

34 years old

ARTHUR GRAY POWELL served on the Georgia Court of Appeals 1907-1912. He was born in Blakely, Early County, Georgia, September 3, 1873, and died August 5, 1951.

He attended Mercer University for 18 months. He was admitted to the Bar at age 18. He practiced law a total of 57 years, the last 39 after he left the Bench, first with his father, then with J. R. Pottle, who would succeed him on the Court, and later with John D. Little. He was recognized as a specialist in litigation involving land and was active in insurance law.

He married Annie Wilkin of Colquitt, Ga., on December 31, 1896. Born of this union were Arthur W. Powell, Frances P. Laws, and Grace P. Hammond.

He authored Powell on Actions on Land, Powell on Land Registration, and on his seventieth birthday his autobiography, I Can Go Home Again.

Recorded in 87 Georgia Appeals Reports, pages 927-938 is a memorial providing details of his life. It is there suggested he worked with unbelievable speed. On a case argued January 8 he prepared an opinion concurred in by two other judges released and announced three days later on January 11. One speaker said, "But once in a while a man mounts the Bench with the salt of life, the spice of wisdom, and the sweetness of humor blended in him so subtly yet so successfully that those who are quite unlearned in the law glimpse some of its beauties."

Judge Marcus Beck said he "knows the law and he loves the Bible." It is said that some of the many brilliant opinions written by him contained in the first 10 volumes of the Georgia Appeals Reports personify George Eliot's epigram, "Wit is wisdom, raised to a higher power." Justice Bond Almand called him "a four-dimensional man, an advocate, a counselor, a judge, and a leader. His work was outstanding...gave the best of his talents." Possessing rare ability, he has been ranked with other legal giants such as "the elder Lumpkin, Nisbet, Bleckley, Blackstone, Kent and Marshall."

# IN MEMORIAM

JUDGE ARTHUR GRAY POWELL

IN THE COURT OF APPEALS OF GEORGIA

DECEMBER 16, 1952

On October 23, 1952, and on November 7, 1952, it was ordered by the Court of Appeals of Georgia that a Committee be appointed to prepare a Memorial commemorative of the life, character, and service of Honorable Arthur Gray Powell, deceased, late Judge of this Court. The Committee was duly appointed by Honorable L. H. Sutton, Chief Judge of said Court, and notified by the Clerk.

It was further ordered by the Court that the report of this Committee be received in the courtroom at the State Capitol at 11 o'clock a.m. on Tuesday, December 16, 1952, and that after presentation of the Committee's report addresses might be delivered by individual members of the Committee or other members of the Bar.

At the appointed hour there assembled in the courtroom at the State Capitol the Judges of the Court of Appeals, Justices of the Supreme Court, members of the Committee, relatives of the deceased, members of the Bar, and friends of the deceased.

Chief Judge Sutton announced the subject of the assemblage, and called for the report of the Committee.

## REPORT OF THE COMMITTEE OF THE BAR.

May it Please your Honors:

The Committee appointed to prepare a memorial commemorative of the life, character, and service of Arthur Gray Powell, formerly a Judge of this Court, begs leave to report as follows:

Arthur Gray Powell was born in Early County, Georgia, September 3, 1873. His parents were Richard Holmes Powell and Katurah Perry Powell. His father served as a young soldier in the Confederate Army and lost a leg in the battle of Petersburg, Virginia. After the war he became a successful lawyer. His paternal grandfather was a Baptist minister.

Judge Powell grew up in the typical southwest Georgia town of Blakely, county seat of Early County, absorbing the full knowledge of life that comes so easily in the well-rounded existence afforded by town as distinguished from either big city or remote country upbringing.

Judge Powell began to take an active part in the life of the community at a time when most boys have hardly given a thought as to what their future studies or occupations will be, becoming a Deputy Clerk of the Superior Court at the age of fifteen and also serving in the same capacity in the county court.

This training, and above all his close association with his father ingrained legal principles into him from so early an age that they became second nature. Also, as he points out in his book, "I Can Go Home Again," the courthouse in those days in small towns was a place of public gatherings and interest; hotly contested cases affording entertainment in all and instruction for those with intellectual leanings.

