition, and we might as well meet the proposition fairly and make a distinction. I don't believe that every case of minor importance should go to the Supreme Court. When these small matters are determined and passed upon in the justice court, the city court and superior court, and finally this court of appeals, and that court shall have decided in favor of either the plaintiff or defendant, he ought to be satisfied without carrying it to the Supreme Court where weightier matters should come up to be decided. I think there is no necessity for the court if you strike out this provision in this

bill to exclude these minor cases and let every small case go to the Supreme Court. You will never pass this bill and you will never get the relief sought by this bill if you go before the General Assembly with a bill of this nature and say that there is no distinction and that every plaintiff has the right to carry his case to the Supreme Court. You can not convince them that there is any legal sense in that and you can never convince them of the necessity of this court. I say I do not believe that it would have the smallest chance of getting through. I believe that when we grant hearings in the justice courts and superior courts and finally in the court of appeals on these small matters, that ought to be sufficient to convince them that either the plaintiff or defendant is wrong, and that it ought to be an end of small civil cases, and also of misdemeanors. It is a matter of fact, and every lawyer here, every citizen and every layman recognize the fact, that where a man's life is involved, there is more involved than in a petty misdemeanor case where a man may pay a few dollars and relieve himself of the sentence of the court. I say there ought to be a distinction, and we ought to feel no delicacy, and we ought to feel no temerity when duty compels us to make this distinction. There ought to be a distinction in small civil matters. I say to you again that if you engraft the amendment suggested by the gentleman from Chatham on this bill, you might as well table the bill, for there is practically no hope of passing it through the General Assembly.

Mr. Akerman: It seems to me that the propositions suggested by my friend Judge Barrow are inconsistent. He appeals to this body for the right of the poor man to carry his case to the court of last resort, and at the same time he has offered an objection to the bill that it allows a man to take a case involving his liberty, a felony case, to the court of last resort.

He objects to a man carrying a case involving his character, his liberty and his franchise to the highest court, and at the same time, he demands that a man with a case involving a squabble over ten dollars shall have the right to take that case to the court of last resort. It seems to me that his position is inconsistent.

The question was put to the Association on the amendment offered by Judge Barrow, and the amendment was declared lost. The question was then submitted on the motion to adopt the report of the committee, and the motion was carried.

The Secretary: We all recognize the necessity for the relief of the Supreme Court. The fact that we have adopted this bill shows that we recognize that necessity, but unless we do something to bring about that relief more active than simply suggesting this bill, we might just as well not suggest it. We must do something to bring this matter properly to the attention of the Legislature. Now the best method of doing that I don't know, but I will make this suggestion, that the Chair appoint a committee of one hundred from this Association, who shall be directed to appear before the Judiciary Committee in behalf of this bill and to urge its passage through the General Assembly.

Vice-President Meldrim (presiding): Do you think that will be large enough?

The Secretary: Yes, sir; I think so.

Mr. Flint: I move that the house resolve itself into a committee of the whole to urge the passage of this bill. As a substitute for the resolution offered by the Secretary, I move that the President of this Association be authorized to appoint a committee of eleven, one from each congressional district.

Mr. Powell: There should be some members from the State at large. I offer an amendment that there shall also be two members from the State at large together with the incoming President of the Association.

The amendment was accepted. The motion as amended was adopted.

Vice-President Meldrim: "The Secretary's Review of the Work of the State Bar Associations" is next upon the program.

(For the paper of the Secretary see Appendix G.)

Vice-President Meldrim: The report of the Committee on Jurisprudence and Law Reform.

Mr. H. C. Peeples presented the report for the committee. (See Appendix H.)

Vice-President Meldrim: Report of the Committee on Judicial Administration and Remedial Procedure.

The Secretary: A report has been sent in by the Chairman with the request that it be referred to some member of the committee. I handed it to Mr. Yeomans, who does not seem to be present at this moment.

On motion, it was ordered that the report of this committee be received later.

Vice-President Meldrim: The report of the Committee on Legal Education and Admission to the Bar.

Mr. H. W. Hill, the Chairman, presented the report. (See Appendix I.)

Mr. Morris: This matter has been before the Association in various forms. I had not intended to say anything upon the subject for the reason that the Chancellor of the University, with whom we are in full accord, has spoken for the Law Department. I am sorry that he is not here to-day. What I shall say I say for the members of the faculty of the Law Department. The Law Department endorses unqualifiedly the sug-

APPENDIX F.

REPORT OF THE COMMITTEE ON RELIEF OF THE SUPREME COURT.

The Georgia Bar Association:

At the last Session of your honorable body the following resolution was adopted:

"*Resolved*, That the President of this Association appoint a committee to consist of one member from each Congressional District and two members from the State at large, of which the next President of this Association shall be ex-officio chairman, and the Secretary of this Association shall be the Secretary of said committee, whose duty it shall be to present to the Legislature by appropriate bill, either for legislation or legislation and constitutional amendment, such measures as will secure the relief of the Supreme Court as shown to be necessary in the paper read before the Association by Mr. Justice Cobb. And that whatever bill may be drawn be submitted by mail to every member of this Association and all the other lawyers of the State, calling for objections and suggestions, which shall be considered by the committee in the final draft of the bill to be presented to the Legislature. And that the Secretary be authorized to send a copy of Judge Cobb's paper to each member of the General Assembly before the next meeting of the same. And that the expenses of the Committee be paid by this Association.

"*Resolved*, That the committee charged with the duty of framing measures for the relief of the Supreme Court be authorized and directed to take into consideration not only the matter of permanent but also of temporary relief, and to this end that said committee take such action as in its judgment may secure by prompt and direct legislation such relief of the latter character as may be expedient, until permanent relief may be had by appropriate amendment to the Constitution."

Acting under this resolution the President appointed a committee as follows:

10 g b a

Samuel B. Adams,
 Arthur Gray Powell,
 E. A. Hawkins,
 T. J. Chappell,
 Hoke Smith,
 M. W. Beck,
 John W. Akin,
 J. B. Park, Jr.,
 W. A. Charters,
 W. K. Miller,
 John W. Bennett,
 J. H. Merrill,
 Washington Dessau.

The President of the Association and the Secretary being named in the resolution as Chairman and Secretary.

Mr. John W. Akin being a member of the General Assembly asked leave to retire from the Committee and A. L. Bartlett was appointed in his place.

The first meeting of the Committee was had in the Supreme Court room at Atlanta, on August 1, 1902, when the matter of the resolution was immediately taken in hand. At this meeting all the Justices of the Supreme Court were invited to be present and take part in the discussion.

Mr. Justice Cobb attended this meeting and participated in the discussions.

The result of this meeting was the formulation of a bill, the material part of which is as follows, to-wit:

A BILL

To be entitled an Act to amend the Constitution of the State of Georgia, by adding a new paragraph to article 6, section 2, to be known as paragraph 9, so as to provide that no writ

of error shall lie in the Supreme Court, in any civil case, unless the amount involved exceeds the sum or value of five hundred dollars (\$500), except it shall appear from the bill of exceptions, that it is a divorce case, or a case respecting the title to land, or an equity case, or is a case involving the title to a public office, or is a *habeas corpus* case, or a contempt case, or the case is one in which an Act of the General Assembly of the State of Georgia is sought to be set aside, as being contrary to the Constitution of the State of Georgia or of the United States, and a decision upon this question is made necessary, or the case is one which any Justice of the Supreme Court of the State of Georgia, upon examination of the record, shall certify that a writ of error should issue; and for other purposes.

Section I. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority of the same, that the Constitution of this State be amended by adding a new paragraph to be known as paragraph 9 of section 2 of article 6, which shall read as follows:

"No writ of error shall lie in the Supreme Court in any civil case, unless the amount involved exceeds the sum or value of five hundred dollars (\$500), except it shall appear from the bill of exceptions that it is a divorce case, a case respecting the title to land or an equity case, or is a case involving the title to a public office, or is a *habeas corpus* case, or a contempt case, or the case is one in which an Act of the General Assembly of the State of Georgia is sought to be set aside, as being contrary to the Constitution of the State of Georgia or of the United States, and a decision upon this question is made necessary, or the case is one in which any Justice of the Supreme Court of the State of Georgia upon an examination of the record shall certify, that a writ of error should issue."

Considerable discussion was had relative to writs of error from city courts, but no definite action has been taken thereon.

Many suggestions were considered relative to temporary relief of the Supreme Court, but no action has been taken thereon.

A resolution was adopted requesting each member of the committee to present his views in writing as to the cause of the over-crowded condition of the Supreme Court docket and suggestions for the relief of the same.

The committee then adjourned to August 11, at the same place.

At the second meeting Mr. Justice Lumpkin was present and read a most valuable paper containing suggestions with regard to the permanent relief of the Supreme Court.

The suggestions offered by Judge Lumpkin were discussed very earnestly by the committee and a sub-committee was appointed to draft a bill embodying the views of Mr. Justice Lumpkin, and to submit the same to the next meeting of the committee, which was appointed for September 13, at the same place.

At this meeting the sub-committee presented its report in accordance with the previous resolution of the committee, and after a very lengthy consideration the same was substantially adopted, the material parts of which are as follows:

A BILL

To be entitled an Act to amend paragraph 1, section 1, and paragraph 5, section 2, and to add a new paragraph to article 6, section 2, to be known as paragraph 9 of the Constitution of this State, so as to provide for the establishment of a Court of Appeals; to define its powers and jurisdiction, and to limit the jurisdiction of the Supreme Court.

Section I. Be it enacted by the General Assembly of the

State of Georgia, and it is hereby enacted by authority of the same, That paragraph 1, section 1 of article 6 of the Constitution of this State be amended so that the same shall read as follows: "The judicial powers of this State shall be vested in a Supreme Court, a court of appeals, superior courts, courts of ordinary, justices of the peace, commissioned notaries public, and such other courts as have been or may be established by law."

Sec. II. Be it further enacted by the authority aforesaid, That paragraph 5, section 2, article 6 of the Constitution of this State be amended so that the said paragraph shall read as follows, to-wit: "The Supreme Court shall have no original jurisdiction, but shall be a court alone for the trial and correction of errors from the superior courts and from the city courts of Atlanta and Savannah, and such other like courts as have been or may hereafter be established in other cities, in all cases of felony, and in all civil cases where the amount involved in money or the value of property in controversy exceeds one thousand dollars principal, and in cases respecting title to land, cases involving title to public office, *habeas corpus* cases, contempt cases, or cases where an Act of the General Assembly of the State of Georgia is sought to be set aside as being contrary to the Constitution of the State of Georgia or of the United States, and a decision upon this constitutional question is made necessary, and for the correction of errors of law from the court of appeals, when established, whenever the Supreme Court shall sanction a *certiorari* from any judgment rendered by the court of appeals, or whenever the court of appeals shall certify to the Supreme Court any questions or propositions of law concerning which it desires the instruction of the Supreme Court for proper decision. The Supreme Court shall sit at the seat of government at such times in each year as shall be prescribed by law, for the trial and determination of writs of error from said superior and city courts, and of all cases, questions and propositions that may

be brought or submitted to the Supreme Court from the court of appeals. The foregoing provisions shall not apply to any case carried to the Supreme Court before the establishment of said court of appeals, except that the Supreme Court shall, without further legislation, transfer to the court of appeals, when established, all cases which by the terms of this paragraph are not within the jurisdiction of said Supreme Court, in which event the court of appeals shall try all said cases so transferred."

Sec. III. Be it further enacted by the authority aforesaid, That the Constitution of this State be amended by adding a new paragraph to be known as paragraph 9 of section 2 of article 6, which shall read as follows: "The court of appeals shall consist of a presiding judge and four associate judges. A majority of the court shall constitute a quorum and said court shall sit at the seat of government at such times in each year as shall be prescribed by law. When one or more of the judges are disqualified from deciding any case by interest or otherwise, the Governor shall designate a judge or judges of the superior courts to preside in said case. The presiding judge and the four associate judges of said court shall be appointed by the Governor by and with the advice and consent of the Senate, and the term of office of the judges so appointed shall expire on the first day of January, 1907, and at the general election to be held on the first Wednesday in October, 1906, the presiding judge and the four associate judges of said court of appeals shall be elected by the people for the terms beginning on the first day of January, 1907, at the same time and in the same manner as the Governor and the State house officers are elected; at which election the presiding judge shall be elected for a full term of six years, and four associate judges shall be elected as follows: Two of said associate judges shall be elected for a term of four years and two of said associate judges shall be elected for a term of two years. After said first election all terms except unexpired terms, shall be for six years each. In case of any vacancy which causes an

unexpired term the same shall be filled by executive appointment, and the person appointed by the Governor shall hold his office until the next regular election and until his successor for the balance of the unexpired term shall have been elected and qualified. The salaries of the judges of said court of appeals shall be fixed by the Legislature at not less than three thousand dollars per annum for each judge, payable out of the treasury of the State. The court of appeals shall have jurisdiction for the trial and correction of errors from the superior courts and from the city courts of Atlanta and Savannah, and such other like courts as have been or may hereafter be established in other cities, in all cases in which jurisdiction is not conferred by this Constitution upon the Supreme Court. When a judgment of the court of appeals is taken to the Supreme Court of this State for review, the former court shall await the judgment of the latter before certifying the final result to the trial court. The General Assembly shall prescribe the officers for said court of appeals and the amount of compensation, and shall also prescribe in what manner cases shall be taken from the superior and city courts to the courts of appeals and in what manner cases shall be taken or certified from the court of appeals to the Supreme Court."

