

# Court of Appeals of the State of Georgia

ATLANTA, February 17, 1922

The following cases have been placed upon the calendar for argument in the order listed, beginning at two o'clock p. m., on

**MONDAY, MARCH 6, 1922**

- |  |   |
|--|---|
| 13207. Cannon v. State.                                | 13315. Cordell v. State.                            |
| 13208. Towns v. State.                                 | 13316. Edwards (Kinney) v. State.                   |
| 13213. Brinson v. State.                               | 13317. Thomas v. State.                             |
| 13214. Jackson v. State.                               | 13318. Hightower v. State.                          |
| 13215. Brown (Wesley) v. State.                        | 13319. Pearce v. State.                             |
| 13225. Palmer v. State.                                | 13325. Brand v. State.                              |
| 13226. Hayes v. State.                                 | 13326. Byrd v. State.                               |
| 13233. Gresham v. State.                               | 13327. Drake v. State.                              |
| 13234. Veal v. State.                                  | 13328. Plummer v. State.                            |
| 13242. Hill v. State.                                  | 13329. Womack v. State.                             |
| 13243. Blackstock v. State.                            | 13336. Bazemore v. State.                           |
| 13244. King v. State. <i>Beu</i>                       | 13337. Sowell v. State.                             |
| 13258. Franklin v. State.                              | 13338. Dalton v. State.                             |
| 13262. Howell v. State.                                | 13339. Persons v. State.                            |
| 13263. Johns v. State.                                 | 13340. Morgan v. State.                             |
| 13264. Shirley v. State.                               | 13204. Samson Tractor Co. v. Furlong et al.         |
| 13265. Mills v. State.                                 | 13205. Rome Ry. & Light Co. v. Spratling.           |
| 13266. Cason v. State.                                 | 13209. Harrison v. State of Georgia.                |
| 13267. Cason v. State. (Motion to set aside.)          | 13210. Wise v. Ray.                                 |
| 13268. Harris v. State.                                | 13216. Wise v. Ray, by next friend.                 |
| 13271. Durham v. State.                                | 13211. Whitten & Son v. Rogers et al., admrs.       |
| 13273. Stinchomb v. State.                             | 13212. Williams et al. v. Swift & Co.               |
| 13275. Shealey v. State.                               | 13217. Burgess v. Calhoun National Bank.            |
| 13276. Tillman v. State.                               | 13218. Flake v. Bowman.                             |
| 13277. Brown (Lucile) v. State.                        | 13219. Blalock v. Barrett.                          |
| 13282. Edwards (Charlie) v. State.                     | 13220. Odom Bros. Co., Inc., v. Gunter.             |
| 13283. Edwards (Charlie) v. State. (Motion in arrest.) | 13221. Odom Bros. Co., Inc., v. Stovall.            |
| 13287. Redd v. State.                                  | 13222. Oliver v. Bullock, receiver.                 |
| 13291. White v. State.                                 | 13223. Farmers Fire Ins. Co. v. Estes.              |
| 13292. Huff v. State.                                  | 13224. Long et al. v. Moody.                        |
| 13293. Parham v. State.                                | 13227. Farmers Bank of Vidette v. Roberson.         |
| 13294. Vellis v. State.                                | 13228. Ray v. Warren.                               |
| 13303. Barksdale v. State.                             | 13229. Callaway, exr., v. Livingston.               |
| 13304. Miller v. State.                                | 13230. Georgia Railroad v. LaPrade.                 |
| 13305. Williamson (Emory) v. State.                    | 13231. Bray v. Porterfield & Brown.                 |
| 13306. Williamson (Frank) et al v. State.              | 13236. Collins v. Myers.                            |
| 13307. Yonce v. State.                                 | 13237. Cox Brothers v. Brooker Lumber Co.           |
| 13310. Thurman v. State.                               | 13238. Craft & Morris v. Watson.                    |
| 13311. Brantley v. State.                              | 13239. Hudson v. Devlin.                            |
| 13312. Dixon v. State.                                 | 13240. Saywell v. Nisbet.                           |
| 13313. Hurst v. State.                                 | 13241. Smith et al. v. Marion Harper Cotton Oil Co. |
| 13314. Young v. State.                                 | 13245. Horton v. Oglethorpe University.             |

In the foregoing cases, briefs must be served not later than February 28, and filed (and costs, where due, paid) not later than March 2, though counsel desiring to be heard in the civil cases listed above need not attend before Tuesday, March 7, at 2 p. m.

See Civil Code §§ 6338, 6339, for requirements as to preparation, service and filing of briefs and payment of costs.

All cases, whether heard orally or by briefs, must be represented by attorneys who shall have been admitted to the bar of the Court of Appeals before the call of the case.

Remit by Atlanta or New York draft, or add exchange to local check. There are no par points in Georgia.

LOGAN BLECKLEY, Clerk Court of Appeals.

By Act of August 11, 1921, costs are fixed at \$15 in all cases heard, and at \$10 in cases withdrawn or dismissed. Acts 1921, p. 239.

ct of Appeal  
M.M.K.O  
56-2-6

unit 4 yr. 1919-

4450-08

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unit 5 yr. 1923

4450-08

# Court of Appeals of the State of Georgia

ATLANTA, December 30, 1921.