Judge Powell attended Mercer University for eighteen months, leaving college because he felt that his younger brother should also have the opportunity of college training, and in the impoverished days following the war between the States, his father could not afford to keep more than one of his boys in college at the same time. While in college he entered fully into both the curricular and outside activities and gave evidence of the leadership and of those scholarly as well as humanly humorous tendencies which were to distinguish him so much in later life, both private and public. He studied law and was admitted to the bar at eighteen.

On December 31, 1896, Judge Powell married Miss Annie Walker, of Colquitt, Georgia. There was a romance which began when they first met in their early teens and was broken only by his death in 1951. They were inseparable companions; Mrs. Powell accompanied him to all the meetings of the Bar Associations—state and national. Probably the most beautiful chapter in his famous book, "I Can Go Home Again," is that which he devotes to his courtship of "Miss Annie," as he always referred to her. He gave great strength to his family, as he did to all of his associations in life—the bench, his professional associations, his church, and his firm.

He began the practice of law in partnership with his father, continued until the death of the senior. Many examples of the skill of this young man will be found in the Supreme Court reports. He rapidly made a name for himself and his reputation spread among the lawyers and judges throughout the entire State.

He became a specialist in litigation involving land law in the unsettled condition of land titles in South Georgia. His services in this field were in demand in courts throughout the southern part of the State, and his success there brought him additional practice. In addition to success in litigation, Judge Powell, at an early age, became a wise counsellor and displayed great ability in conciliating differences arising among contestants which led to the amicable settlement of many cases.

After his father's death, he practiced alone for several years, and then formed a partnership with the late Judge J. R. Pottle, who was desired to succeed him on this Court.

Living near both the Alabama and Florida borders of Georgia, he found it useful and even necessary to know the law of all three States, but with his studious and intellectual bent he no doubt found mastering the points of difference between Florida, Alabama, and Georgia law an interesting pursuit, rather than a burden.

When legislation was enacted for the establishment of the long-needed Court of Appeals, in 1906, Judge Powell dissolved the existing partnership with Judge Pottle and offered himself as a candidate for one of the three places on this bench. Though he had never offered for any public elective office, so well was his reputation established among the lawyers of the

State, that he ran second in a sixteen-man race, which resulted in the choice of Richard B. Russell, Judge Powell, and Benjamin H. Hill. He was then 34 years of age.

During the campaign he was signally honored by the legendary figure of the Georgia bar and bench, Judge Logan Bleckley, who made the following statement in a letter to Judge Powell: "In view of your candidacy for a seat on the bench in the proposed Court of Appeals, allow me to say that I have seen your light shine with resplendent brightness. I can bear testimony to your being one of the elect few among the members of our profession. You are a genuine lawyer, with a true insight into the nature of law and its real import both in letter and in spirit."

Judge Powell remained on the bench five years and fifteen days. From the beginning he more than justified the high commendation by Judge Bleckley which we have quoted. His decisions are reported in the first ten volumes of the reports of this Court, beginning with *Curry vs. Dever*, 1 Ga. App. 11, and ending with *Cotton vs. City of Atlanta*, 10 Ga. App. 397. A proper appraisal of the work of Judge Powell is difficult. History will probably characterize him as a judge of unusual ability, and rank his work with that of the elder Lumpkin, Nisbet, and Bleckley. A true appreciation can only be obtained from an examination of his opinions.

He brought to his office the ability of all great lawyers to dispose of cases both quickly and correctly; and to give clear and logical reasons for doing so. Characteristic of his lifelong habit of disregarding mere technicalities, the first opinion he wrote (*Curry vs. Dever*, 1 Ga. App. 11), decided that an unsigned pleading might be signed and refiled, though a bill of exceptions could not be. In his last opinion (*Cotton vs. City of Atlanta*, 10 Ga. App. 397), he refused to let the arguments of expediency and the low state of the parties involved affect his judgment, his comment being: "We recognize that expediency might be subserved by allowing police courts to deal summarily with matters of this nature, but the law is otherwise; and the law must be the law even among its friends."

Judge Powell was a modest man, and this modesty is reflected in the simplicity of his opinions. Nowhere is found what Judge Cardozo describes as "the type magisterial or imperative." He did not feel that he had been especially called on to announce great principles of law which would affect mankind, but rather dealt with the litigants and lawyers as if they stood with him on the same plane. The style of his opinions, if they may be said to have a fixed style, was laconic, at times conversational or homely. He delighted in the use of epigrams and at times, when the occasion justified, jest. The great English judges in the Yearbooks wrote in this style. In most cases, however, his opinions are precise, exact, and always in keeping with the dignity of this great Court.