In addition the sub-committee was appointed to prepare an address to the people of the State setting forth the reasons why the proposed amendment to the Constitution was necessary, and was further directed to have a copy mailed to every lawyer in the State with the names of the committee to be signed to this address.

In obedience to this suggestion the following address was prepared and published in accordance with the terms of the resolution:

To the People of Georgia:

The proposed amendment to the Constitution of the State of

Georgia, providing for the establishment of a court of appeals, grows out of an imperious necessity for the immediate relief of the Supreme Court of our State.

It has been ascertained from actual experience that it is not practicable for the Supreme Court to dispose of the cases brought before that court within the time required by law, and in the manner required by law. The increase in the number of judges has neither diminished the number of cases, nor the amount of labor imposed upon each judge. The accumulation of business, owing to the increase in population and wealth, and the number of city courts from which cases can be brought directly to the Supreme Court, and the vast variety of legal questions constantly arising, owing to our complex civilization, and the advancement of society, have imposed burdens upon the Supreme Court which will not permit that branch of the government to discharge its duties to the satisfaction either of the judges or the people, in the manner originally contemplated by law.

In order that the people may understand the manner in which cases are disposed of in that court, your attention is called to an extract from a paper read by Mr. Justice Andrew J. Cobb, before the Georgia Bar Association, at its last session, in July, 1902:

"From October, 1898, until February, 1900, all the justices presided in every case. The accumulation of business compelled the court to abandon this plan and hear arguments in division. Under this system the division which hears the argument, or to which the case is submitted, examines the record and agrees upon a tentative decision, and the justices to whom the case has been assigned makes another examination of the record and writes an opinion, which is read to all the justices. If the

division which has determined the case is satisfied that the opinion submitted properly deals with the case as shown by the record, and all the justices agree that the law of the case is correctly set forth, the opinion is filed. If the opinion is not satisfactory to all the justices present, the case is re-examined by them. It is not uncommon for this examination to result in another opinion being prepared, or the one first submitted being substantially changed. It is, and has been, the earnest purpose of all the justices to avoid, as far as possible, decisions by a divided court, and when such a result seems probable, cases are often re-examined by all the justices again and again. When, however, a decision by a divided court is inevitable, one of the justices writes an opinion, expressing the views of the majority, and the dissenting justices, if there are more than one, agree which one shall express their views.

"The record in each case is closely examined twice: First, by the justices of the division hearing the case, which is always never less than two, and generally three; and second, by the justice who is to write the opinion. If there are any differences among the justices of the division hearing the case, the record is again examined by all the justices present for general consultation."

It is well known to the bar and the public that the accumulation of business was piled so fast upon the Supreme Court that at last they had to dispense with oral argument, much to the detriment of the litigants, as well as to the profession and the public generally.

When it is recollected that the court is continuously in session from the first Monday in October until the latter part of July, and frequently until the middle of August, it will be observed at once how little time the court has for rest, and really how

little time for consultation and the preparation of opinions. Over a thousand cases are to be decided by this court in a working year of three hundred days, of ten hours each, or three thousand hours; that is, the court must hear argument, examine the record, look up the law, consult, decide, and write the opinion in one case in every three hours, or in a little less time. It is enough to say that this cannot be done with satisfaction to anybody. Therefore, relief must be had in some practical way.

It has not been deemed wise to cut off the right of appeal, because every man feels that he ought to have the right, and we know of no one who is in a position to deny this right.

But there are many cases which can be appealed properly and justly to another and independent tribunal, qualified under the Constitution and laws to dispose of such appeals. This tribunal is suggested and submitted to the people in the form of a court of appeals. By the establishment of this court, the Supreme Court will be relieved of the labor of hearing all cases, but will have jurisdiction to dispose of all felony cases and all civil cases where the amount involved in money, or value of property, exceeds one thousand dollars, principal, and in cases respecting the title to land, *habeas corpus* cases, contempt cases, or cases where an Act of the General Assembly of the State of Georgia is sought to be set aside as being contrary to the Constitution of the State or of the United States; and, also, for the correction of errors of law from the court of appeals, whenever the Supreme Court shall sanction a *certiorari* from any judgment rendered by the court of appeals, or whenever the court of appeals shall certify to the Supreme Court any questions or propositions of law concerning which it desires the instruction of the Supreme Court for proper decision. All

other cases will be heard by the court of appeals, and in this manner the labor of the two courts will be divided, and the thousand cases, or more, that are to be disposed of will be disposed of, it is believed, with an equal number of cases in each court. In this event, it will be largely to the interest of the public to have two separate courts disposing of separate business at the same time.

The court of appeals is intended to be inexpensive in its arrangements, as far as possible, and it is hoped and believed that it will be speedy in the disposition of cases.

So far as the cost of the court is concerned, that will be saved many times over to the people in having the law definitely ascertained and settled as a precedent and guide for the future, as well as in the proper determination of the particular case under consideration.

Of course, it must be known that the General Assembly cannot dispose of this matter finally, but it will come before the people, and it will be for them ultimately to declare by their direct votes whether they will adopt this measure or reject it.

This proposed amendment can only reach the people through the intervention of the General Assembly, and the people who feel an interest in this matter, and it is believed that every good citizen does feel an interest in it, should urge their representatives to vote for this measure, so it can be submitted to the people, by whose suffrages alone the proposed remedy can be ingrafted as an amendment upon the Constitution.

To a people numbering now largely more than two millions, active in every commercial enterprise, advancing rapidly along all the best lines of civilization, spreading an influence all over the Union, and determined to hold the State's place as the Empire State of the South, this measure is commended as a

step forward and upward, for the honor and glory of the Commonwealth of Georgia.

BURTON SMITH, Chairman.

S. B. ADAMS, First Congressional District.

ARTHUR GRAY POWELL, Second Cong'l District.

E. A. HAWKINS, Third Congressional District.

T. J. CHAPPELL, Fourth Congressional District.

HOKE SMITH, Fifth Congressional District.

MARCUS W. BECK, Sixth Congressional District.

A. L. BARTLETT, Seventh Congressional District.

J. B. PARK, Eighth Congressional District.

W. A. CHARTERS, Ninth Congressional District.

W. K. MILLER, Tenth Congressional District.

JOHN W. BENNETT, Eleventh Cong'l District.

WASHINGTON DESSAU, State-at-Large.

JOS. HANSELL MERRELL, State-at-Large.

ORVILLE A. PARK, Secretary.

Committee from the Georgia Bar Association.

Very shortly after the convening of the session of the General Assembly in October, 1902, a copy of the bill as finally adopted by the committee, and likewise a copy of the address to the people of Georgia, were laid upon the desk of every member of the General Assembly, both of the House and of the Senate.

The President of the Association had been selected by the committee to take charge of the proposed legislation before the General Assembly, but owing to a sad accident which occurred to him about this time, he was providentially prevented from engaging upon this task, and it fell to the lot of another member of the committee.

Mr. Slaton, of Fulton, was selected to present the measure to the General Assembly, but owing to the crowded condition of business before that body the bill was not reached, and no action

was taken thereon further than a reference to the General Judiciary Committee of the House.

Your committee feels confident that it has presented a bill for the relief of the Supreme Court and of the people of Georgia, which embodies the best thought of the bar of the State.

This bill was the result of great and earnest labor; it is carefully drawn, it has been maturely considered, and it is believed and hoped that if the plan it offers shall be adopted, great and permanent good will result.

In presenting this report the writer desires to say that all the members of the committee have devoted their time and thought liberally and cheerfully to the accomplishment of the proposed measure for relief. There has been no laggard amongst them.

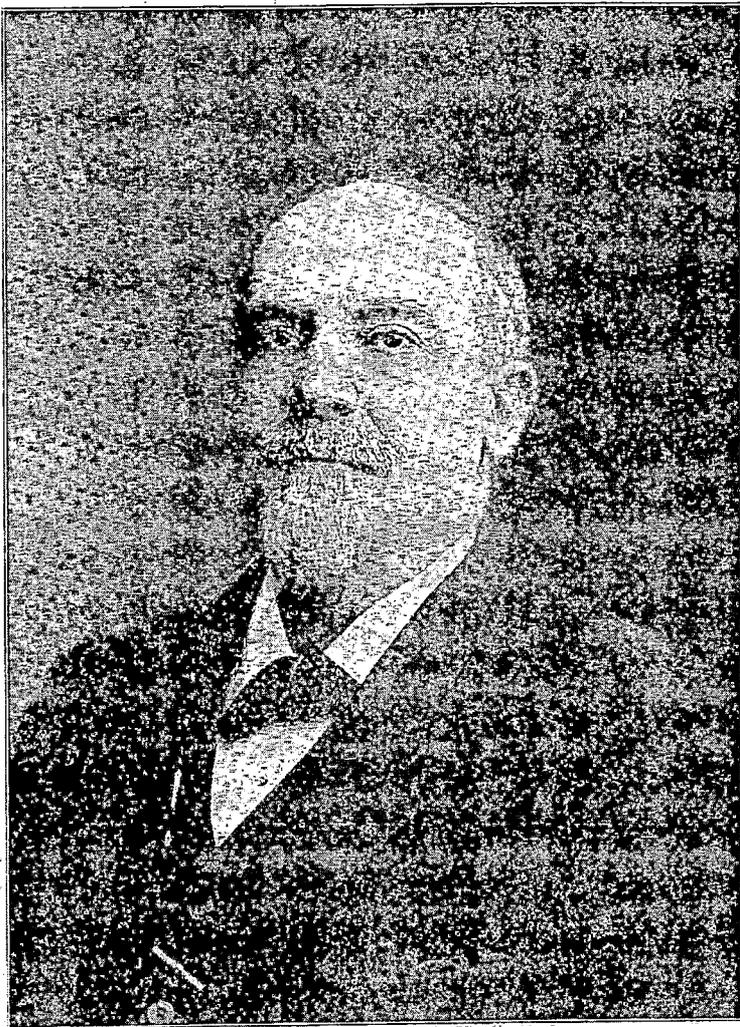
Respectfully submitted.

WASHINGTON DESSAU, for the Committee.

21 GA Bar Association Reports

1904 Meeting

“Report of Committee on Court of Appeals”



JUDGE SAMUEL LUMPKIN.

REPORT

OF THE

Twenty-First Annual Session

OF THE

Georgia Bar Association

HELD AT

WARM SPRINGS, GA.

ON

June 30th, July 1st and 2d, 1904

EDITED BY

ORVILLE A. PARK

SECRETARY

ATLANTA, GA.

The Franklin Printing and Publishing Company
Geo. W. Harrison, Manager

1904

The Secretary: There is another matter which I think should be called to the attention of the Association. On yesterday we recommitted a report which was read by Judge Hillyer. This morning we reconsidered that action and certain recommendations in the report were adopted, but we left the remainder of the committee's report in the air. I think it would be well to pass a resolution recommitt- ing the remainder of that report.

The President: That was the original resolution. The Secretary moves that the remainder of the report of the committee referred to, other than the two subject-matters already dealt with, be recommitted to the committee.

The motion was adopted.

The President: The next matter is the report of the Committee on the Court of Appeals.