The following cases have been placed upon the calendar for argument in the order listed, beginning at two o'clock p. m., on

**MONDAY, JANUARY 16, 1922**

- |  |  |
|--|--|
| 13086. Bennett v. State.                                 | 12976. Savannah Warehouse & Compress Co. v. Hayes.                               |
| 13087. Durrence v. State.                                | 12979. Buchman v. Rogers.  |
| 13093. Clark v. State.                                   | 12980. Bush v. Miami Trailer Co.   |
| 13094. Todd v. State.                                    | 12981. Charleston & Western Carolina Ry. Co. v. Gay, admr.                       |
| 13096. Calhoun v. State.                                 | 12986. Davis, agent, etc., v. Peacock.   |
| 13097. Swain v. State.                                   | 12987. Lineberger et al. v. Swain.   |
| 13108. Elder v. State. (Pointing pistol.)                | 12988. Columbus R. Co. v. Moore.   |
| 13109. Elder v. State. (Concealed weapon, etc.)          | 12991. Pate v. Pate et al.   |
| 13110. Elliott v. State.                                 | 12992. Perry et al., receivers, v. Camilla Cotton Oil Fertilizer Co. et al.      |
| 13111. Norwood v. State.                                 | 12993. Flowers v. Thompson.  |
| 13115. Morgan v. State.                                  | 12994. Massachusetts Bonding & Ins. Co. v. United States Conservation Co. et al. |
| 13116. Wilson v. State.                                  | 12995. United States Conservation Co. v. Massachusetts Bonding & Ins. Co. et al. |
| 13117. Harris v. State.                                  | 12996. Georgia Ry. & Power Co. v. Howell, by next friend.                        |
| 13118. Harrison v. State.                                | 12997. Augusta Fish Co. v. Seats.  |
| 13128. Shahan v. State. (Making liquor.)                 | 12998. Chattooga County v. Glenn, tax collector, et al.                          |
| 13129. Shahan v. State. (Selling liquor.)                | 12999. Gainesville Limestone Co. v. Robertson, admx.                             |
| 13130. Lynn v. City of Hazlehurst.                       | 13000. Smith et al. v. Williamson.   |
| 13143. Curtis v. State.                                  | 13001. Watkins v. Mathis.  |
| 13144. Fletcher v. State.                                | 13002. Wood v. Pynetree Paper Co.  |
| 13149. Manning v. State.                                 | 13003. Burgess v. Murphy et al.  |
| 13150. Hart v. State.                                    | 13004. Kinney v. Liverpool & London & Globe Ins. Co.                             |
| 13153. Floyd et al. v. State.                            | 13015. Redpath Chautauquas, Inc., v. Parks et al.                                |
| 13154. McGee (Ira) v. State.                             | 13016. Bagley v. Ledford.  |
| 13155. McGee (Roy) v. State.                             | 13017. Roesel et al., exrs., v. Green.   |
| 13156. Smith (S. S.) v. State.                           | 13018. Parker-McCaskill Furniture Co. v. St. Pasteur.                            |
| 13157. Tinch v. State.                                   | 13019. Yates v. Olivent, admr.   |
| 13158. King v. State. <i>paper</i>                       | 13022. Allen v. Commercial Credit Co.  |
| 13159. Knight et al. v. State.                           | 13023. Taggart et al. v. Banco Mercantile Americano de Cuba.                     |
| 13163. Littlejohn v. State.                              | 13024. Gravitt v. Mullins.   |
| 13170. Lucree v. State.                                  | 13027. Shinall Bros. v. Cartersville Electric Co.                                |
| 13171. Monroe v. State.                                  | 13028. Shinall Bros. et al. v. Skelton.  |
| 13172. Segui v. State.                                   | 13029. Town of Decatur v. Hinson.  |
| 13176. Rozier v. State.                                  | 13030. Florence v. Byrd.   |
| 13177. Cates v. State.                                   | 13031. Griffin v. Lester.  |
| 13178. Coulter v. State.                                 | 13035. Tidwell v. Hines.   |
| 13179. Fletcher v. State.                                | 13056. Young et al. v. Exchange National Bank of Fitzgerald.                     |
| 13180. Jones (S. J.) v. State.                           | 13037. Terrell, next friend, v. Giddings & Son.                                  |
| 13181. Rylce v. State.                                   | 13040. Buckeye Cotton Oil Co. v. Busby.  |
| 13182. Jackson v. State.                                 | 13041. Jones v. Schacter.  |
| 13183. Middleton v. State.                               | 13042. Rittenbaum v. Cohen et al.  |
| 13187. Byrd v. State.                                    | 13043. Southern Moon Auto Co. v. Moon Motor Car Co., Inc.                        |
| 13188. Persons v. State.                                 | 13051. Bell v. Kelley.   |
| 13189. Davis v. State.                                   | 13052. McLeod et al. v. Mills.   |
| 13190. Maddox v. State.                                  | 13053. Parrott v. Bradley & Co.  |
| 12943. Brooks, admx., v. Seaboard Air Line Ry. Co.       | 13054. Hagedorn v. Zemurray.   |
| 12944. Southern Ry. Co. v. Griffier.                     | 13056. Consolidated Grocery Co. v. Bugg, receiver.                               |
| 12945. Davis, admr., v. Davis.                           | 13057. Keen v. Justice Court 1600 Dist. G. M.                                    |
| 12949. Ware v. Duggan.                                   | 13058. Beth Eden Baptist Church v. Ellis, admx.                                  |
| 12954. Pruitt v. Hulsey.                                 | 13059. Davis, agent, etc., v. Churcher.  |
| 12955. Savannah River Lumber Co. v. Smith.               |  |
| 12956. Tallulah Falls Ry. Co. v. Davis, admx.            |  |
| 12957. Putnam v. Coweta Fertilizer Co.                   |  |
| 12961. City of Nashville, Ga., v. Hendricks et al.       |  |
| 12962. City of Ocilla v. Luke.                           |  |
| 12968. Center v. Mercer Co.                              |  |
| 12969. Garfunkel et al. v. Byck.                         |  |
| 12970. Kittle v. Brown.                                  |  |
| 12971. McCall, admr., v. Stubbs.                         |  |
| 12972. Savannah & Southern Ry. v. Davis, by next friend. |  |
| 12973. Savannah & Southern Ry. v. Davis.                 |  |
| 12974. Rome Ry. & Light Co. v. Gaddis.                   |  |

In the foregoing cases, briefs must be served not later than January 10, and filed (and costs, where due, paid) not later than January 12, though counsel desiring to be heard in cases numbered 12957 to 12986, inclusive, as listed above, need not attend before Tuesday, January 17, at 2 p. m.; counsel in cases numbered 12987 to 13024, as listed above, need not attend before Wednesday, January 18, at 2 p. m., and counsel in cases numbered 13027 et seq. need not attend before Thursday, January 19, at 2 p. m.