Judge Powell worked with unbelievable speed. An examination of the opinions announced by him disclosed that in cases argued on January 8th and 10th, opinions were announced on January 11th and January 29th, 1907.

During his term on the bench he wrote more than 1,000 opinions. It is our understanding that some member of this Court will comment on a few of his decisions; therefore no comprehensive examination of any of the cases will be made. It is probably sufficient to call to the attention of

the Bar the remarkable reasoning and excellent writing which will be found in the following cases:

*King vs. Seaboard Air Line Railway*, 1 Ga. App. 88.

*Callaway vs. Mims*, 5 Ga. App. 10, a comprehensive examination of principles governing the conflict between municipal ordinances and applicable state criminal laws.

*Southern Railway Company vs. Decker*, 5 Ga. App. 21, dealing with the force and effect to be given statutes of foreign States.

In *Purcell vs. Armour Packing Company*, 4 Ga. App. 253, and *Lowry vs. Hutchinson*, 5 Ga. App. 865, are examples of his outstanding work in the field of negotiable instruments. These cases contain a clear exposition of the principles permitting defenses to these instruments. *Lowry vs. Hutchinson*, is a recognized authority in this field, having been cited by this Court more than twenty times and on several occasions by the Supreme Court of Georgia. It is included in the Case Book on Negotiable Instruments used at Columbia Law School.

Like most of the men who undertake judicial service, Judge Powell accepted a place on the bench at great financial sacrifice. For a few years he was able to supplement his meager salary with income from his property and farming operations. This income failing, and feeling that he should no longer sacrifice the needs of a growing family, Judge Powell resigned from the bench, effective January 15, 1912.

He then formed a partnership with John D. Little, an able lawyer and son of a former Supreme Court Justice. From the beginning of his practice in Atlanta, Judge Powell participated in cases of importance.

Judge Powell not only possessed great ability as a lawyer who knew the law, but he was a most resourceful man. He knew how to apply the law in difficult situations. When it came to a choice of remedy or procedure, or where the occasion was new or complicated, his resourcefulness was very conspicuous in selecting the procedure best adapted to a complicated situation.

Judge Powell was active in the field of insurance law, and so successful was his work that he was employed by his clients to handle difficult cases for them in various Southern states. One of his clients remarked that he was the only lawyer in Georgia, to his knowledge, who had ever obtained the verdict of a jury in favor of a surety company when sued by a bond bank, and so unusual was this situation that this Court felt proper to comment on it. (*Home Savings Bank vs. Massachusetts Bonding and Insurance Company*, 19 Ga. App. 352.)

Judge Powell did not confine his practice of law to the cases which would bring him the larger monetary rewards. His door was always open to those who needed help, which he bestowed with infinite patience and good humor. He could always find time to be of assistance to other members of the bar, and particularly enjoyed talking with the younger members and giving them the benefit of his knowledge and experience.

Judge Powell's activity as a lawyer continued for more than thirty-nine years after leaving the bench. In the closing years of his life, failing health caused a slow-down in his work, but its high quality remained with him to the end, and he was preparing to go to South Georgia to participate in the trial of a case when he was stricken by his last illness.

While on this Court, he devoted one of his summer vacations to the completion of his book, "Powell on Actions for Land," a textbook which is widely used by lawyers throughout the State and extensively cited by the Courts. He was instrumental in drawing the Land Registration Act, and published "Powell on Land Registration," a valuable textbook dealing with that subject (which was in substance included in our Code, Chapter 60-1).

He was an inveterate reader of literature, and always found time for genuine scholarship in general reading. The subjects of his interest were varied—fiction, science, philosophy, and religion. For more than forty years he was a leading member of The Ten Club, a famous group of men of Atlanta, whose interests are in literature and the reading and discussion of "good books."

His interest in literature, both as a student and creative writer, was foreshadowed by the caliber of his writings on the bench. In his case, as in that of Chief Justice John Marshall (about whom the statement was made by David Loth in his biography of that great Justice), it can be truthfully said: "But once in a while a man mounts the bench with the salt of life, the spice of wisdom, and the sweetness of humor blended in him so subtly yet so successfully that those who are quite unlearned in the law glimpse some of its beauties."