Mr. Dessau: Mr. Chairman and gentlemen of the Association: There is very little to be said about this bill other than what is known to the members of the Association. You will all recall that for several years the subject of the relief of the Supreme Court of the State of Georgia has received our close attention and our undivided effort. Year before last when the proposed measure for the relief of the Supreme Court took real shape, a committee was appointed, a large committee composed of members from each congressional district and from the State at large, charged with the duty of preparing a measure looking to specific legislation on the subject, either through legislation without the intervention of a constitutional amendment, or through the intervention of a constitutional amendment if such was deemed necessary. Your committee in the preparation of the measure had the assistance of the members of the Supreme Court bench and also members of the Association on the committee and of other gentlemen not on the committee. The result of the efforts of these gentlemen was crystallized into a bill, a copy of which you now have in your hands. This bill came before the last meeting of this Association at Tallulah Falls and was discussed at length by one its most dis-

tinguished members, and by other members of the Association. The result of that discussion, as many of you will remember, was the practically unanimous agreement that the measure submitted in this bill embodied the thought of this Association upon the subject, and it was determined, as far as this Association could do so, to aid in having this measure become operative. The Senate of the General Assembly has adopted the measure and it is now pending before the General Judiciary Committee of the House, or rather before the House on a favorable report from the General Judiciary Committee, and will be placed on the calendar I presume whenever it is the wish of this Association that it should take its place. As to whether this measure will ever be incorporated into the constitution of our State is of course a matter of doubt, but it is quite certain that the discussion of this measure has attracted general and close attention to the necessity for the relief of the Supreme Court. The Legislature is now in session. The Chairman of the General Judiciary Committee awaits some direction or expression of opinion from this Association as to what is its wish in regard to the further presentation of this bill before the General Assembly. It may be deemed proper by this Association to appoint a special committee from this body to aid the Chairman of the General Judiciary Committee in his efforts. It may be that the General Assembly, or the House, may consent to a discussion of the merits of this measure by the President of this Association. It may be that other hearings can be had, and it may be that some practical good would result and the bill be passed. It is entirely and absolutely within the control of this body, and before I take my seat, Mr. President and gentlemen, I desire to say in behalf of the General Assembly of the State of Georgia, that while that mighty lawmaking body has not at all times adopted our suggestions, and has not at all times seen fit to carry into effect the specific suggestions we have made, it is true, and it appears so upon the records, that the General Assembly of the State of Georgia, has paid

great respect to the suggestions and wishes of this body in regard to legislation which has come before it, and I feel quite sure that whatever may be the direction that this Association shall give to this matter, it will receive the most considerate attention at the hands of the General Assembly. What will be the pleasure of this body will be for you to determine, but whatever is to be done must be done promptly. The next general election will occur in the early part of October, the first Wednesday I believe. If this bill is to be incorporated into the Constitution, if these changes are to become effective they must be advertised for sixty days before the date fixed for the general election. The bill must be advertised not later than the first of August. The time is almost gone and as we all know the delays which follow any effort to carry legislation through the General Assembly, whatever is done in that regard must be done with promptness, because the time is short and delays would be very inimical. It may be that the measure may not pass, but if so no particular harm is done. The attention of the Legislature has been called to the need, and while this Assembly, these members, may not be willing to adopt these suggestions, the next members may be willing to adopt the suggestions, and if so the work marked out will be accomplished. It is not the work of a day or the work of an hour. If we accomplish it this year or accomplish it next year the court will have been established by our efforts.

The President: Does the Committee recommend that the present committee shall keep the matter in hand.

Mr. Dessau: I have no authority to speak for the Committee. In fact I didn't know that I was expected to make this report until I received a letter from you and by some misfortune the request in the letter was overlooked. I understood on yesterday the Chair announced a committee on Legislation of which my friend, Mr. Fleming, was made chairman.

The President: I announced the committee on Legislation: Mr. Fleming, Mr. Lawrence and Mr. T. A. Hammond.

Mr. Dessau: Now, Mr. President, I think it would be well for this Association to commit the care of this measure to my distinguished friend; to the committee of which he is chairman, and as far as possible other gentlemen will come to its assistance.

Mr. Fleming: I never heard until a few minutes ago of my appointment as chairman of that committee. I wish to say that I will be obliged to ask the chairman to excuse me from serving this year. My time will be so occupied for the next thirty or forty days that it will be impossible for me to serve.

The President: Do you urge that now?

Mr. Fleming: I do not wish to inject that except for his information.

Mr. Dessau: Then whoever will be chairman. Some other gentleman will be named as chairman before this meeting closes. I suggest that this bill be immediately committed to the care of that committee to proceed with it before the General Assembly. The Chairman of the General Judiciary Committee is familiar with the bill, and his committee has made a favorable report on it. I am informed that the bill is growing in favor. I was so told by two members, influential members of the House. I was told the bill is growing in favor, and if that direction is given we have a fair opportunity to pass it.

Mr. W. R. Hammond: I have a resolution I wish to offer on that subject:

Resolved, That in the opinion of this Association there is urgent and pressing need for the relief of the Supreme Court of this State, by the General Assembly at the present session, by the passage of the bill, now pending, for the establishment of a Court of Appeals; and that a special committee of five be appointed by the president of this Association, to confer with the General Assembly on that subject; and, if practicable, to appear before that honorable body, and present the reasons for the passage of the bill.

The only difference is that this provides for a special com-

mittee. The bill, as I understand it, is now in the hands of the organized machinery of this Association through its committees. They have done what they could. They have done very efficient work, and I think it would emphasize the matter to place it in the hands of a new committee for a special effort.

Mr. Peeples: I wish to suggest an amendment that the special committee proposed by Judge Hammond shall act in connection with the regular Committee on Legislation.

Mr. W. R. Hammond: I think they would do so as a matter of course. The only object of this resolution was to emphasize the importance of the bill.

The President: A committee has had charge of this work. Has that committee become *functus officio* by reason of this report?

Mr. Dessau: I think that committee thinks that its duty has been done. I have talked with several of the gentlemen and they feel that way.

Mr. Persons: I move, as a substitute, that the present special committee, which now has it in charge, continue to keep it in charge. It occurs to me that they know more about it and are more familiar with it, and calculated to accomplish more good, and that the measure should remain in their custody, and I would suggest in addition to that they be requested to prosecute the matter to a conclusion.

Mr. W. R. Hammond: I think the committee is charged with that duty under the resolution of the Association. My object in appointing a special committee was to increase the efficiency of the means employed by this Association for the accomplishment of this much desired object. I have thought about this bill a great deal. I have studied it carefully. I have talked with members of the General Assembly on the subject. One difficulty, and that is what this resolution is offered for, is to get a hearing. I believe if the resolution I offer is passed it will be possible to get a hearing before the General Assembly of the State. It would be a resolution passed by this body, the influence of which is recognized by

the General Assembly, and the effort to get a hearing before them would have the backing of this body. It would be a request from this Association to that body; the request of this body to that body for a hearing before the General Assembly.

Mr. Garrard: Do I understand that this is a special committee of one from each congressional district?

The President: There was a committee of one from each congressional district that was heretofore raised and had a hand in the preparation of the bill. They have now done the work and ask that they be discharged, and the resolution now offered substitutes a committee of five.

Mr. W. R. Hammond: One word more. My idea about the special committee was this; there is a special work to be done. A committee from each congressional district would be too unwieldy. The Chair would have in view in appointing the committee the question of getting good men who could attend to the matter promptly with the least possible delay. I believe it is absolutely essential if you want to get the bill through.

Mr. Garrard: I don't think much has been done by sending large committees to the Legislature. I don't think that anything hurts legislation more than to have a crowd of men hanging around. I believe if your regular committee goes there they can get a hearing without attracting so much attention. I believe you can do more with a committee of three. You don't want more than that number of speeches before the committee. You have got a regular committee. I have heard the names and I don't think they can be improved on. Let that committee understand that they are to take charge of this bill and carry it through and I believe they will do more good than a special committee. The committee goes there as a part of their general duty, and I think will do more good than a special committee. I earnestly hope that the gentleman will withdraw the resolution, or that it will be voted down. Let the committee appointed take charge of the bill, but as it would not be wise for this

body to be put in the position of voting down that portion of the resolution which recommends the passage of this bill, I think it would be well to divide the question. I think we would all concur in voting for the passage of that part of the resolution which recommends the passage of the bill, while we might not be unanimous about the special committee.

The President: The gentleman asks for a division of the question. Is there any objection, Mr. Hammond?

Mr. W. R. Hammond: No, sir.

Mr. Brewster: I have no special interest in the matter taking one course or the other. I don't understand that under the appointment of the original committee that that committee can get rid of this bill unless we take it out of their hands. It seems to me to be a peculiar proposition when a committee has gone so far, for that committee was appointed two years ago, they appeared before the last meeting of the Association, they have gone before the Legislature, they have succeeded in passing the bill through the Senate, they have a favorable report from the General Judiciary Committee, to take the matter out of their hands now. I don't see why the Association should take it out of the hands of such able gentlemen for the purpose of placing it in the hands of anybody. Having commenced the work I hope the Association will permit them to finish it.

The President: The question is on the passage of the portion of the resolution recommending the passage of the bill.

This portion of the resolution was adopted.

The President: I will put the question in the form of a substitute to strike out the special committee of five and insert in lieu thereof the committee of one from each congressional district and two from the State at large.

The substitute was adopted, and the original committee given charge of the measure.

Mr. Harrison: Should the bill be passed before the Legis-

lature it will be necessary to have literature published to bring it before the people, and I offer the following resolution:

Resolved, That the committee charged with presenting the bill for the establishment of the Court of Appeals be authorized to prepare, publish and distribute such literature as in its opinion may be needful to secure the ratification of the Act when passed, and that the Treasurer be authorized to pay the expenses of said committee on itemized bills approved by the chairman of the committee.

The resolution was adopted.

The President: Mr. Fleming, I want to call your attention to the fact that the Chair was particularly anxious that you should serve as Chairman of the Committee on Legislation because the subject-matter to be dealt with is that presented by your committee. The report of your committee which met with the approval of the Association on yesterday consisted in four recommendations and presented the bills you had drawn. Inasmuch as you are familiar with that work the purpose of the Chairman in appointing you chairman of that committee was to get the benefit of the work you have done.

Mr. Fleming: I would have promptly notified you if I had heard the appointment announced, but I did not know of it until a few minutes ago. I have an engagement which I am sure will prevent my giving the time and attention necessary to do the work.

The President: The Chair recognizes the necessity of relieving Mr. Fleming, and will appoint Mr. Charlton Battle in his place.

The next matter is a paper by Mr. Eugene Ray.

(For Mr. Ray's paper see Appendix P.)

The President: The next is the report of the Committee on Legal Ethics.

Mr. Branham: The report I am about to submit to you has at least two features which I have no doubt will commend it to your consideration. The first is, it is short. You all know that Solomon, David, or some other ancient gen-

Legal Ethics.

W. G. Charlton, Chairman	Savannah
C. E. Battle	Columbus
J. H. Merrill	Thomasville
A. S. Bussey	Wrightsville
J. R. Terrell	Greenville

Reception.

R. D. Meador, Chairman	Brunswick
F. U. Garrard	Columbus
E. Winn Born	Atlanta
J. J. Dunham	Buena Vista
Barry Wright	Rome

Committee on Legislation.

Charlton E. Battle, Chairman	Columbus
A. A. Lawrence	Savannah
T. A. Hammond	Atlanta

SPECIAL COMMITTEES.

On Bill to Establish Court of Appeals.

President A. P. Persons, Chairman, <i>ex officio</i>	Talbotton
S. B. Adams, 1st District	Savannah
A. G. Powell, 2d District	Blakely
E. A. Hawkins, 3d District	Americus
J. R. Terrell, 4th District	Greenville
Burton Smith, 5th District	Atlanta
Washington Dessau, 6th District	Macon
Joel Branham, 7th District	Rome
A. S. Erwin, 8th District	Athens
W. A. Charters, 9th District	Dahlonega
J. C. C. Black, 10th District	Augusta
John W. Bennett, 11th District	Waycross
L. E. Bleckley, State at Large	Clarkesville
W. A. Little, State at Large	Columbus

22 GA Bar Association Reports
1905 Meeting

REPORT

OF THE

TWENTY-SECOND ANNUAL SESSION

OF THE

Georgia Bar Association

HELD AT

WARM SPRINGS, GA.,

ON

July 5th, 6th and 7th, 1905.

EDITED BY

ORVILLE A. PARK

SECRETARY

ATLANTA, GA.

The Franklin Printing and Publishing Co.