See Civil Code §§ 6338, 6339, for requirements as to preparation, service and filing of briefs and payment of costs.

All cases, whether heard orally or by briefs, must be represented by attorneys who shall have been admitted to the bar of the Court of Appeals before the call of the case.

Remit by Atlanta or New York draft, or add exchange to local check. There are no par points in Georgia.

LOGAN BLECKLEY, Clerk Court of Appeals.

By Act of August 11, 1921, costs are fixed at \$15 in all cases heard, and at \$10 in cases withdrawn or dismissed.

# Court of Appeals of the State of Georgia

ATLANTA, January 27, 1922

The following cases have been placed upon the calendar for argument in the order listed, beginning at two o'clock p. m., on

## MONDAY, FEBRUARY 13, 1922

13197. Davis v. State.  
13203. Martin v. State.  
13060. Lawson v. Buleken.  
13061. O'Quinn v. Edmondson.  
13062. Payne, agent, etc., v. Wilson, by next friend.  
13068. Glass v. Austin.  
13069. Lee v. Hill.  
13070. Evans v. Smith.  
13071. Smyly, by next friend, v. Globe & Rutgers Fire Ins. Co.  
13072. Globe & Rutgers Fire Ins. Co. v. Smyly, by next friend.  
13073. Abernathy v. Wilson.  
13074. Allen v. Crawford.  
13075. Heald v. Fidelity & Deposit Co. of Maryland.  
13076. Mills v. Braswell.  
13077. Bullard et al. v. Hightower.  
13078. Owens v. Jones-Kennedy Furniture Co.  
13079. Rose Co. v. Gatti-Goodyear Co.  
13081. Alsberg & Co., Inc., v. Harper Mfg. Co.  
13082. Mayor, etc., of Savannah, v. Kops.  
13084. Stanton et al. v. Washington Loan & Banking Co.  
13085. Crews v. Hanson.  
13088. Darley v. Williams.  
13089. Folds v. Fireman's Fund Ins. Co.  
13090. Moore v. Griffith.  
13091. Peebles v. McCrary.  
13092. Bush v. American Mills Co.  
13098. Bankendorf v. Sevelovitz.  
13099. Hartford Fire Ins. Co. v. Payne, director-general.  
13100. Shaine & Son v. Block.  
13101. Singletary v. Swift & Co.  
13102. Mutual Life Ins. Co. of New York v. Johnson.  
13103. Rowell et al. v. Brown et al.  
13104. Collier v. Chamlee.  
13105. Wright, comptroller-general, etc., v. Central of Ga. Ry. Co.  
13106. Wright, comptroller-general, etc., v. Southern Ry. Co. (\$821.81 execution.)  
13107. Wright, comptroller-general, etc., v. Southern Ry. Co. (\$145.49 execution.)  
13112. Mertins v. Gavalos.  
13113. Hendricks v. Jones.  
13114. Martin v. Penn Mutual Life Ins. Co.  
13119. Holcombe, exr., v. Heard.  
13120. Sweat v. Foster.  
13121. Walker Bros. Co. v. Capital City Grocery Co.  
13122. Holland v. Hill.  
13123. Macon Ry. & Light Co. v. Southern Ry. Co.  
13124. Marlow v. Mayor, etc., of Savannah.  
13125. Kenney v. Walden et al.  
13126. Northern Assurance Co., Ltd., v. Pate.  
13127. Covin v. Cairo Banking Co.  
13132. Stallworth Taxicab Co. v. Subers, by next friend.  
13133. Poythress v. Hagan Grocery Co.  
13134. Ubico Milling Co. v. Poythress.  
13135. Bussell v. Alma State Bank.  
13136. Ehrlich v. Jones.  
13137. Layton v. Dean Gold Mining Co.  
13138. Rhames v. Stokes, admr.  
13139. Bray & Son et al. v. Southern Iron & Equipment Co.  
13140. Lewis et al., receivers, v. Joyner.  
13141. Zemurray v. Mansor.  
13142. Veal v. Wood.  
13145. Shepard v. Orr et al.  
13146. Kennedy et al. v. Dexter Banking Co.  
13147. Dexter Banking Co. v. Kennedy et al.  
13148. Third National Bank of Columbus, Ga., v. Merchants & Mechanics Bank of Columbus, Ga.  
13151. Chotas & Gust v. Turman & Co.  
13152. Southeastern Mutual Fire Ins. Co. v. Williams.  
13160. Ladd Lime & Stone Co. v. MacDougald Construction Co.  
13161. MacDougald Construction Co. v. Ladd Lime & Stone Co.  
13162. Davis, agent, etc., v. Murray.  
13164. Butler v. Augusta Belt Ry. Co.  
13165. Mack v. Augusta Belt Ry. Co.  
13166. Southern Ry. Co. v. Cathey.  
13167. Walker, admx., v. Metropolitan Life. Ins. Co.  
13168. Schreiber et al. v. Wolf.  
13169. Schreiber v. Milbury Atlantic Mfg. Co.  
13173. Long v. England.  
13174. Green et al., exrs., v. Fairburn Banking Co.  
13175. Mixon v. Lacey.  
13184. Citizens First National Bank of Albany, Ga., v. Wilson.  
13185. Wilson v. Citizens First National Bank of Albany, Ga.  
13186. Merchants & Miners Transportation Co. v. Crowe.  
13191. Ellis v. Lynch.  
13193. Swofford v. Keaton et al.  
13194. McCook v. Alligood.  
13195. McCook v. Brown.  
13196. Bagwell Manufacturing Co. v. Royer Wheel Co.  
13198. Scott School District et al. v. Carter et al.  
13199. Chandler v. Bank of Waynesboro.  
13200. Shepard v. Chappell.  
13201. McKellar v. Moynihan et al.  
13202. Rich et al. v. Brinson Consolidated School District et al.