He was a lifelong Baptist. Of his religious life, Dr. Louie D. Newton, an eminent Baptist minister and a close friend, has written a member of the committee: "He was a genuinely religious man. I shall ever cherish a remark of the late Judge Marcus Beck regarding Judge Powell, when he said: 'Arthur Powell knows the law, and he loves the Bible.' That gets to the heart of the matter."

The partnership with John D. Little, formed in 1912, was enlarged in 1913 by the addition of Frank A. Hooper, Sr. and Max F. Goldstein. Mr. Hooper retired to devote his time to special practice, and Marion Smith joined the firm. This partnership continued until 1931, when Mr. Smith withdrew and Charles S. Reid joined the firm. This partnership continued until Mr. Reid left the partnership to become Chief Justice of the Supreme Court of Georgia. In the meantime Messrs. Murphy, Frazer, and Rankin joined the firm, and this partnership continued with the addition of Max F. Goldstein when he returned from the war, until the death of Judge Powell.

Judge Powell died August 5th, 1951, a few weeks before his 78th birthday. His wife, Mrs. Annie Wilkin Powell, his son, Arthur W. Powell, his daughters, Mrs. Clarence (Frances) Laws and Mrs. Edward (Grace) Hammond, numerous grandchildren and great grandchildren survive him.

In this brief sketch we have only touched on a few of the highlights of this versatile personality. His activity as a lawyer and a judge covered sixty years. He found time to do some delightful writing in letters to his friends, in articles that appeared in law magazines, and particularly in his autobiography "I Can Go Home Again," which was published on his 70th birthday.

In reviewing this book for the American Bar Association Journal, Mr. Justice Jackson of the United States Supreme Court, said: "To squeeze this book into a review would destroy its charm. It is a garland of dainty

flowers from the Southern countryside, and although one can bale straw, he can only crush a bouquet."

While this book has particular interest to lawyers, it is most interesting and entertaining for those not initiated into legal work. It gives a vivid picture of the social scene of the times it covers. Someone has said Mark Twain would have loved it had this book been written in his day, but it is likely he would have envied this book, as Judge Powell showed a remarkable sense of humor and great power of expression in describing the many interesting people and events which occurred in this southern Georgia community during Judge Powell's residence there.

This sketch would not be complete if we did not make some reference to Judge Powell's remarkable gift of friendship. Three generations of Georgia lawyers held him in affection, and he regarded each of them as his personal friend. For more than forty years he attended the annual meetings of the Georgia Bar Association and the American Bar Association and renewed the ties of friendship. He leaves happy memories among these friends and a lasting legacy to the Bar and public in general by his long and useful career.

Respectfully submitted,  
 REUBEN R. ARNOLD, *Chairman*  
 MAX F. GOLDSTEIN, *Vice Chairman*  
 PAUL F. AKIN  
 ZACK ARNOLD  
 JUSTICE EMERITUS R. C. BELL  
 ROBERT BLACKBURN  
 E. DORSEY BLALOCK  
 JUDGE SHEPARD BRYAN  
 WILLIAM BUTT  
 H. SOL CLARK  
 T. MAYHEW CUNNINGHAM  
 JUDGE T. H. FORT  
 SENATOR WALTER F. GEORGE  
 L. P. GOODRICH  
 A. H. GRAY  
 PAT HARALSON

WALTER A. HARRIS  
 SAMUEL D. HEWLETT  
 JAMES M. HULL, SR.  
 CHIEF JUSTICE EMERITUS W. FRANK  
 JENKINS  
 HATTON LOVEJOY  
 JUDGE EMERITUS HUGH J.  
 MACINTYRE  
 H. H. PERRY  
 MILLARD REESE  
 JOHN A. SIBLEY  
 A. S. SKELTON  
 HON. JOHN M. SLATON  
 WILLIAM LOWREY STONE  
 ROBERT B. TROUTMAN, SR.  
 JOHN L. TYE, JR.  
 JOHN R. WILSON

#### REMARKS OF HONORABLE T. M. CUNNINGHAM.

It was my good fortune to have been associated with Judge Powell for more than 50 years.

I first knew him when he was a country lawyer. He was not merely a learned lawyer and Judge; he was more than that, he had a penetrating mind and was a great practitioner of law. When he was on the bench his decisions were sound and predictable. He had a solid mind. He did not indulge in unsubstantial refinements or in distinctions which did not exist.