GEO. W. HARRISON, Manager

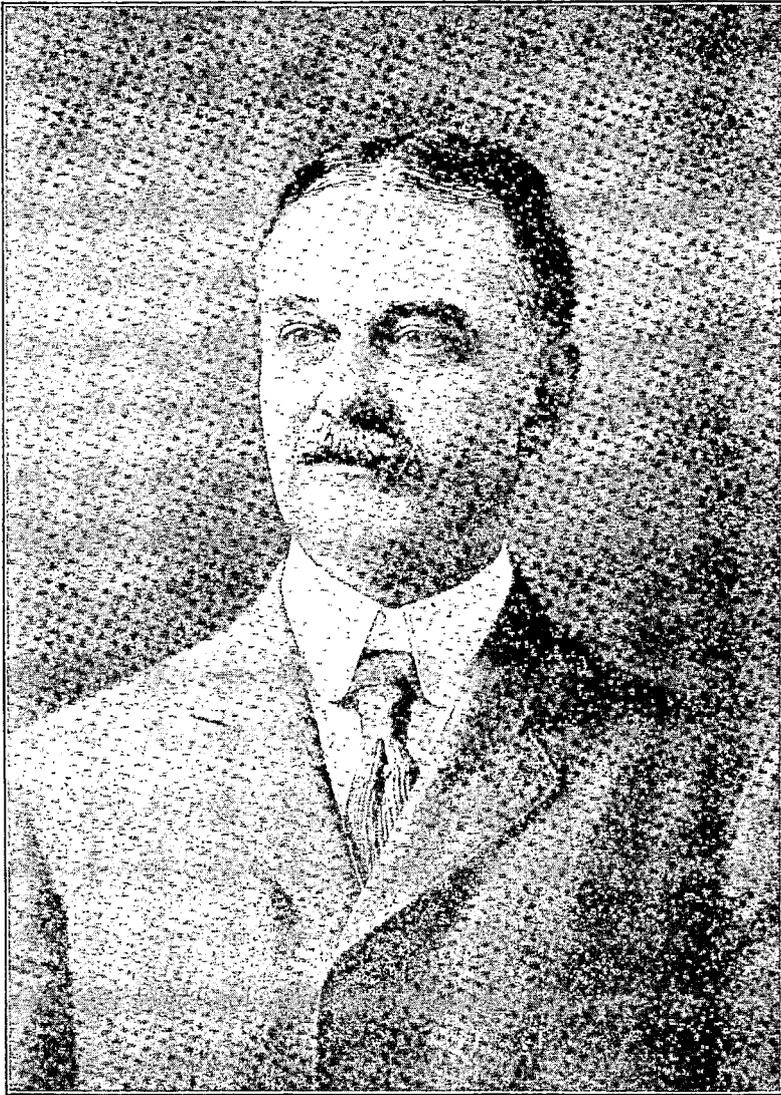
1905.

ised. If all the Judges quit at once, they may take a Summer trip, which we know they need.

Next, a "Bill to establish a Court of Appeals." That measure was referred to a special Committee appointed two years ago. That Committee has performed very arduous labors. They have drafted a Bill, which was introduced into the Senate. It met with the approval of that body. It met the approval of the General Judiciary Committee of the House, but for reasons unnecessary to state at this time it did not proceed, as it met the disapproval of some of the prominent members of that body. The Legislature at that time was very busily engaged on franchise laws, and the measures recommended by this body did not receive as much attention as they otherwise would perhaps.

The last measure referred to this Committee was the "Negotiable Instruments Act." It seems to have been a matter of impossibility to get the Legislature to consider this bill with any degree of seriousness. The Chairman of the General Judiciary Committee of the House, Mr. Slaton, was very much in favor of it. He is now Speaker of the House, and at his suggestion your Committee did not urge this bill for passage at that time, so as not to have it meet a fate similar to the others. His opinion was that it required a campaign of education, and, if that be true, and I think it is true from the experience that I met with before that body, the Committee would respectfully submit, Mr. President, that not the Legislative Committee, but a special Committee be appointed, looking to the constant urging of this measure before the General Assembly. The Committee regards it as a bill of great importance. It has met the approval of several Legislative bodies in different States, and has finally been enacted into law in many of them, and when all other States have come together, and adopted this measure, a great deal of trouble and useless litigation will have been avoided. The Committee respectfully makes this report.

23 GA Bar Association Reports
1906 Meeting



PRESIDENT T. A. HAMMOND.

REPORT

OF THE

Twenty-Third Annual Session

OF THE

Georgia Bar Association

HELD AT WARM SPRINGS, GA.

ON

July 18th, 19th and 20th, 1906.

EDITED BY

ORVILLE A. PARK, Secretary.

ATLANTA, GA.

THE FRANKLIN-TURNER COMPANY

PRINTERS, PUBLISHERS, BINDERS

1906

The Secretary then read the program as arranged by the Executive Committee.

A Voice: How about Judge Bleckley's address? When is that?

The Secretary: I did not have it on the program because Judge Bleckley has just consented to favor us. He speaks tomorrow morning. It's hardly necessary for me to exploit that speech in this company of Georgia people, and especially of Georgia lawyers, however. The mere mention of the fact that Judge Bleckley will speak is sufficient. (Applause.)

Mr. H. C. Peeples (Atlanta): What time is the report expected from the Committee on the Nomination of Officers?

The Secretary: As arranged by the Executive Committee, it is the first thing to-morrow morning.

The President: You have heard the outline of the program made by the Secretary.

The first thing in order upon the program is a paper upon "Forged Bank Checks," by Mr. R. E. Dismukes, of Columbus.

For Mr. Dismukes' paper, see Appendix K.

Mr. P. W. Meldrim (Savannah): Mr. President, your committee, whose report was passed on yesterday, that is, your Committee on Legislation, is prepared to submit a brief report, if it is agreeable to take it up at this time.

The President: We will be glad to hear from you, Mr. Meldrim.

Mr. P. W. Meldrim (Savannah): This report, Mr. Chairman, is quite brief. I will read it as follows:

(For report of Committee on Legislation see Appendix L.)

Now, before taking my seat, I beg to suggest and to move the appointment of a special committee of five, who shall present for the consideration of the Legislature now in session a bill for the purpose of creating a Court of Appeals for the relief of the Supreme Court of our State. I offer that for the reason that your Special Committee on Legislation will

have enough work of its own in pressing other matters before the General Assembly, and, if you will pardon me for trespassing upon your time for a single instant, I desire to impress this fact upon the Association: We work here year after year to determine what legislation should be promoted, whether we should seek to enact remedial and deserving legislation, and whether we should be opposed to injudicious or slipshod legislation. We come to a conclusion, but when our session ends without our having definitely determined upon a course of procedure, our work is lost. Therefore, it was that a Special Committee upon Legislation was raised, and the duty of that committee is to go before the respective committees of the Senate and House and say that the great body of lawyers of the State, the men who are consecrating their lives to the advancement of the law and the administration of justice, without fee or reward, come before you, the Legislature, to urge or oppose the passage of this bill or that bill for sufficient reasons.

I could not help feeling, Mr. Chairman, to-day, when Mr. Jerome sounded that bugle-call to duty on the part of the lawyers of this country to render their best service towards the moulding of public opinion, that we can do it. The necessity is upon us now in regard to our great court.

I shall take the liberty of asking that this special committee of five shall co-operate with your Committee on Legislation, and that those two committees will exercise all the power at their command to aid in the relief of the Supreme Court.

Now, before taking my seat, I would suggest that Mr. Justice Cobb, or one of the other justices of the court here present, will state to the members of the Association how they are being pressed with the burden of the work upon them, so that we can get the facts and have the great body of lawyers in this State bring their influence to bear upon the Legislature to give relief to the court, not because we lawyers need it, but

because the people of the State need it. We stand as their representatives. Our interests are but small as compared with the interests of our clients. The great and true lawyer always recognizes as a paramount consideration, and as the object for which he strives, the interests of the client he represents, and not his own smaller interests.

I therefore move you, Mr. Chairman, that Mr. Justice Cobb, or any of the other distinguished gentlemen of the court, be requested to state the conditions, and, when he has done that, I would be pleased if you would put the resolution I offer for the appointment of the committee of five, if I meet with a second.

Mr. Marion W. Harris (Macon): I second both motions, Mr. President.

(Mr. Justice Cobb was just coming into the room at the time, and did not hear Mr. Meldrim's motion.)

Mr. P. W. Meldrim (Savannah): I suggested Mr. Justice Cobb because he was the oldest of the Justices here.

Mr. Justice Cobb: I did not hear the motion, Mr. President; I was just coming in.

The President: Mr. Justice Cobb announces that he did not hear your motion, Mr. Meldrim.

Mr. P. W. Meldrim (Savannah): I have heretofore found that to be the case with the Bench. My motion, Judge Cobb, was that a committee of five be appointed to see that proper legislation is passed for the relief of the Supreme Court, looking to the establishment of a Court of Appeals. Before putting the motion, however, I have asked, with the permission of the Chair, that you would give us some information as to the work of the Supreme Court at this time.

Mr. Justice Cobb: As a preface to what I shall say, it would not be out of place to relate one of the stories of my friend, Col. W. D. Tutt, of Elberton, which I once heard him relate in his inimitable way. Brother Crawford, a devout Baptist,

walked into the mid-week prayer-meeting, and took one of the prominent seats in front of the pulpit. During the progress of the meeting the preacher said, "Will our Brother Crawford lead us in prayer?" Brother Crawford arose and said "I certainly will; I came for the purpose."

Mr. P. W. Meldrim (Savannah): If you had told me that before, I would not have put my request on the ground that I did.

Mr. Justice Cobb: The justices of the Supreme Court knew that this matter would be discussed by the Association at this meeting, and they were fully aware of the fact that the Bar appreciated in a general way the condition of the business of that Court, and that some few members of the Bar who have had the opportunity and taken the time to investigate in regard to the details, were informed as to some of the matters to which I will call your attention. But I do not think that any member of the Bar, who has not had the opportunity and the occasion to go into the clerk's office, and get the information, which the clerk has gathered for me, can fully appreciate the exact condition of affairs at this time.

~~This~~ This movement—if we may call it such—this movement for the relief of the Supreme Court is of no recent origin. I think it is unfortunate that it has been termed a movement for the relief of the Supreme Court. It is a movement in behalf of the administration of the law, for the relief of those whose lives, whose liberty, whose property, is involved, those who have been given under the Constitution of the State the right to have an adverse decision reviewed. That's what it is, no more, no less. The personal welfare of the individuals who, for the time being, seek as best they may to discharge the delicate and onerous duties which the law and their oath of office lay upon them, pales into absolute insignificance, in the light of the fact that the time is not far ahead, when hundreds of people—it may be those whose lives are involved, whose liberties

are involved, and certainly whose property is involved—will be by the mandate of the Constitution deprived of a hearing in the Supreme Court for the simple reason that it will be a physical impossibility, not only for those who are now the justices of that court, but any other six persons, no matter what may be their native ability, nor how superior their attainments, to dispose of the cases within the time prescribed by the Constitution. Let us but take a glance at the present condition of the business of the court.

There were brought to the October term, 1896, and to the March term, 1897, of the Supreme Court, 778 cases. The Supreme Court has, since the first day of last October, disposed of 704 cases. That is, since the beginning of the October term, we have disposed of nearly as many cases as were brought to the two terms of the court ten years ago. The docket now contains 452 cases. Of this number, the records in 200 cases have been assigned to the different justices. There are 252 cases which have not been assigned to justices.

The justices of the Supreme Court are human beings only, and they can do no more work from year's end to year's end than any other six individuals. It is the purpose of the justices to work diligently and faithfully until about the middle of next month, the 15th of August. It is absolutely essential that they should have at least a rest of from five to six weeks before taking up the work for another year. The Bar appreciates this, and the Bar will not criticise the justices for taking an adjournment. (Applause.) The people of Georgia will believe the Bar when they tell them that the justices are not at fault. (Applause.)

Between this date and the 15th or 16th of August we will endeavor to dispose of, as best we may, as many as possible of the two hundred cases already assigned. We may be able to dispose of one hundred, possibly not so many, possibly a few more. So that this condition of affairs now confronts us.

There are 252 cases of the March term, which will go over to the October term with the records untouched. There will probably be not less than fifty, possibly one hundred, of the cases, that are in the hands of the justices now, that may have to go over. Making the most liberal estimate of the possibilities of work during the next few weeks, you can absolutely rely upon the fact that the October term will begin with the Court 300 cases behind.