In the foregoing cases, briefs must be served not later than February 7, and filed (and costs, where due, paid) not later than February 9, though counsel desiring to be heard in cases numbered 13001 to 13124, inclusive, as listed above, need not attend before Tuesday, February 14, at 2 p. m.; counsel in cases numbered 13125 to 13169, as listed above, need not attend before Wednesday, February 15, at 2 p. m., and counsel in cases numbered 13173 et seq. need not attend before Thursday, February 16, at 2 p. m.

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**From:** Bob McAteer  
**To:** Ripple  
**Date:** 8/8/2005 10:19:17 AM  
**Subject:** Napier

The Macon bar historian called be this morning and left a message. He said the case that Napier argued was Hendricks v. Jones. Case # 13110 It was argued on 3/13/22. The day she was sworn in.

I will get you print outs of all the cases even Bells.

bob

28 GA App 335

2/13/22  
2/22/22 - Irene Bell



A Century of Serving Justice

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FACSIMILE TRANSMITTAL SHEET

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TO:	Frank McKenney	FROM:	Bob McAteer
COMPANY:		DATE:	8/8/2005
FAX NUMBER:	(478) 746 - 3476	TOTAL NO. OF PAGES INCLUDING COVER:	2
RE:	Viola Ross Napier Information		

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NOTES/COMMENTS:

Mr. Mckenney,

Attached is a copy of when Hendricks v. Jones was heard. I will be going to the Archives this week to check the docket. I will get a copy of that for your records.

Thanks for researching this.

Bob

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FROM THE DESK OF BOB MCATEER  
THE COURT OF APPEALS OF THE STATE OF GEORGIA  
334 STATE JUDICIAL BUILDING, 40 CAPITOL SQUARE, ATLANTA, GA 30334  
OFFICE: (404) 463-8649 - FAX: (404) 651-6418  
MCATEERB@GAAPPEALS.US

# Court of Appeals of the State of Georgia

ATLANTA, January 27, 1922

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## MONDAY, FEBRUARY 13, 1922

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| 13061. O'Quinn v. Edmondson.  | 13133. Poythress v. Hagan Grocery Co.   |
| 13062. Payne, agent, etc., v. Wilson, by next friend.                               | 13134. Ubico Milling Co. v. Poythress.  |
| 13068. Glass v. Austin.   | 13135. Bussell v. Alma State Bank.  |
| 13069. Lee v. Hill.   | 13136. Ehrlich v. Jones.  |
| 13070. Evans v. Smith.  | 13137. Layton v. Dean Gold Mining Co.   |
| 13071. Smyly, by next friend, v. Globe & Rutgers Fire Ins. Co.                      | 13138. Rhames v. Stokes, admr.  |
| 13072. Globe & Rutgers Fire Ins. Co. v. Smyly, by next friend.                      | 13139. Bray & Son et al. v. Southern Iron & Equipment Co.                                   |
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| 13079. Rose Co. v. Gatti-Goodyear Co.   | 13148. Third National Bank of Columbus, Ga., v. Merchants & Mechanics Bank of Columbus, Ga. |
| 13081. Alsborg & Co., Inc., v. Harper Mfg. Co.                                      | 13151. Chotas & Gust v. Turman & Co.  |
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| 13084. Stanton et al. v. Washington Loan & Banking Co.                              | 13160. Ladd Lime & Stone Co. v. MacDougald Construction Co.                                 |
| 13085. Crews v. Hanson.   | 13161. MacDougald Construction Co. v. Ladd Lime & Stone Co.                                 |
| 13088. Darley v. Williams.  | 13162. Davis, agent, etc., v. Murray.   |
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| 13092. Bush v. American Mills Co.   | 13167. Walker, admx., v. Metropolitan Life. Ins. Co.  |
| 13098. Bankendorf v. Sevelovitz.  | 13168. Schreiber et al. v. Wolf.  |
| 13099. Hartford Fire Ins. Co. v. Payne, director-general.                           | 13169. Schreiber v. Milbury Atlantic Mfg. Co.   |
| 13100. Shaine & Son v. Block.   | 13173. Long v. England.   |
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| 13102. Mutual Life Ins. Co. of New York v. Johnson.                                 | 13175. Mixon v. Lacey.  |
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| 13104. Collier v. Chamlee.  | 13185. Wilson v. Citizens First National Bank of Albany, Ga.                                |
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| 13106. Wright, comptroller-general, etc., v. Southern Ry. Co. (\$821.81 execution.) | 13191. Ellis v. Lynch.  |
| 13107. Wright, comptroller-general, etc., v. Southern Ry. Co. (\$145.49 execution.) | 13193. Swofford v. Keaton et al.  |
| 13112. Mertins v. Gavalos.  | 13194. McCook v. Alligood.  |
| 13113. Hendricks v. Jones.  | 13195. McCook v. Brown.   |
| 13114. Martin v. Penn Mutual Life Ins. Co.  | 13196. Bagwell Manufacturing Co. v. Royer Wheel Co.   |
| 13119. Holcombe, exr., v. Heard.  | 13198. Scott School District et al. v. Carter et al.  |
| 13120. Sweat v. Foster.   | 13199. Chandler v. Bank of Waynesboro.  |
| 13121. Walker Bros. Co. v. Capital City Grocery Co.                                 | 13200. Shepard v. Chappell.   |
| 13122. Holland v. Hill.   | 13201. McKellar v. Moynihan et al.  |
| 13123. Macon Ry. & Light Co. v. Southern Ry. Co.                                    | 13202. Rich et al. v. Brinson Consolidated School District et al.                           |
| 13124. Marlow v. Mayor, etc., of Savannah.  |   |
| 13125. Kenney v. Walden et al.  |   |

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LOGAN BLECKLEY, Clerk Court of Appeals.

By Act of August 11, 1921, costs are fixed at \$15 in all cases heard, and at \$10 in cases withdrawn or dismissed.

Citation/Title

11 S.E. 81, 28 Ga.App. 335, Hendricks v. Jones, (Ga.App. 1922)

\*81 111 S.E. 81

28 Ga.App. 335

**HENDRICKS**

v.