I had many conferences with him and was always struck with his resourcefulness and ingenuity. When he had explained his view, which he

always did with clarity and forcefulness, I often wondered why I had not thought of that before.

In the trial of his cases, he clung tenaciously to the salient point of his case and was not distracted by the smaller points. He was always, no matter what the stress of the case might be, urbane and courteous to his adversary.

I never heard him speak harshly or critically of his brethren of the Bar, or for that matter of anyone else, because he was innately charitably disposed toward all persons.

I esteemed him as a high-toned honorable gentleman, above fear and above reproach. He was a great lawyer, an ornament of our profession. His reputation extended beyond the limits of the State of Georgia.

He was genial and hospitable and loved to have his friends around him. His humor was unailing and delightful.

I spent many hours in his congenial company. The loss of an old friend in the evening of one's life is irreparable. He can never be replaced, there is no substitute for him.

#### REMARKS BY CHIEF JUSTICE EMERITUS W. FRANK JENKINS OF THE SUPREME COURT.

May it Please the Court:

I am happy to briefly respond to the invitation just made by the Chairman of the Memorial Committee to present a few unpremeditated sentiments concerning our beloved and brilliant, departed friend.

To me personally, as to so many others, he meant much. For just about fifty years I have known and admired him. During about thirty years of this period we were members of The Ten Club, which organization was alluded to in the report by the Committee.

His brilliant mind and personality had many facets: one being that he was learned. For him, with his faculty of quick comprehension, acquiring knowledge was an easy task. In this, as in so many ways, he was truly remarkable. I recall once handing him to read a full page typewritten letter. He examined it closely for what seemed but a moment, then handed it back. "Read it Arthur," I said, "It is important that you do so." "I read it," he said. "But you couldn't," I replied. "I will tell you everything in it," was his answer, which he proceeded to do with accurate detail. With such remarkable talent, combined with exceptional, unceasing, and serious energy, he became, as might be expected, steeped in knowledge. He was a legal scholar.

The fact that he was indeed so truly learned perhaps explains the two chief virtues in his writings as a member of this Court and as author of several books. These twin excellencies were simplicity and clarity. What two greater praiseworthy merits could there be? His clarity of expression it would be difficult to match unless it be in the genius of Judge Bleckley himself, to whom reference has been made in the Committee's report. Like Woodrow Wilson, Judge Powell could make abstruse and difficult problems seem easy and plain. I believe Woodrow Wilson could have

talked to a lot of one-gallon frontiersmen on psychology and made them at least think they understood it. The secret of Wilson's clarity of style might be explained by an incident of his youth when he showed an essay he had written to his father. After reading it, his father asked, "What is it you mean to say?" The young Woodrow briefly explained. His father's answer was, "Well, why didn't you say it?" Judge Powell, to a marked degree, said what he meant. He cleared up for us many a murky problem like a vivid flash of lightning against the black storm clouds of midnight. I am sure that many of us never became really acquainted with John Doe and Richard Roe until we read his *Actions for Land*, written during brief moments snatched away from his arduous duties as a member of this Court.

I have said his deep learning might explain both his simplicity and clarity in expression. He did not give us all he knew, with every insignificant detail. He skimmed it for us, so to speak. Bancroft, in the introduction to his *History* says, "I hold my fist full, and lift my little finger." To be clear, it might seem that one must give only the pure nuggets from a rich mine of knowledge.

No one was ever more loyal to his noble profession than was Judge Powell. The Bar, especially the younger members, will miss his ever ready and helpful interest.

But he is gone, he has left us, until the "dawning of the morning of some bright and happy day."

The following made talks, without manuscript, commendatory of the life, character, and ability of Judge Powell, and of their pleasant association with him as a lawyer, as a Judge, and as a friend: Hon. John M. Slaton, Hon. M. L. Stone, and Hon. R. C. Bell, Justice Emeritus of the Supreme Court of Georgia.

#### RESPONSE FOR THE SUPREME COURT BY ASSOCIATE JUSTICE

BOND ALMAND.