Under the system that now prevails, criminal cases and fast writs of error are heard on the third Mondays of each month. On the third Mondays of October, November and December, no matter what may be the condition in regard to business brought over from the preceding term, the court will be compelled to suspend work on it and hear the criminal cases and the fast writs of error. The three monthly calls will embrace between 100 and 200 cases. If there should be only 100, these added to the 300 cases carried over from the present term, will make 400 cases to be disposed of before the regular call of the civil docket for the October term is reached. Judging by past experience, we can not dispose of exceeding 100 cases a month. The average is not that high. It is really about ninety cases a month. The general call of the civil docket for the October term will probably not be reached before the first of February. If the civil docket is as large during the next October term as it was during the last October term, there will be on it between 600 and 700 cases. So there will be one month to dispose of 600 or 700 cases, and taking 90 or 100 from that, the March term will begin with the court 500 or 600 cases brought over from the preceding term. The March term embraces five months. The third Monday in each month will bring criminal cases and fast writs of error that must be expedited. It will be impossible to dispose of all the cases brought over from the preceding term and the criminal cases and the fast writs of error of the March term before the end of that term. It is

only a matter of twelve months before the time will arrive when there will be judgments affirmed by the operation of the mandate of the Constitution that all cases must be disposed of during the second term. How many it may be is a matter of speculation. It may be fifty, it may be one hundred, it may not be more than twenty-five, but, unless something is done, it is only a matter of a few years when a whole term's business will be stricken from the docket by one stroke of the pen, the entry upon the docket and upon the minutes of the court in 700 or 800 cases will be "Affirmed without a hearing, by operation of the mandate of the Constitution."

I am no alarmist. I am sure that I have not exaggerated the condition of affairs. If I have, make allowances for it. With all possible allowance on account of interest, the matter can appear to the impartial mind in no other light than deplorable.

The relief sought is not for the justices. They can continue disposing of cases at the rate of ninety or one hundred a month, taking such precaution as to their health as they feel they are bound to exercise, and they will probably survive. But what becomes of the litigant, who is entitled under the Constitution to have a decision in his case by the Supreme Court? Will the people permit a condition to be reached where the mandate of the Constitution that a man shall be entitled to have his case reviewed, when he has lost it in the lower court, will amount to nothing? It is true there are two mandates of the Constitution, and the operation of the one may destroy the other. But the people have said in the preamble to the Constitution that the purpose of that instrument is to "insure justice to *all*." The General Assembly when apprised of the facts will take steps to "insure justice to *all*."

I have given you the condition as it exists. I have not consciously overdrawn the picture a particle. I have painted it exactly as I see it. The question is, what is to be done? Every

one will agree that something should be done. What shall it be? Speaking for myself, I do not believe there is any other practical method than the establishment of a Court of Appeals. As to what should be the character of such a court, even among those who agree that that is the only practical method, there may be differences of opinion. I will give you some information, which may be useful in determining what shall be the jurisdiction of the Court of Appeals. There were 1,156 cases returned to the last two terms of the Supreme Court. Of this number 877, or 76 per cent., came from the superior courts, 279 cases, or 24 per cent., were from the city courts. It has been said that if the city courts were abolished this would bring great relief. I think everybody concedes that, no matter how the Constitution should be interpreted, even those who disagree with the decision of the Supreme Court in its interpretation of the Constitution relating to the power to create city courts, all will agree that Atlanta, Savannah, Macon and Augusta are each, under any view of the Constitution, a city in the true sense of that word. There will be no difference of opinion about that. Therefore, the suggestion to abolish the city courts necessarily embraces nothing more than the abolition of the city courts, other than those in these four cities. The judges of these four city courts are required to measure up to the same standard as a judge of the superior court. They are paid the same, or even larger, salaries. One appointed to preside in any of these four city courts would be fully competent to discharge the duties of a judge of the superior court. Therefore, to determine what would be accomplished by the abolition of the city courts, we must deal with the matter as if the city courts in the four large cities of the State are left intact. For the purposes of this statement, I will refer to the other city courts as "rural" city courts, with due apologies to Columbus, Rome, Albany and Athens, and other similar cities, for classing them as "rural." We find, then, that out of the 279 cases

from city courts eighty were brought from the city courts of Atlanta, Augusta, Macon and Savannah, which leaves 199 cases carried to the Supreme Court from the fifty-three rural city courts, not an average of four to the court. I have not the exact figures, but a very large percentage of these were misdemeanor cases. So that the abolition of every city court outside of the four large cities of the State would have reduced the present docket only to 955 cases. Speaking for myself, and on my own responsibility only, I think in this movement for the relief of those who are entitled to have their cases passed on by the court of last resort, we should treat it as a fact that the city courts, both in cities and in the smaller towns of the State, *have come to stay*.

Mr. J. W. Quincy (Douglas): Is it not a fact that, in the event those smaller courts were abolished, a great number of cases which are now brought in those courts would come to the Supreme Court through the superior courts?

Mr. Justice Cobb: Some would not, perhaps, but the more important ones would. These city courts are local courts. They are courts established after having run the gauntlet of opposition on account of the expense of establishing a local court. When once established in the county, the city court has behind it the Bar of the county, and the wise and conservative element of the county, who are willing to permit enough courts to be established to conduct the business of the county. When they are established they have that sentiment behind them, and I say, with all due respect to those who may entertain a different opinion, it is not practical to deal with this question, except upon the assumption that the city courts are a permanent part of the judicial system to be created and abolished only at the will of the people of the different counties to be affected.

Therefore, the question again arises, "What cases should be given to the Court of Appeals?" It has been suggested that

this court, if established, should have jurisdiction to review all misdemeanor cases, and all cases which originate in courts other than the superior court, and, in addition to that, all appeal and certiorari cases. The Governor in his message has suggested this. It becomes important to know what would be the effect upon the business of the Supreme Court if a court with such jurisdiction were established. An estimate based upon the experience of the last two terms shows that cases from city courts, certioraries and appeals, cases originating in the court of ordinary, and misdemeanor cases, comprise 40 per cent. of the number of cases on the docket. But that does not mean 40 per cent. of the work. The cases which originate in the superior courts are, as a rule, the more important ones.

It is said that it might be well to base the jurisdiction not upon the court in which the cases originate, but upon the subject-matter of the cases. It has been suggested that it should have jurisdiction in all criminal cases, in all certiorari and appeal cases, and all interlocutory writs of error. Basing the calculation upon the experience of the last two terms, this would take from the docket of the Supreme Court about 46 per cent. of the cases; just a little more than the other plan.

There are, however, some complications that might arise out of one court having jurisdiction of a case at the interlocutory hearing, and the other jurisdiction of the same case at the final hearing. I will do no more now than suggest this fact.

Certioraries and appeals embrace about twelve per cent. of the business. City court cases embrace twenty-four per cent. So there is thirty-six per cent. from those two sources. If it is determined to vest that jurisdiction in the new court, then the question is what other class of cases should be embraced within the jurisdiction of the new court?

Gentlemen of the Bar Association, I desired to give you this information. I knew you wished it. A Georgia judge always feels that he has the sympathy and support of the Georgia Bar.

(Applause). No matter how he may be overwhelmed in the mass of work that may be imposed upon him; no matter how he may be staggered by the magnitude, importance and delicacy of the questions which have been laid before him for decision; no matter how many mistakes may be made in endeavoring to formulate into words the true law; a Georgia judge feels at all times that his mistakes are going to be criticized by the most generous class of generous men—the Georgia lawyers. (Applause).

I make no appeal in behalf of the judges as individuals. I do, though, ask that you arouse yourselves, if you are not already aroused, to the importance of the situation, and see that others, who may not appreciate it, are aroused, as I have no doubt you will do, and make an appeal to the law-making power to do that which is necessary to secure to *all* the constitutional right which every one has had since 1845 to have his case reviewed by the court of last resort. I would not, if I could, impress upon you any of my peculiar views in regard to the details of this matter. What is needed is a Court of Appeals of some kind. The time for the passage of such a bill is exceedingly short if anything is to be accomplished at this session of the Legislature. It will require an amendment to the Constitution of the State, which must be advertised sixty days before the general election in October. The bill must be passed by the House and Senate and in the hands of the Governor by the first of August to enable him to advertise it in the eleven congressional districts as required by the Constitution. The time is short, but, if the lawyers of Georgia will co-operate with their brethren in the Legislature, some character of Court of Appeals can be established, and the constitutional amendment can be proposed. The General Assembly in the future can perfect the scheme and remedy any defects and change the jurisdiction from time to time as occasion may require. While you may not at first have a court which will meet all your desires you

will have a court which in time can be perfected, and which finally under the hand of the General Assembly, may develop into a court which will bring the desired aid in all its fullness. May the day never come when it can be said that a citizen of Georgia living under a constitution which "insures justice to *all*," is deprived of the right to have his case reviewed for the reason that the courts can not dispose of the business before them within the time prescribed.

In conclusion, in behalf of the people whose lives, whose liberties, and whose property, are involved in this question, I appeal to you to use your influence to bring about a change in the conditions. Disregard the convenience and the health of the judges. This is immaterial. It is not for the relief of the judges. Judges may die, judges may resign, but the administration of the law must live. It is for the relief of the people whom the law says are entitled to have their cases heard. I have not said anything intentionally to stir you up by predicting a condition of affairs that will not arise. It seems to me that the day is certain to come, it may be in twelve months, it may be in eighteen months, when cases will be wiped from the docket of the Supreme Court on account of the operation of the mandate of the Constitution above referred to.

Mr. G. A. Whitaker (Valdosta): Before Mr. Justice Cobb takes his seat, it has occurred to me that for the purpose of shedding a little more light upon this matter it might be well for him to state the percentage of time consumed in the hearing of these cases. We know that the court has to sit and hear these cases, and to strengthen the argument for the necessity of this additional court, we would like to know the percentage of the time of the court consumed in hearing oral argument.

Mr. Justice Cobb: It would be very hard to give the actual percentage of time. The decision of a case, when it comes along in its regular order, is after this plan. The oral argu-

ment is heard by all the judges, if practicable, by never less than three. The record is scrutinized by not less than two judges. The opinion is written by the judge to whom the case is assigned, and the opinion is then submitted to the whole court. The time consumed in each case varies according to the character of the case. I should say that the oral argument consumes twenty-five to thirty per cent. of the time of the court. About seventy-five per cent. of the time is consumed in consultation and preparation of opinions.

I did intend to say another thing that I was about to omit. It is not at all satisfactory to the court to decide the cases without oral argument. Oral argument is helpful to any court, and it was an unfortunate condition of affairs when the time arrived that it had to be dispensed with. The judge who listens to the Bar, reflects in his opinions the learning of the Bar. No judge who is jealous of his reputation can afford to close his ears to the oral argument of counsel. That great masterpiece in the law, the opinion of Chief Justice Marshall in the Dartmouth College case, was but the reflected light of the brain of Daniel Webster brought to the fullest exercise of its power by the sentimental regard he cherished for his alma mater. If Marshall was content to be but a reflector of the intellectual light of others, how much more must those of lesser ability be satisfied to reflect the light that comes from the more brilliant intellects of the Bar. It is indeed a deplorable state of affairs when a court is deprived of the benefit of oral argument. I use the word "benefit" advisedly. My experience upon the bench has been limited, barely ten years; comparatively speaking, a very short space of time. I went upon the bench with no judicial experience, and while I was given a helping hand by those men with whom I was thrown—and especially do I feel grateful to-day for the kind words and helpful assistance that was given me by that grand old man, Chief Justice Thomas J. Simmons (applause), and no

less by his associate, Presiding Justice Samuel Lumpkin. (applause), who had the most remarkable legal mind of any man with whom I ever came in contact. When some one rises up in the future to write the judicial history of Georgia, no name will stand higher upon the roll of Georgia's judges than that of Samuel Lumpkin. I say I feel grateful to those men, many years my senior, for taking me by the hand and helping me in the onerous work which, since I began it, I have often wondered that I ever had the temerity to undertake. There are others, though, to whom I feel grateful besides my associates on the bench. I feel grateful to the Georgia lawyer who prepares his brief and orally argues his case pointedly and intelligently. No case should be disposed of in any court until the parties have been heard, and heard by counsel. Do not let the present condition of affairs continue with the court which declares not only the judgment in the particular case, but endeavors to formulate the rule for future action, deprived of the help and benefit of oral argument. Let the light which shines in the trained minds of the Bar shed its rays for the benefit of all through the utterance of the Bench.

Mr. Wright Willingham (Rome): Looking to a practical solution of this question of so great importance to the people of Georgia at this time, and the encouragement of legislation upon this subject, I desire to offer a resolution as follows: "Be it resolved by the Bar Association of Georgia in convention assembled, That it is the sense of this body that there exists at this time an imperative necessity for the establishment in Georgia of a Court of Appeals, and that each member of this Association be urged to at once communicate with his representative in the Legislature, presenting this question to the representative, and urging the passage of a bill looking to the establishment of this Court of Appeals." I offer that as a resolution.