**JONES.**

No. 13113.

Court of Appeals of Georgia, Division No. 1.

March 7, 1922.

Syllabus by the Court.

Neither count of the amended petition set out a cause of action, and the court erred in overruling the general demurrer interposed.

Error from Superior Court, Bibb County; H. A. Matthews, Judge.

Action by Mrs. L. M. Jones against B. L. Hendricks. Judgment for plaintiff, and defendant brings error. Reversed.

INNKEEPERS 10.9

213 ----

213k10 Injury to Person of Guest

213k10.9 Pleading.

Ga.App. 1922

Petition held to show that hotel guest became aware when she started to return to a lower floor that stairway was not sufficiently lighted, and, in attempting to use it in the darkness, did not exercise ordinary care.

DAMAGES 49

115 ----

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)2 Mental Suffering

115k49 As distinct cause of action or element of damages, in general.

Ga.App. 1922

There can be no recovery of damages on account of mental pain and anguish unaccompanied by any physical injury to the person or any pecuniary loss.

Robt. G. Plunkett, Walter De Fore, and Jas. C. Estes, all of Macon, for plaintiff in error.

Arrington & Napier, of Macon, for defendant in error.

111 S.E. 81, 28 Ga.App. 335, Hendricks v. Jones, (Ga.App. 1922)

ROYLES, C. J.

This was a renewal suit brought within six months from the dismissal of the first suit. The petition as amended was brought in two counts. Conceding that the present suit was for substantially the same cause of action as the first suit, and that in other respects it was a proper renewal thereof, and conceding further that the second count of the amended petition was sufficiently complete within itself, we do not think that either count of the petition set out a cause of action. The first count of the petition alleged that the defendant owned and was in full charge and control of a certain hotel in which the plaintiff lived; that on January 7, 1918, about 3 o'clock p. m., the plaintiff had occasion to go upstairs from the first to the second floor, and that when she subsequently came down the stairs from the second floor, about 6 p. m. on the same day, on account of insufficient light upon the stairway she fell when three or four steps from the bottom step, and thereby sustained the injuries sued for; that prior to this occasion the stairway was always sufficiently lighted for one to make his way safely up and down it, but that on this occasion, through the gross and wanton negligence of the defendant, the usual and necessary light for the stairway was not provided. The petition further alleged that--

"Petitioner was not aware that there was not sufficient light on the stairway *when she went up to the second floor*, and after she completed her errand to the second floor, and, desiring to descend to the lobby on the first floor, and there being [only] one stairway leading to said lobby, she was compelled to use said stairway, although *it was darkened*. Said stairway was not dangerous when lighted [and if it had been lighted] she would not have sustained the fall and the injuries incident thereto." (Italics ours.)

These averments of the petition, properly construed most strongly against the plaintiff, clearly show that when the plaintiff had finished her errand on the second floor and started to return to the first floor, she became aware that the stairway was not sufficiently lighted for her to safely attempt to descend by it, and that in attempting to use it in the darkness she was not in the exercise of ordinary care. See, in this connection, *Flournoy v. American Hat Mfg. Co.*, 21 Ga. App. 599, 94 S. E. 835; *Day v. Graybill*, 24 Ga. App. 524, 101 S. E. 759; *Lebby v. Atlanta Realty Corporation*, 25 Ga. App. 369, 103 S. E. 433; *Ogain v. Imperial Café, Inc.*, 25 Ga. App. 415, 103 S. E. 594.

In the second count of the petition the plaintiff sought to recover damages for an alleged willful and wanton trespass upon her premises. It was alleged in this count that the trespass caused her mental pain and anguish, and prolonged an illness from which she was then suffering. In our opinion this \*82. count did not set forth a cause of action, as the law is well settled in this state that there can be no recovery for damages on account of mental pain and anguish unaccompanied by any physical injury to the person or any pecuniary loss. *Chapman v. Western Union Telegraph Co.*, 88 Ga. 763, 15 S. E. 901, 17 L. R. A. 430, 30 Am. St. Rep. 183; *Seifert v. Western Union Telegraph Co.*, 129 Ga. 181, 58 S. E. 699, 11 L. R. A. (N. S.) 1149, 121 Am. St. Rep. 210; *Goddard v. Walters*, 14 Ga. App. 722, 82 S. E. 306; *Western Union Telegraph Co. v. Knight*,

111 S.E. 81, 28 Ga.App. 335, Hendricks v. Jones, (Ga.App. 1922)

10 a. App. 203, 84 S. E. 986; Dresbach v. Davis, 17 Ga. App. 79, 86 S. E. 256.

From what has been said it follows that neither count of the petition set forth a cause of action, and that the court erred in overruling the general demurrer to the amended petition.

Judgment reversed.

LUKE and BLOODWORTH, JJ., concur.

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**Content of Act/Resolution**

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**ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF  
GEORGIA 1916**

**PART I.—PUBLIC LAWS  
TITLE IV. COURTS.**

**1916 Vol. 1 -- Page: 56**

**Sequential Number: 035**

**Short Title:** COURT OF APPEALS; JUDGES AND CONDUCT OF BUSINESS.  
**Law Number:** No. 572.

**Full Title:** An Act to prescribe the number of Judges of the Court of Appeals of this State, to provide for the election of such judges, to prescribe regulations for conducting the business of said court, and for other purposes.

Section 1. Be it enacted by the General Assembly, That from and after the first day of January, anno domini nineteen hundred and seventeen, the Court of Appeals of this State shall consist of six judges, of whom three shall be the judges constituting the court at the time of the approval of this Act, and their successors in office; and three shall be elected as hereinafter prescribed. The judges shall elect one of their number as Chief Judge, in such manner and for such time as may be prescribed by rule or order of the court. The court shall sit in divisions of three judges each, but two judges shall constitute a quorum of a division. The

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**Page: 57**

assignment of judges to each division shall be made by the Chief Judge, and the personnel of the divisions shall from time to time be changed in accordance with rules prescribed by the court. The division of which the Chief Judge is a member shall be known as the first division,

and he shall be its presiding judge. He shall designate the presiding judge of the second division, and shall, under rules prescribed by the court, distribute the cases between the divisions in such manner as to equalize their work as far as practicable; and all criminal cases shall be assigned to one division. Each division shall hear and determine, independently of the other, the cases assigned to it.