An estimate of the ability of Arthur G. Powell as a lawyer was aptly given by a former Chief Justice of the Supreme Court. In 1906, when he was a young lawyer 33 years of age, a candidate for election to the office of Judge of the proposed Court of Appeals, Judge Logan B. Blackley, unasked, wrote the following letter to Judge Powell:

"During my service of about twelve years on the bench of the Supreme Court, I studied the minds of lawyers, as well as the cases they argued before me. This experience assured me that, as musicians widely differ in musical touch, so lawyers differ in legal aptitude, or what may be called their legal touch; many of them being moderately gifted, some highly gifted, and a few very highly gifted. The three grades or orders are analogous to the grammatical degrees of positive, comparative, and superlative—good, better, best."

"The best legal minds are readily distinguished and easily recognized

as soon as, with tongue or pen, they touch upon any complex or difficult topic of law, whether in legal argument, their professional documents and writings, or merely in conversation. Whenever a superlative lawyer expresses himself his light is set upon a candlestick; it is hidden under a bushel only when he is silent.

"In view of your candidacy for a seat on the bench of the proposed Court of Appeals, allow me to say that I have seen your light shine with resplendent brightness. I can bear testimony to your being one of the elect few among the members of our profession. You are a genuine lawyer, with a true insight into the nature of law and of its real import, both in letter and spirit. With ample opportunity for judicial service, I am sure you will not fail to prove yourself a great judge."

Judge Blackley not only knew the law, but he also knew the essentials of a good lawyer. The following five years proved that Judge Powell was a great judge, and his fifty-seven years in the active practice of the law was clear proof that he was a superlative lawyer, with all his talents of mind and heart "set upon a candlestick."

Judge Powell was a star of the first magnitude in the universe of jurisprudence. Not a Van Maanen, a dead star, but a Sirius, emitting light and radiating warmth.

Some lawyers have attained great stature by one single characteristic—brilliant advocacy in the courtroom, or as a sound counsellor in the office, or by eminence in the field of politics. Judge Powell was a four-dimensional man, an advocate, a counsellor, a judge, and a leader in all activities of his profession. In each field his work was outstanding, and to all of them he gave the best of his talents.

In appraising his life and work, it would be difficult to assay more weight to one field of service than another. His service as a judge is recorded in the clear, precise, and incisive opinions in the reports of the Court of Appeals, and his success at the bar as an advocate and counsellor is attested by the universal love and respect of the bench and bar for him, and his long and active service in local, state, and national bar associations, where he was found always promoting the best interest of the bench and bar, will long be remembered by the lawyers of Georgia.

A gentleman, in the highest meaning of that term, jurist, lawyer, author, scholar, leader, and friend. In the Valhalla of the beyond, if lawyers gather together as they do on earth for the exchange of wit and witticism, Judge Powell will feel at home with Blackstone, Kent, Marshall, and Blackley.

#### RESPONSE FOR THE COURT OF APPEALS BY

CHIEF JUDGE I. H. SUTTON.

The Court extends its thanks to the Chairman and the other members of the Committee for their splendid report. This memorial report and the other tributes and addresses have fittingly portrayed the life and career of Judge Arthur G. Powell. In fact, this has been done so well there is not much that can be added by me without repeating, because

we are all talking about the same subject. However, in response, it may be appropriate to refer to some of his opinions and decisions, and also to say that Judge Powell was a distinguished and brilliant member of the bar of this State for almost 60 years, including the five years that he was a judge on this Court. His personality was so rare and unique as to attract the attention of all with whom he came in contact. While he was still a young man, and had practiced law for a period of only 15 years, when he became a member of the Court of Appeals, his fame as a lawyer at that time was not confined to the immediate section of southwest Georgia where he lived, but even then he was widely known over the State as an outstanding lawyer. This, and his friendly disposition and engaging personality, enabled him to be elected one of the original members of this Court when it was first created, although there were 16 prominent lawyers and judges in that race. Upon the organization of the Court on January 1, 1907, 130 cases were transferred to it by the Supreme Court, and Judge Powell, along with Judges Hill and Russell, commenced the hearing of cases on January 8, 1907, and three days thereafter, on January 11, 1907, the first decisions were handed down, as shown by Volume I of the Georgia Appeals Reports.

Judge Powell's opinions are clothed in well-chosen English, and they are forceful and expressive, and show that he had a ready legal grasp of the controlling points in the case with which he was dealing. He was also a good judge of human nature, and he united with his eminent legal ability and learning the bright edge of wit and the keen flavor of humor in the decision of cases. Yes, his opinions as a judge show sympathy and understanding of the human as well as the legal side of the issue.