The President: The first matter for consideration is the mo-

tion that a special committee of five be appointed to go before the Legislature for the purpose of securing the passage at this session of a bill to establish a Court of Appeals, as I understand Mr. Meldrim's motion.

Mr. P. W. Meldrim (Savannah): While I made that motion, I can not, of course, be put on the committee, as I am on the other Committee on Legislation.

The President: I was about to suggest that in the event the motion is carried, the Chair would be very thankful to the mover if he would suggest the names of some attorneys who are not so otherwise engaged as that if they were put on this committee they could serve actively on the same. The Chair in appointing this committee would not like to bind members who are so actively engaged otherwise as that they would be unable to do something for the relief of the situation.

Mr. P. W. Meldrim (Savannah): May I be permitted to suggest that the two committees—your standing Committee on Legislation, which is composed of Mr. Hill, Mr. King and myself, and the committee to be appointed—co-operate with each other fully, and that they be charged with the preparation of an appropriate bill, and that that bill be introduced, unless we find that there is pending in the legislature a bill that will meet the purpose. If there is such pending legislation, there would, of course, be no necessity for the preparation of another bill. It might be amended, if amendment was necessary. I think we should clothe the committee with discretionary power in that regard, and that the committee should be charged to at once earnestly urge upon the present Legislature such a bill as is best calculated to remedy the evil. I will, as far as I can, co-operate with the Chair in the suggestion of the names of such persons as might be most active on this committee. If the resolution is adopted, you might defer the appointment of the committee until later in the session.

Mr. Frank Harwell (LaGrange): I do not care to say any-

thing on the necessity of some bill being passed by the Legislature establishing a Court of Appeals, because I think all of us realize the imperative necessity of that being done, but I want to offer this suggestion, that has occurred to me. The committee can give such consideration to it in preparing their bill as they may see proper. It occurs to me that, in order to give the Court of Appeals and the Supreme Court, if the Court of Appeals shall be established, such elasticity as will allow them to adjust conditions among themselves, it might be well if those courts were permitted to certify cases from one court to the other, giving them the right to divide the cases as they may see proper. I do not think it would be a good idea to incorporate in the bill the sort of cases of which they should have jurisdiction, or that jurisdiction should be governed by the court in which cases originate, or the amount that is involved. Let the two courts divide the work between themselves. I do not care to go into details, but if each court could certify cases to the other, they might be able to equitably divide the burden.

Mr. A. G. Powell (Blakely): The Supreme Court has done, and is doing, more work than is at once apparent from the statements of Judge Cobb. If that court gets three hundred days out of a year for working, the justices work more than the average time. If their hours should be from 8 to 12 and from 2 to 6, making full eight hours each one of those three hundred days, they would only have 2,400 hours per year, and 1,200 cases decided in that time, counting the average 100 a month, gives two hours to the case. That is not to be multiplied by six on account of there being six judges, because the time of the whole court must be devoted to argument by counsel, examination of the record and so on. The able opinions that have been handed down by that court for the last few years have been prepared under the pressure of

an average of two hours to the case. The justices are the hardest-worked men in the State.

On one occasion I happened after dark to be at the capitol. I had forgotten something, and was admitted to the Supreme Court library to get it, and there sat the court still engaged in work at that hour upon the cases. The justices are hard-worked men, and that Court is entitled to relief.

Mr. J. L. Sweat (Waycross): As a member of the committee making the report on Judicial Administration and Remedial Procedure, I desire to say that for one I am heartily in favor of the adoption of the motion made by Mr. Meldrim.

Judge Logan E. Bleckley (Clarksville): If I did not know the nature of the distress of the members of the Supreme Court, as individuals, as human beings, I might feel gratified that Judge Cobb puts it out of consideration in his recommendations altogether. But I know, that notwithstanding his modesty and apparent disinterestedness, the members of that court do feel that some sort of relief, personal relief, is required. I felt it to such an extent that I had to retire twice for the sake of relief, such relief as would come through this Court of Appeals, or largely so. I am here before you this day on account of my not being brave and bold enough to stand up and remain on the court in spite of the peril that attended the position, and I did retreat twice. My brethren, who served with me, and did not retreat, during my last term, are both in the grave, in consequence of not taking my precaution. I have no doubt that both Judge Lumpkin and Judge Simmons would be alive to-day, if they had retired, for I feel that I saved my life by going out. You will save the lives of some of these judges by giving the relief sought, for it is impossible to perform the duties required of this court and be safe in the enjoyment of life.

Mr. J. J. Strickland (Athens): I want to give the Association the benefit of a suggestion made by Judge Branham in the

preparation of the report submitted by our committee on yesterday. It is proper to state that all the members of our committee, except one, were in favor of recommending the establishment of a Court of Appeals, but since it was not unanimous, we thought best to recommend only what we could agree on, and leave open the question as to the Court of Appeals to be dealt with by the Association. In preparing the report our chairman, Judge Branham, made this suggestion: That a Court of Appeals be established, composed of the judges of the superior courts, a court of six to be designated by the Governor, so that the judges would not pass upon their own cases. One set of six judges would sit at a certain time, and then another set would sit at another time, and in such a way as not to put the work on the same men all the while. The idea was to meet the immediate demand, as a proper bill establishing the Court of Appeals would probably take some years. It could not be done at the present session of the Legislature in the opinion of the committee, and it was thought that this court might be established now and make it a nucleus, around which a court could be established in future.

Mr. Marion W. Harris (Macon): Having seconded Colonel Meldrim's motion, I merely wish to call attention to the fact that we should pass a resolution recommending the establishment of a Court of Appeals, or some other method of relief, because the Legislature might not wish to establish a Court of Appeals, or to establish it under that name, and our committee should be instructed to ask for relief through the establishment of a Court of Appeals, or through some other method.

Mr. P. W. Meldrim (Savannah): It is the purpose to give that committee general power,—discretionary power.

Mr. W. W. McDonald (Douglas): If I am correctly informed, there is now pending a bill for such relief, and it

might be well to urge its passage with such amendments as may commend themselves to the committee.

Mr. P. W. Meldrim (Savannah): The resolution permits that.

The resolution offered by Mr. Meldrim was then voted upon and carried, a rising vote being taken.

Mr. Wright Willingham (Rome): Inasmuch as Mr. Meldrim has enlarged his motion, and it now seems to include my resolution, I will withdraw my resolution.

Judge S. B. Adams (Savannah): I would like to make a motion that it is the sense of this Association that the best relief can be obtained through the establishment of a Court of Appeals. I think we should settle on some general form of relief.

Mr. P. W. Meldrim (Savannah): I agree with Judge Adams that it is the sense of this body that we should have a Court of Appeals, but you can not always dictate to a legislative body what it should do, and I would not think it wise to have the committee bound by Judge Adams' motion, as it may be possible that some other form of relief might be the best that we could get at this time.

Judge S. B. Adams (Savannah): It is simply a question of preference, not that we wish to bind the committee. Simply want to express the sense of this body. Of course we will get such relief as we can.

Mr. P. W. Meldrim (Savannah): That is entirely satisfactory.

Judge Adams' motion was then put to a vote and carried.

Mr. A. G. Powell (Blakely): A casual reading of the by-laws will show that they are not in good form, and that they need revision. I therefore move that a committee be appointed to revise the by-laws and submit them for ratification by this Association. Understand, that does not bind the Association to adopt the by-laws, as submitted, but I simply

Senate and House Journal 1906

Message to the General Assembly from Governor J.M. Terrell, June 27, 1906

RELIEF OF THE SUPREME COURT.

The crowded condition of the docket of our Supreme Court is a serious menace to the general business interests of the State. In 1895 the number of cases in that court reached such a volume that some relief was necessary. The General Assembly in 1895 proposed and the people at the general election in October, 1896, ratified an amendment to the Constitution increasing the number of justices from three to six. The remarkable growth of the State during the last ten years has resulted in more than a corresponding increase in the number of cases brought before the Supreme Court. In 1896 our taxable values

were \$413,307,473, and in 1905 they were \$577,841,252, making an increase of \$164,533,809, or about 40 per cent. The Southeastern Reporter publishes the decisions of five States, viz., Virginia, West Virginia, North Carolina, South Carolina and Georgia. An examination of these reports for the last year will show that the Supreme Court of Georgia decides nearly as many cases as the Supreme Courts of the other four States combined. There were brought to the October Term, 1896, and to the March Term, 1897, of the Supreme Court 778 cases, and to the corresponding terms for 1905 and 1906 there were 1,165 cases, making an increase of about 50 per cent. The creation of eight new counties, and the establishment of additional lower courts to meet the necessities of the people will no doubt result in a much larger increase of the cases before the Supreme Court during the next ten years. In 1896 there were 137 superior courts and 13 city courts from which cases might be carried to the Supreme Court, and in 1906 there were 145 superior courts and 57 city courts, with a probability of new city courts being established annually for several years. In a few years, should no remedial legislation be enacted, we are almost sure to witness the spectacle of a majority of the cases brought to a term of our Supreme Court being affirmed by operation of law on account of the inability of the court to hear and determine the same in the time required by the Constitution.

These conditions call for serious consideration at your hands. Justice should be judicially administered. Every

citizen of Georgia, under the Constitution, has the right of having his case heard and determined by a court of review. This is a right not given to the citizen by all the States. Some make a distinction by giving the privilege of appeal when the amount involved in the suit exceeds a given sum. Other States unconditionally require bond before entering the appeal, which policy frequently prohibits any but the rich, or those able to make the bond, from having the right to carry his case to the Supreme Court. Many States prescribe such excessive cost bills as prevent the citizen from taking his case to the court of review. The Georgia policy is the right one, as justice should be administered "freely without sale, fully without any denial, and speedily without delay" in every case. To accomplish this desirable result, it is our highest duty to provide the necessary courts. In order that the difficulties which confront us may be fully met we should establish an additional court of review to be known as the Court of Appeals. This court should have exclusive and final jurisdiction in all cases originating in all courts other than the superior courts, and in all misdemeanor cases, irrespective of the courts in which such cases are tried. The Supreme Court alone should have final jurisdiction over constitutional questions, and it should be provided that if such a question be raised in the Court of Appeals that it should be certified to the Supreme Court and decided by that tribunal, and the decision certified to and followed by the Court of Appeals in deciding the case; also, that the Court of Appeals may at any time certify to the Supreme

Court any other question or propositions of law concerning which it desires instruction of the Supreme Court for proper decision. An examination of the present docket shows that a Court of Appeals, as above outlined, would relieve the Supreme Court of about forty per cent. of the business. I most respectfully suggest that an amendment to the Constitution be proposed providing for such a court.

Senate Journal
1906

A bill creating the city court of Whigham.

A bill to amend the charter of Edgewood.

The following Senate bills were read first time:

By Mr. Reid—

A bill to provide that all pensioners on the pension rolls of this State over eighty years of age shall be paid a pension of \$80 per year.

Referred to Committee on Pensions.

By Mr. Reid—

A bill to provide that persons convicted of the offense of larceny after trust delegated shall be punished as for a misdemeanor.

Referred to General Judiciary Committee.

By Mr. Bond—

A bill to amend section 1250 of the Code.

Referred to Committee on Pensions.

By Mr. Alsobrook—

A bill to regulate the running of automobiles in this State.

Referred to Special Judiciary Committee.

The following House bills were read first time:

✓ By Mr. Perry—

A bill to create the Court of Appeals in this State.

Referred to Committee on Constitutional Amendments.

The Committee also recommends that the following bill of the House do pass as amended:

A bill to amend paragraph 1 of section 1 of article 6 of the Constitution of this State, and paragraph 5 of section 2, and to add to said section a paragraph to be known as paragraph 9, so as to provide for the establishment of a Court of Appeals.

Respectfully submitted.

B. S. MILLER, Chairman.

On motion this bill was made special order for Monday immediately after reading of Journal.

By unanimous consent the following House bills were read second time:

By Mr. Perry—

A bill to amend paragraph 1 of section 1 of article 6 of the Constitution of this State, and paragraph 5 of section 2 of article 1, so as to add to said section 2 a paragraph to be known as paragraph 9, so as to provide for the establishment of a Court of Appeals.

This bill was made special order for next Monday, and to continue special order until disposed of.

By Mr. Bell of Fulton—

A bill to regulate the employment of children in factories of this State.

By Mr. Clifton—

A bill to repeal the Act to create the board of commissioner of roads and revenues for Tattnall county.

A bill creating the city court of Whigham.

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387 *et seq.*

By Mr. Booker—

A bill to amend an Act to organize a public school system of West Point.