[Sidenote: Six judges.]

[Sidenote: Chief Judge.]

[Sidenote: Two divisions.]

Sec. 2. Be it further enacted by the authority aforesaid, That the three additional judges of the Court of Appeals provided for in this Act shall be elected at the general State election to be held on Tuesday after the first Monday in November, 1916, in the manner in which justices of the Supreme Court are elected. The terms of the judges so elected shall begin on the first day of January, anno domini nineteen hundred and seventeen, and shall continue respectively two, four, and six years, and until their successors are qualified. The persons so elected shall 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.

[Sidenote: Election of judges.]

[Sidenote: Terms of office.]

Sec. 3. Be it further enacted by the authority aforesaid, That all **laws** now of force relating to the Court of Appeals shall, so far as may be practicable and with such modifications as necessarily result from this Act, apply to said court after its reorganization hereunder.

[Sidenote: **Laws** applicable.]

Sec. 4. 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.

**Approval Date:** Approved August 19, 1916.

## Jurisdiction

The 1906 legislation granted the Court of Appeals last resort jurisdiction in the following cases:

- some civil case, depending on which court they originated in (which ones??)
- certified questions to the Supreme Court on all state and federal constitutional questions, and any other topics on which the court desired the instruction of the court

In 1914 J. R. Pottle came before the Bar Association to discuss the confusion and tedium created by having two courts of last resort.

The Jurisdiction of the Court of Appeals was again enlarged by constitutional amendment, ratified by the people, in 1916

1916 - increased the court of appeals jurisdiction; two panels created

1956 - direct review of juvenile court judgements

1977

Constitution of 1983 - revenue of estate (now to court of app) given cup ct exclusive jurisdiction in election contests

OCCA 5-6-35

discretionary - workers comp and domestic relations were no longer direct

Mundy v.. Mundy - custody cases NOT incident to a divorce decree went to the court of appeals

when did we become an intermediate court? When the supreme court get the power to review appeals court decision

the assignment of criminal cases to a single division was eliminated in 1967 -

Jan 12  
1900 - ISS

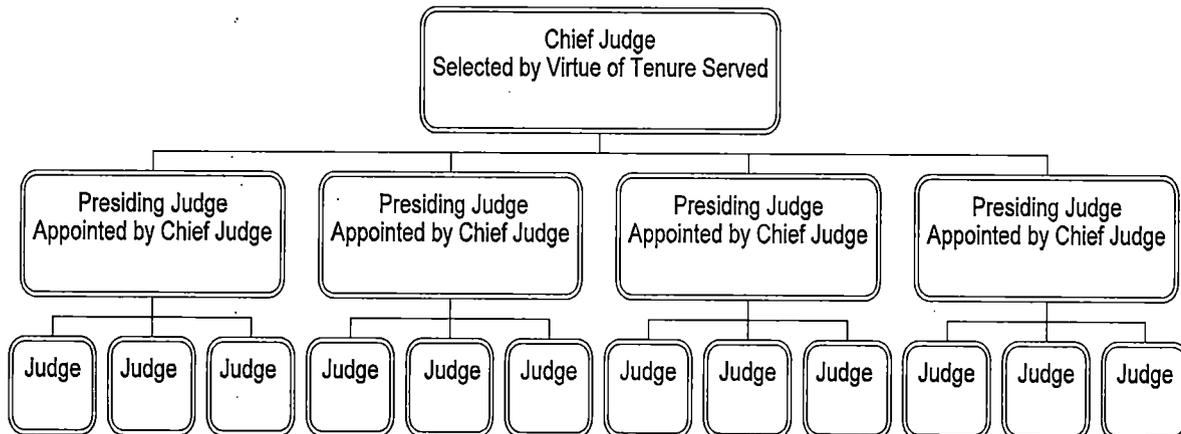
## Chief Judge

- The most senior member of the court served as chief judge until 1979, at which time the court switched to its current rotating basis comprised of two year terms
- Who would serve as the very first Chief Judge was an issue of contention among the founding three jurists. The general election of 1906 did not allow the voters to specify who they would choose as the first chief Judge. Since all three men had served the same and equal tenure (nothing) and elected upon the same day, there was no obvious choice. Hill thought that he should serve first, based on his age, while Russell thought that he should based on his experience and that he won the largest percentage of votes in the popular election. Since Powell was charged with drawing up the first set of Court Rules, the draft he produced borrowed the applicable provision from the Supreme Court. This particular clause allowed that the Chief Judge be selected upon age when there was a tie based upon the day the Judges were given their commissions and Hill, the man with the lowest popular vote, was made the first chief Judge.

Boyles

- The men who have served in the capacity of chief Judge are:
  - Hill
  - Russell
  - Wade
  - Broyles
  - Sutton
  - Felton
  - Bell
  - Deen
  - Quillian
  - Shulman
  - McMurray
  - Banke
  - Birdsong
  - Carley
  - Sognier
  - Pope
  - Beasley
  - Andrews
  - Johnson
  - Blackburn
  - Smith
  - Ruffin
- Nash Rose Broyles served as Chief Judge the longest amount of time, from 1919 to his death in 1947.
- In the modern scheme, the Chief Judge serves for a two year term and is selected based on seniority of tenure. Once selected he appoints four presiding judges, one to lead each appellate panel. The Judges served the panels on an annual rotation

**Current Election Scheme**



## **Judge Emeritus:**

### Status of Judge Emeritus and Retirement

**1937 - pg. 1101** - Status of Justice Emeritus established for Georgia Supreme Court Justices that have reached the age of 70, and been in 10 or more years of consecutive service to Supreme, Appeals or Superior Court. They get 2/3 of the salary that Justices get at the time of appointment to Emeritus status. The duties of Justice Emeritus include membership on the Advisory Appellate Council, whose intended purpose was to assist the Supreme and Appellate courts to revise their rules and practices and handling administrative duties. In no instance shall the committee members participate in the rendering of decisions.