Referred to Committee on Education.

By Mr. Beauchamp—

A bill to amend the charter of the town of Pepperton.

Referred to Committee on Corporations.

By Messrs. Longley and Booker—

A bill to repeal an Act to establish a dispensary in the town of Hogansville.

Referred to Committee on Temperance.

By Messrs. Knight and Alford—

A bill to fix annual license fee for retailing liquors of Tift county at \$20,000.

Referred to General Judiciary Committee.

The following House bill was read third time and put upon its passage:

✓ *pp 357-343*

By Mr. Perry—

A bill to amend paragraph 1 of section 1 of article 6 of the Constitution so as to provide for a Court of Appeals in this State.

Report of the committee was agreed to.

Upon the passage of the bill the ayes and nays were ordered and the vote was as follows:

Those voting in the affirmative were Messrs.—

Alsobrook,	Furr,	Phillips,
Bennet,	Hamby,	Reid,
Bloodworth,	Hand,	Rose,
Bunn,	Hogan,	Steed,
Candler,	King,	Strange,
Carithers,	Lumsden,	Walker,
Carswell,	McHenry,	Westbrook,
Copelan,	Miller,	Wheatley,
Crum,	Odum,	Wilcox,
Foster,	Parker,	Williams,
Foy,	Peyton,	

Those not voting were Messrs.—

Adams,	Fitzgerald,	Mills,
Blalock, of 35th,	Förtner,	Sirmans,
Blalock, of 26th,	Graybill,	Ware,
Bond,	McAllister,	Mr. President.

Ayes 32, nays 0.

The bill having received the requisite constitutional majority was passed as amended.

The bill is as follows:

A BILL

To be entitled an Act to amend paragraph one of section one of article six of the Constitution of this State, and paragraph five of section two of said article, and to add to said section two a paragraph to be known as paragraph nine, so as to provide for the establishment of a Court of Appeals and to define its powers and jurisdiction; to define the jurisdiction of the Supreme Court, and for other purposes.

SECTION 1. Be it enacted by the General Assembly, That paragraph one of section one of article six of the Constitution of this State be amended so that it shall read as follows:

“The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, superior courts, courts of ordinary, justices of the peace, commissioned notaries public, and such other courts as have been or may be established by law.”

SEC. 2. Be it further enacted, That paragraph five of section two of article six of the Constitution of this State be amended so that it shall read as follows:

“The Supreme Court shall have no original jurisdiction, but shall be a court alone for the trial and correction of errors in law and equity from the superior courts in all civil cases whether legal or equitable, originating therein (or carried thereto from the court of ordinary,) and in all cases of conviction of a capital felony) and for the determination of questions certified to it by the Court of Appeals; and shall sit at the seat of government at such times in each year as are or may be prescribed by law, for the trial and determination of writs of error from the superior courts and of questions certified to it as aforesaid. The provisions of this paragraph shall become effective on the first day of January, Anno Domini nineteen hundred and seven, but shall not affect cases which on that date are pending in the Supreme Court, except that cases then pending therein of the kind of which the Court of Appeals has jurisdiction may be transferred by the Supreme Court to the Court of Appeals. Any case thereafter carried to the Supreme Court which is of the class of which the Court of Appeals has jurisdiction may be transferred to the Court of Appeals, under such rules as the Supreme Court may prescribe, until otherwise provided by law; and the Court of Appeals shall try the cases so transferred.”

SEC. 3. Be it further enacted, That the Constitution of this State be amended by adding to section two of article six a paragraph to be known as paragraph nine, which shall read as follows:

"The Court of Appeals shall, until otherwise provided by law, consist of three judges, of whom two shall constitute a quorum. It shall sit at the seat of government and at such other places as may be prescribed by law. The Governor shall immediately on the ratification of this amendment call an election, to be held on Tuesday after the first Monday in November, Anno Domini nineteen hundred and six, at which the judges of the Court of Appeals shall be elected in the manner in which justices of the Supreme Court are elected. The returns of said election shall be made to the Secretary of State. The terms of office of the judges then elected shall begin on the first day of January, Anno Domini nineteen hundred and seven, and shall continue respectively two, four and six years, and until their successors are qualified. The persons so elected shall, among themselves, determine by lot which of the terms each shall have, and they shall be commissioned accordingly by the Governor. All terms of the judges of the Court of Appeals after the expiration of the terms aforesaid (except unexpired terms) shall continue six years and until their successors are qualified. The times and manner of all other elections, and the mode of filling a vacancy which causes an unexpired term, shall be the same as are or may be provided for by the laws relating to the election and appointment of Justices of the Supreme Court. The Court of Appeals shall have jurisdiction for the trial and correction of errors in law and equity from the superior courts in all cases in which such jurisdiction is not conferred by this Constitution on the Supreme Court, and from the city courts of Atlanta and Savannah, and such

other like courts as have been or may be hereafter established in other cities, and in such other cases as may hereafter be prescribed by law, except that where, in a case pending in the Court of Appeals, a question is raised as to the construction of a provision of the Constitution of this State or of the United States, or as to the constitutionality of an Act of the General Assembly of this State, and a decision of the question is necessary to the determination of the case, the Court of Appeals shall so certify to the Supreme Court; and thereupon a transcript of the record shall be transmitted to the Supreme Court, which, after having afforded to the parties an opportunity to be heard thereon, shall instruct the Court of Appeals on the question so certified, and the Court of Appeals shall be bound by the instruction so given. But if by reason of an equal division of opinion among the Justices of the Supreme Court, no such instruction is given, the Court of Appeals may decide the question. The Court of Appeals may at any time certify to the Supreme Court any other question of law concerning which it desires the instruction of the Supreme Court for proper decision; and thereupon the Supreme Court shall give its instruction on the questions certified to it, which shall be binding on the Court of Appeals in such case. The manner of certifying questions to the Supreme Court by the Court of Appeals, and the subsequent proceedings in regard to the same in the Supreme Court, shall be as the Supreme Court shall by its rules prescribe, until otherwise provided by law. No affirmance of the judgment of the court below, in cases pending in the Court of Appeals, shall result from delay in disposing of questions certified by the Court of Appeals to the Supreme Court. All writs of error in the Court of Appeals, when received by its clerk during a term of the court, and before the docket of the term is by order of the court closed, shall be entered

thereon, and when received at any other time shall be entered on the docket of the next term, and they shall stand for hearing at the term for which they are so entered, under such rules as the court may prescribe, until otherwise provided by law. The Court of Appeals shall appoint a clerk and a sheriff of the court. The reporter of the Supreme Court shall be reporter of the Court of Appeals, until otherwise provided by law. The first term of the Court of Appeals shall be held on the first Monday in January, Anno Domini nineteen hundred and seven. The laws relating to the Supreme Court, as to qualifications and salaries of the judges, the designation of other judges to preside when members of the court are disqualified, the powers, duties, salaries, fees and term of officers, the mode of carrying cases to the court, the powers, practice, procedure, times of sitting and costs of the court, the publication of reports of cases decided therein, and in all other respects, except as otherwise provided in this Constitution, and until otherwise provided by law, shall apply to the Court of Appeals, so far as they can be made to apply. The decisions of the Supreme Court shall bind the Court of Appeals as precedents."

SEC. 4. Be it further enacted, That whenever the above proposed amendment to the Constitution shall be agreed to by two-thirds of the members elected to each of the two houses of the General Assembly, and the same has been entered on their journals, with the yeas and nays taken thereon, the Governor shall, and he is hereby authorized and instructed, to cause said amendment to be published in at least two newspapers in each congressional district in this State for the period of two months next preceding the time of holding the next general election.

SEC. 5. Be it further enacted, That the above proposed amendment shall be submitted for ratification or rejection to the electors of this State at the next general election

to be held after publication, as provided in the fourth section of this Act, in the several election districts of this State, at which election every person shall be qualified to vote who is entitled to vote for members of the General Assembly. All persons voting at said election in favor of adopting the proposed amendment to the Constitution shall have written or printed on their ballot the words, "For Court of Appeals amendment," and all persons opposed to the adoption of said amendment shall have written or printed on their ballots the words "Against Court of Appeals amendment."

SEC. 6. Be it further enacted, That the Governor be, and he is, hereby authorized and directed to provide for the submission of the amendment proposed in the first, second and third sections of this Act to a vote of the people as required by the Constitution of this State in paragraph 1 of section 1 of article 13, and by this Act, and if ratified, the Governor shall when he ascertains such ratification from the Secretary of State, to whom the returns shall be referred in the manner as in cases of elections for members of the General Assembly to count and ascertain the results, issue his proclamation for one insertion in one of the daily papers of this State, announcing such results and declaring the amendment ratified.

SEC. 7. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

The following Senate bill was read first time:

By Messrs. Steed, Candler and Miller—

A bill to establish a board for the examination of accountants in this State.

Referred to General Judiciary Committee.

✓ The House offers an amendment to the Senate amendment to the following House bill, and concurs in the Senate amendment as amended by the House, to wit:

A bill to amend paragraph 1 of section 1 of article 6 of the Constitution of this State, and paragraph 5 of section 2 of said article, and to add to said section 2 a paragraph to be known as paragraph 9, so as to provide for the establishment of a Circuit Court of Appeals.

By unanimous consent the following House bill was taken up with House amendment to Senate amendment:

By Mr. Perry—

A bill to amend paragraph 1 of section 1 of article 6 of the Constitution, so as to create the Court of Appeals.

Upon the concurrence in this amendment the ayes and nays were ordered and the vote is as follows:

Those voting in the affirmative were Messrs.—

Bennet,	Foster,	Odum,
Blalock, of 35th,	Furr,	Parker,
Blalock, of 26th,	Graybill,	Phillips,
Bloodworth,	Hamby,	Reid,
Bond,	Hand,	Steed,
Bunn,	Hogan,	Strange,
Candler,	King,	Walker,
Carithers,	Lumsden,	Ware,
Carswell,	McAllister,	Westbrook,
Copelan,	McHenry,	Wheatley,
Crum,	Miller,	Wilcox,
Fitzgerald,	Mills,	Williams,

Those not voting were Messrs.—

Adams,	Foy,	Sirmans,
Alsbrook,	Peyton,	Mr. President.
Fortner,	Rose,	

Ayes 36, nays 0.

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MONDAY, JULY 30, 1906.

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The following message was received from the Senate through Mr. Northen, the Secretary thereof:

Mr. Speaker:

The Senate has passed as amended by the requisite constitutional majority the following bill of the House, to-wit:

A bill to amend paragraph 1, section 1, article 6 of the Constitution, and paragraph 5 of section 2 of said article 1, so as to provide for a Court of Appeals.

By unanimous consent the following bill was read the third time, to wit:

By Mr. McMichael of Marion—

A bill to amend an Act to provide for the creation and operation of local tax district schools.

The hour of adjournment having arrived, the above bill went over as unfinished business.

The following Senate bill was read the first time, to wit:

By Mr. Bloodworth—

A bill to amend paragraph 2, section 1, article 11 of the Constitution for the creation of a new county.

Referred to Committee on New Counties.

Leave of absence was granted Mr. Rainey of Terrell.

The Speaker announced the House adjourned until 3 o'clock this afternoon.

Smith of Calhoun,	Thorne,	Williams of Laurens,
Smith of Greene,	Trammell,	Williams of Madison,
Smith of McDuffie,	Ward,	Wilson of Gwinnett,
Smith of Tattnall,	Walker of Monroe,	Wilson of Sumter,
Spence,	Walker of Wash'gton,	Wise,
Steed,	Waters,	Woodliff,
Stovall,	Way,	Wootten,
Sutton,	West,	Wright of Floyd,
Swilling,	Whitley,	Wright of Richmond,
Taylor,	Wilcox,	Mr. Speaker.
Terry,		

The Journal of yesterday's proceedings was read and confirmed.

The following resolution was read and referred to the Committee on Rules, to wit:

By Mr. Kelly of Glascock—

A resolution fixing the sessions of the House.

By unanimous consent the following bill was taken up for the purpose of agreeing to the Senate amendments, to wit:

By Mr. Perry of Hall—

A bill to amend paragraph 1, section 1, article 6 of the Constitution, and paragraph 5, section 2, article 6, and to add to said section a paragraph to be known as paragraph 9, so as to create a Court of Appeals.