**1943 - pg. 677** - Creates the seat of Judge Emeritus for all former Court of Appeals Judges who have reached 70 or are within one year of their 70<sup>th</sup> at the time of retirement and have served 10 consecutive years on some combination of the Supreme and Appeals Court. They get 2/3 of the salary that Judges get at the time of appointment to Emeritus status. The duties of Judge Emeritus include membership on the Advisory Appellate Council, whose intended purpose was to assist the Supreme and Appellate courts to revise their rules and practices and handling administrative duties. In no instance shall the committee members participate in the rendering of decisions. Only exception is that you can not be an Emeritus when you are defeated in election or if you quit your term incomplete.

**1952 - pg. 260** - Changes the pay scale for Justice Emeritus based on 2/3 of that years salary for Supreme Court Justices, not the year they were appointed.

**1952 - pg. 248** - all officers and employees of the Court of Appeals, except Judges, are eligible to participate in the state retirement system.

**1952 - pg. 316** - Changes the pay scale for Judge Emeritus based on 2/3 of that years salary for Court of Appeals Judges, not the year they were appointed.

**1955 - pg. 705** - Proposed amendment to the constitution for ratification by voters that would allow Justices and Judges Emeritus to preside in or over the courts in which were members.

**1958 - pg. 491** - Proposed amendment to the constitution which would allow Emeritus members of Supreme Court, Court of Appeals and Superior courts to preside over any of the following courts (regardless of on which court they served): Supreme Court, Court of Appeals, and Superior Court.

**1959 - pg. 80** - Judges Emeritus for the Court of Appeals must accept their position as Emeritus within 30 days of their 75 birthday or shall be forever ineligible from holding the position and receiving the salary.

**1960 - pg. 911** - Expands people who are eligible for receiving Emeritus status to those are 70 and have sat for 10 straight years on Supreme, Appeals, SUPERIOR and all CITY courts. Or anyone who reaches 65 and has 20 years on consecutive on the above named courts.

**1964 - pg. 115** - Any person becoming an Appellate Judge on or after April 1, 1964 shall be a member of the retirement system of the State of Georgia and shall not be eligible for the

Emeritus status. All Judges sitting on the court on this date must declare if they desire to join the retirement system, thus making themselves ineligible for Emeritus status.

- The newly formed stat retirement system was intended to wipe out the emeritus status for all state employees. While employees must contribute to their retirement fund, the benefits are also available to widows should the husband die. Under the emeritus system, if a Judge should die while under this status his wife would receive nothing

**1971 - pg. 99** - Any judge who has not retired by age 70 forfeits all of his benefit. Also lays out the benefits eligible for Judges, widows of Judges, and incapacitated Judges...Find out more.

**Gardner, 77, Won't Quit Bench**  
**The Atlanta Journal; March 3, 1958; pg. 13,2**

**Compulsory Quitting: Emeritus Status For Judges**  
**The Atlanta Journal; March 8, 1959; pg. 11A, 4**  
**Margaret Shannon**

**Emeritus Status Dying for Judges**  
**The Atlanta Journal; February 13, 1964; pg. 40, 4**

**State Judge Carlise to Retire**  
**The Atlanta Journal; August 3, 1963; pg. 9,1**

**Refiring Judge at Age of 70 Hit by Justice**  
**The Atlanta Journal; March 29, 1964; pg. 42, 1**

add cites from Ga Law

### **Random Facts - diversity and interesting tidbits**

- ◆ Judges that have served ten or more years: thirty one
- 1. Nash Rose Broyles (32+)
- 2. O.B.H. Bloodworth (15+)
- 3. Roscoe Luke (15+)
- 4. W. F. Jenkins (20)
- 5. A. W. Stephens (25+)
- 6. I. Homer Sutton (21+)
- 7. Hugh MacIntyre (19+)
- 8. Jule Wimberly Felton (32+)
- 9. B. C. Gardner (20+)
- 10. John Murphy Clagett Townsend (14+)
- 11. Ira Carlisle (11+)
- 12. H. E. Nichols (12)
- 13. John Sammons Bell (18+)
- 14. Robert Jordan (11+)
- 15. Homer Eberhardt (13+)
- 16. Robert Hall (12+++)
- 17. Charles Pannell (13+)
- 18. Braswell Deen (25+)

19. J. Kelley Quillian (17+)
20. William McMurray (23+)
21. Harold Banke (14+)
22. A. W. Birdsong (20+)
23. Georgia Carley (13+)
24. John Sognier (12++)
25. Marion Pope (21+)
26. Dorothy Beasley (14+)
27. Gary Andrews (14+)
28. Edward Johnson (13+)
29. G. Alan Blackburn (12+)
30. J. D. Smith (12+)
31. John Ruffin (11+)

◆ Judge that served more than 20 years: ten

1. Nash Rose Broyles (32+)
2. Marion Pope (21+)
3. A. W. Birdsong (20+)
4. William McMurray (23+)
5. Braswell Deen (25+)
6. Jule Wimberly Felton (32+)
7. B. C. Gardner (20+)
8. W. F. Jenkins (20)
9. A. W. Stephens (25+)
10. I. Homer Sutton (21+)

- ◆ Joslin has the distinction of being the only temporary appointment to the court. A professor at Emory, he was asked to fill in for just over two months while Whitman gathered the necessary tenure to gain retirement benefits as a superior court judge
- ◆ Whitman received his appointment and then waited to gather enough time under the state retirement system as a superior court judge that he would be able to receive those benefits when he retired, as his age made him too old to get appellate court benefits.