The Senate proposed to amend as follows:

To amend section 3 by striking all of the words from and including the words, "The said judges shall be elected," etc., to and including the words "Annó Domini 1907," and substituting the following words: "The Governor shall immediately on the ratification of this amend-

ment call an election, to be held on Tuesday after the first Monday in November, A. D. 1906, at which the judges of the Court of Appeals shall be elected in the manner in which justices of the Supreme Court are elected. The returns of said election shall be made to the Secretary of State. The terms of office of the judges then elected shall begin on the first day of January, A. D. 1907, and shall continue respectively two, four and six years and until their successors are qualified. The persons so elected shall, among themselves, determine by lot which of the terms each shall have, and they shall be commissioned accordingly by the Governor. All terms of the judges of the Court of Appeals after the expiration of the terms aforesaid (except unexpired terms), shall continue six years and until their successors are qualified."

The following amendment offered by the House to the Senate amendment was adopted, to wit:

To amend the Senate amendment by adding after the words "Secretary of State," in line 5 of said amendment the following words, to wit: "And the Secretary of State shall canvass the returns and declare the three persons receiving the greatest number of votes to be elected."

On the adoption of the Senate amendment as amended the ayes and nays were ordered, and on taking the ballot viva voce, the vote was as follows:

Those voting in the affirmative were Messrs.—

Adams of Elbert,	Arnold,	Beall of Paulding,
Adams of Wilkinson,	Ashley,	Beauchamp,
Alexander,	Bacon,	Bell of Fulton,
Almand,	Barksdale,	Black,

Blackburn,	Humber,	Proctor,
Bowden,	Hutcheson,	Rainey of Schley,
Boylkin,	Jackson of Jones,	Ramsey of Jefferson,
Branch,	Jackson of Muscogee,	Ramsey of Murray,
Buchanan of Ware,	Jenkins,	Reaves,
Buchannon of Early,	Kelly,	Richardson,
Bush,	Kendrick,	Roper,
Callaway,	King,	Rogers,
Calvin,	Knight of Berrien,	Rose,
Christopher,	Knight of Folk,	Rountree of Emanuel,
Clark,	Land,	Rucker,
Clements,	Lane,	Rudicil,
Clifton,	Lawrence,	Shultz,
Connor,	Leigh,	Scruggs,
Conley,	Lewis,	Sears,
Cook,	Little,	Seymour,
Corn,	Longino,	Simmons,
Covington,	Longley,	Smith of Calhoun,
Cureton,	Lumpkin,	Smith of Greene,
Davis of Bibb,	McElmurray,	Smith of McDuffie,
Davis of Burke,	McMichael,	Smith of Tattnall,
Derrick,	McMullan,	Spence,
Daugharty,	McRee,	Stovall,
Duckett,	Martin,	Sutton,
Duggan,	Matthews,	Swilling,
Dunbar,	Mayson,	Taylor,
Edwards,	Milikin,	Terry,
Felder,	Mitcham,	Thorne,
Flanders,	Mitchell of Taylor,	Ward,
Flynt,	Mitchell of Thomas,	Walker of Monroe,
Fraser,	Mizell,	Walker of Wash'gton,
Fussell,	Mobley,	Waters,
Galloway,	Moore of Cherokee,	Way,
Graham,	Moore of Columbia,	West,
Green,	Mooty,	Whitley,
Grovenstein,	Nix,	Wilcox,
Hall,	Nolan,	Williams of Laurens,
Hardman,	Nowell,	Williams of Madison,
Harrell,	Overstreet,	Wilson of Gwinnett,
Harris,	Owen,	Wise,
Hayes,	Parker,	Woodliff,
Hill,	Perry,	Wootten,
Hines,	Persons,	Wright of Floyd,
Holder of Jackson,	Porter,	Wright of Richmond,
Horn,	Prescott,	Mr. Speaker.

Those voting in the negative were Messrs.—

Akin,

Those not voting were Messrs.—

Alford,	Holder of Floyd,	Rainey of Terrell,
Anderson of Bulloch,	Johnson of Baker,	Revell,
Anderson of Chatham,	Johnson of Crawford,	Rountree of Thomas,
Booker,	McClure,	Russell,
Brinson,	Mann of Catoosa,	Saffold,
Butts,	Mann of Dougherty,	Singleary,
Donalson,	Maxwell,	Steed,
George,	Orr,	Trammell,
Griffin,	Powell,	Wilson of Sumter,

By unanimous consent the verification of the roll-call was dispensed with.

On the adoption of the amendment as amended the ayes were 147, nays 1.

The amendment was therefore adopted as amended.

The following Senate bill, which was made the special order for this morning, was read the third time and put upon its passage, to wit:

By Mr. Wilcox of the 15th district—

A bill to amend an Act amendatory of paragraph 2, section 1, article 11, of the Constitution approved July 19, 1904, by striking the words "forty-five," in line 7 of section 1, and substituting in lieu thereof the words, "forty-six," and for other purposes.

The following substitute which was offered by the committee was adopted, to wit:

The substitute for Senate bill No. 157:

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Content of Act/Resolution

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA. 1906.

PART I--PUBLIC LAWS.

TITLE III. AMENDMENTS TO CONSTITUTION.

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Sequential Number: 012

Short Title: COURT OF APPEALS, ESTABLISHMENT OF.

Law Number: No. 373.

Full Title: An Act to amend paragraph one of section one of article six of the Constitution of this State, and paragraph five of section two of said article, and to add to said section two a paragraph to be known as paragraph nine, so as to provide for the establishment of a Court of Appeals and to define its powers and jurisdiction; to define the jurisdiction of the Supreme Court, and for other purposes.

SECTION 1. Be it enacted by the General Assembly, That paragraph one of section one of article six of the Constitution of this State be amended so that it shall read as follows:

"The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, superior courts, courts of ordinary, justices of the peace, commissioned notaries public, and such other courts as have been or may be established by law."
[Sidenote: Judicial department.]

SEC. 2. Be it further enacted, That paragraph five of section two of article six of the Constitution of this State be amended so that it shall read as follows:

"The Supreme Court shall have no original jurisdiction, but shall be a court alone for the trial and correction of errors in law and equity from the superior courts in all civil cases,

whether legal or equitable, originating therein, or carried thereto from the court of ordinary, and in all cases of conviction of a capital felony, and

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for the determination of questions certified to it by the Court of Appeals; and shall sit at the seat of government at such times in each year as are or may be prescribed by law, for the trial and determination of writs of error from the superior courts and of questions certified to it as aforesaid. The provisions of this paragraph shall become effective on the first day of January, Anno Domini nineteen hundred and seven, but shall not affect cases which on that date are pending in the Supreme Court, except that cases then pending therein of the kind of which the Court of Appeals has jurisdiction may be transferred by the Supreme Court to the Court of Appeals. Any case thereafter carried to the Supreme Court which is of the class of which the Court of Appeals has jurisdiction may be transferred to the Court of Appeals, under such rules as the Supreme Court may prescribe, until otherwise provided by law; and the Court of Appeals shall try the cases so transferred."

[Sidenote: Supreme Court jurisdiction.]

SEC. 3. Be it further enacted, That the Constitution of this State be amended by adding to section two of article six a paragraph to be known as paragraph nine, which shall read as follows:

"The Court of Appeals shall, until otherwise provided by law, consist of three judges, of whom two shall constitute a quorum. It shall sit at the seat of government and at such other places as may be prescribed by law. The Governor shall, immediately on the ratification of this amendment, call an election, to be held on Tuesday after the first Monday in November, Anno Domini nineteen hundred and six, at which the judges of the Court of Appeals shall be elected in the manner in which Justices of the Supreme Court are elected. The returns of said election shall be made to the Secretary of State, and the Secretary of State shall canvass the returns and declare the three persons receiving the greatest number of votes to be elected. The terms of office of the judges then elected shall begin on the first day of January, Anno Domini nineteen hundred and seven, and shall continue respectively two, four and six years and until their successors are qualified. The persons so elected shall, among themselves, determine by lot which of the terms each shall have, and they shall be commissioned accordingly by the Governor. All terms of the judges of the Court of Appeals after the expiration of the terms aforesaid (except unexpired terms) shall continue six years and until their successors are qualified. The times and manner of all other elections, and the mode of filling a vacancy which causes an unexpired term, shall be the same as are or may be provided for by the laws relating to the election and appointment

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of Justices of the Supreme Court. The Court of Appeals shall have jurisdiction for the trial and correction of errors in law and equity from the superior courts in all cases in which such jurisdiction is not conferred by this Constitution on the Supreme Court, and from the city courts of Atlanta and Savannah, and such other like courts as have been or may be hereafter established in other cities, and in such other cases as may hereafter be prescribed by law, except that where, in a case pending in the Court of Appeals, a question is raised as to the construction of a provision of the Constitution of this State or of the United States, or as to the constitutionality of an Act of the General Assembly of this State, and a decision of the question is necessary to the determination of the case, the Court of Appeals shall so certify to the Supreme Court, and thereupon a transcript of the record shall be transmitted to the Supreme Court, which, after having afforded to the parties an opportunity to be heard thereon, shall instruct the Court of Appeals on the question so certified, and the Court of Appeals shall be bound by the instruction so given. But if by reason of an equal division of opinion among the Justices of the Supreme Court no such instruction is given, the Court of Appeals may decide the question. The Court of Appeals may at any time certify to the Supreme Court any other question of law concerning which it desires the instruction of the Supreme Court for proper decision; and thereupon the Supreme Court shall give its instruction on the question certified to it, which shall be binding on the Court of Appeals in such case. The manner of certifying questions to the Supreme Court by the Court of Appeals, and the subsequent proceedings in regard to the same in the Supreme Court, shall be as the Supreme Court shall by its rules prescribe, until otherwise provided by law. No affirmance of the judgment of the court below, in cases pending in the Court of Appeals, shall result from delay in disposing of questions certified by the Court of Appeals to the Supreme Court. All writs of error in the Court of Appeals when received by its clerk during a term of the court and before the docket of the term is by order of the court closed, shall be entered thereon, and when received at any other time shall be entered on the docket of the next term, and they shall stand for hearing at the term for which they are so entered, under such rules as the court may prescribe, until otherwise provided by law. The Court of Appeals shall appoint a clerk and a sheriff of the court. The reporter of the Supreme Court shall be reporter of the Court of Appeals, until otherwise provided by law. The first term of the Court of Appeals shall be held on the

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first Monday in January, Anno Domini nineteen hundred and seven. The **laws** relating to the Supreme Court, as to qualifications and salaries of the judges, the designation of other judges to preside when members of the court are disqualified, the powers, duties, salaries, fees and terms of officers, the mode of carrying cases to the court, the powers, practice, procedure, times of sitting and costs of the court, the publication of reports of cases decided therein, and in all other respects, except as otherwise provided in this Constitution, and until otherwise provided by law, shall apply to the Court of Appeals, so far as they can be made to apply. The decisions of the Supreme Court shall bind the Court of Appeals as precedents."

[Sidenote: Court of Appeals, judges of.]

[Sidenote: Jurisdiction.]

[Sidenote: Officers.]

SEC. 4. Be it further enacted, That wherever the above proposed amendment to the Constitution shall be agreed to by two-thirds of the members elected to each of the two houses of the General Assembly, and the same has been entered on their journals, with the ayes and nays taken thereon, the Governor shall, and he is hereby authorized and instructed to cause said amendment to be published in at least two newspapers in each congressional district in this State for the period of two months next preceding the time of holding the next general election.

[Sidenote: Advertisement of proposed amendment]

SEC. 5. Be it further enacted, That the above proposed amendment shall be submitted for ratification or rejection to the electors of this State at the next general election to be held after publication, as provided in the fourth section of this Act, in the several election districts of this State, at which election every person shall be qualified to vote who is entitled to vote for members of the General Assembly. All persons voting at said election in favor of adopting the proposed amendment to the Constitution shall have written or printed on their ballots the words, "For Court of Appeals Amendment," and all persons opposed to the adoption of said amendment shall have written or printed on their ballots the words, "Against Court of Appeals Amendment."

[Sidenote: Ratification]

SEC. 6. Be it further enacted, That the Governor be, and he is, hereby authorized and directed to provide for the submission of the amendment proposed in the first, second and third sections of this Act to a vote of the people as required by the Constitution of this State in paragraph 1 of section 1 of article 13, and by this Act, and if ratified the Governor shall, when he [Illegible Text] such ratification from the Secretary of State, to whom the returns shall be referred in the manner as in cases of elections for members of the General Assembly to count and ascertain the results, issue his proclamation for one insertion in one of the daily papers

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of this State, announcing such result and declaring the amendment ratified.

[Sidenote: Announcement of result]

SEC. 7. Be it further enacted, That all **laws** and parts of **laws** in conflict with this Act be, and the same are, hereby repealed.

Approval Date: Approved July 31, 1906.