**Dr. Joslin Takes Oath as Judge**

**The Atlanta Journal; April 24, 1967; pg. 14, 1**

- ◆ Exact number of Judge that have served the court during its first hundred years is 71.
- ◆ Four women have served on the Court
- ◆ Judge Nash Rose Broyles served in the capacity of Chief Judge the longest, 28 years.
- ◆ Judge Jule Felton served the court for the most years, 32 and 8 months - three months longer than Broyles total tenure with the Court
- ◆ There have been 6 clerks of Court: Logan Bleckley, William England, Morgan Thomas, Alton Hawk, Victoria McLaughlin and William Martin
- ◆ At only 34 years old, Powell is the youngest person to have served on the bench
- ◆ Richard B. Russell is the only Judge to serve as both the Chief Judge of the Court of Appeals and the Chief Justice of the Georgia Supreme Court.
- ◆ The Russell family also boasts the title to have the only grandfather - R. B. Russell - and grandson serve on the Court (Robert L. Russell, Jr.)
- ◆ The only father son combination is of Joe and Kelley Quillian
- ◆ Both the Russell and Quillian families are from winder - remember that one family photo

- ◆ from the Russell Library that had a small child with the last name Quillian in it??
- ◆ The progeny of Judges Webb and Custer were married, Mr. And Mrs. Henry Custer, and their children are the only ones who can claim to have both of their grandfather serve on the court of appeals
- ◆ Judge Roan was appointed to replace Judge Hill in September 1913. However, in the time it took Judge Hill to complete his pending appeals at his current seat as Chief Judge, Judge Roan was permitted time to hear Leo Franks Motion for a new trial. Judge Hill took a seat on the Fulton County Superior Court, a lower position than the court of appeals, but one that paid \$5,000 a year while the Appellate Judges were only making \$4,000 annually.
- ◆ Previously, Judge Broyles had opposed Judge Pottle but withdrew on the night returns were counted because the race was close he felt that the tie should be broken in favor of the incumbent.
- ◆ In this seat, the appointment of Judge Roan was made only months before a general election in which Judge Hill (now Judge Roan's) seat was up for election. The Recorder for the city of Atlanta, Nash Broyles, challenged Judge Roan in his first election. A total of eight men contested the seat held by Roan:
  - John Smith
  - William Smith
  - Watt Kelly
  - Thomas Goodwin
  - Carl Guess
  - Georgia Johnson
  - W. H. Preston

And then, just prior to the election, Judge Roan announced that he would not seek re-election and Broyles ran in the primary largely unopposed.

## **Judges:**

### **Judge Worrill Named to State Appeals Court**

The Atlanta Journal; June 8, 1949; pg. 2,1

### **Senator Carlisle Named to State Appeals Court**

The Atlanta Journal; April 9, 1952; pg. 42,1

### **Worrill Named to High Court; Quillian Gets Appeals Post**

The Atlanta Journal; October 5, 1953; pg. 1,6

### **Worrill, Quillian Take Court Oaths at Rites**

The Atlanta Journal; October 6, 1953; pg. 5,1

### **Sutton to Succeed Justice Worrill**

The Atlanta Journal; January 9, 1953; pg. 1,7

### **Talmadge Views Change on Nichols Since 1948**

The Atlanta Journal; January 9, 1953; pg. 1,7

### **Memorial Rite Honors Judge Hugh McIntyre**

The Atlanta Journal; May 9, 1957; pg. 54,1

England Retires as Court Clerk

The Atlanta Journal; October 24, 1957; pg. 7,5

2 to Take Post

The Atlanta Journal; October 24, 1960; pg. 5,5

2 State Officials Given Office Oath

The Atlanta Journal; October 31, 1960; pg. 4,1

Four Judges Given Oath

The Atlanta Journal; December 19, 1960; pg. 2,7

Appeals Judge B.C. Gardner Retiring at 78

The Atlanta Journal; September 16, 1960; pg. 1,4

Custer Rated Top Choice for Judge Townsend's Spot

The Atlanta Journal; October 8, 1961; pg. 20,1

Appeals Judge Vance Custer Dies Following Heart Attack

The Atlanta Journal; February 1, 1962; pg. 2, 1

Russell Gets Appeals Post

The Atlanta Journal; February 3, 1962; pg. 1, 6

Charles Pou

Vandiver Names In-Law as Judge

The Atlanta Journal; February 4, 1962; pg. 2,1 (personality feature on page 8)

State Judge Carlise to Retire

The Atlanta Journal; August 3, 1963; pg. 9,1

Pannell Succeeding Retired Carlise

The Atlanta Journal; August 9, 1963; pg. 4, 3

Sen. Pannell Becomes Judge on Sept. 5

The Atlanta Journal; August 15, 1963; pg. 58, 1

3 Appellate Judges Likely to Retire Soon

The Atlanta Journal; March 22, 1971; pg. 2A,1

Savannah Lawyer Named to Bench

The Atlanta Journal; November 26, 1971; pg. 2A,4

Jack Dorsey Qualifies for Appeals Court  
The Atlanta Journal; June 10, 1974; pg. 2A,4

Dorsey Leads In Race for Appeals Court  
The Atlanta Journal; August 14, 1974; pg. 19A,1  
Raleigh Bryans

McMurray New Appeals Court Judge  
The Atlanta Journal; April 30, 1976; pg. 26A,1

Smith, Dorsey Compete in a Yawner  
The Atlanta Journal; August 5, 1976; pg. 2A,1  
Prentice Palmer

Smith Gets High Score From Bar  
The Atlanta Journal; August 6, 1976; pg. 10A,1  
Prentice Palmer

George T. Smith Soundly Defeats Dorsey (Election Results)  
The Atlanta Journal; August 8, 1976; pg. 2A,1

Judge Clark Will Retire on Dec. 29<sup>th</sup>.  
The Atlanta Journal; November 5, 1976; pg. 3A,1

Appeals Judge Webb Plans to Retire  
The Atlanta Journal; January 30, 1979; pg. 2C,5  
Charles Hayslett

**New Courtroom:**

Appeals Court to Dedicate New Room  
The Atlanta Journal; June 1, 1956; pg. 26,1

Appeal Judges Enter Light of New Courtroom  
The Atlanta Journal; June 4, 1956; pg. 5,4  
Dorothy Cremin