Some of his opinions show his ability to solve legal problems with his knowledge of literature and the Bible as well as the law. In *Williams v. Foin*, 2 Ga. App. 136, in construing the meaning of the word, "consenting," as used in a statute which says that a case in a named court may be tried at the first term, provided the plaintiff is present and "consenting," Judge Powell quoted from Shakespeare, the Bible, the Declaration of Independence, and Byron, to show that the word "consenting" connoted individual and not joint volition. In *Gann v. Zettler*, 3 Ga. App. 589, in dealing with the question of dual agency, he wrote, "Who, having undertaken the service of his master, counsels with another and agrees also to serve him in those same things wherewith he has been trusted, cannot claim the reward promised by his master, unless he manifestly plain that he has not acted privily, but that his master was consenting thereto." He headnoted the case with the Biblical truth that "No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other."

Some of his cases deal with the protection and upholding of moral conduct. In *Holcombe v. State*, 5 Ga. App. 47, the defendant was charged with using obscene language in the presence of a female; and in the course of the opinion Judge Powell said: "Modesty, that 'kind' of quick and delicate feeling in the soul, the exquisite sensibility that warns a woman to shun the first appearance of everything hurtful, is, according to the mind of the average citizen of Georgia, as needful and legitimate a subject matter of protection from invasions as those more familiar sub-

jects of protection through criminal statutes—life, liberty, and property." And, in *Redd v. State*, 7 Ga. App. 575 (2), he stated: "What is decent and what is indecent are determined by the sensibilities and moral standards of a people, as evolved from generation to generation along with their civilization."

Occasionally, his opinions show that he could gracefully restrain his own view of the facts of a case so as to conform to that of the jury; for instance, in *Marshall v. Bahnsen*, 1 Ga. App. 485, he remarked: "S270 does seem to be a right heavy charge for a few hours work by what the folks colloquially call a 'horse doctor,' and what is styled with greater gentility a 'veterinary surgeon'; but the law wisely considers that juries know, very much better than judges, especially appellate judges, do, what is reasonable and just pay not only for 'horse doctors,' but also for all other classes of professional men."

It also appears that he was well-versed in what he referred to as "the intricacies of the dog law." In holding that the owner of sheep could not be convicted for killing a dog which had previously killed his sheep, he said: "The cynical reflection of the modern philosopher, that the more he sees of some dogs the less he thinks of some men, has no reference to snick-egg dogs or to sheep-killing dogs." In concluding, he reminisced with humane tenderness: "I well remember hew in the days gone by my childish tears flowed as, in poignant grief, I stood broken-hearted and viewed the cold remains of my fine dog Buster, who had met an untimely death." *Muller v. State*, 5 Ga. App. 463.

Reference is made to some of these cases to show that Judge Powell did occasionally exercise his wit and sense of humor in considering cases, and to show briefly his original and unique manner of expression. George Eliot said, in a striking epigram, "Wit is wisdom, raised to a higher power."

The following may be mentioned as being among his outstanding cases: The duty of an occupier of land with respect to the safe maintenance of his premises is thoroughly discussed in *Mandeville Mills v. Dale*, 2 Ga. App. 607, in *Rollestone v. Cassirer & Co.*, 3 Ga. App. 161, and in *Huey v. City of Atlanta*, 8 Ga. App. 597. *Dunn v. Western Union Telegraph Co.*, 2 Ga. App. 845, stands at the head of a line of cases dealing with the duty of a business to treat its customers respectfully, and not to insult or abuse them. The rights of a landowner whose timber has been cut and carried away are amply covered in *Milltown Lumber Co. v. Carter*, 5 Ga. App. 344. The right of a tenant at will to recover damages for injury to his leasehold is developed in the cases of *Hayes v. City of Atlanta*, 1 Ga. App. 25, and *Towaliga Falls Power Co. v. Sims*, 6 Ga. App. 749. Judge Powell's exposition of the doctrine of proximate cause in *Atlantic Coast Line Railroad Co. v. Daniels*, 8 Ga. App. 775, in which he neither cited nor quoted from a single case or authority, has itself been cited at least 41 times, and it stands as a vivid example of his ability to elucidate simply and clearly this complex principle, which many other judges and writers have attempted to do with less success.

His able and exhaustive opinion in *Lacey v. Hutchinson*, 5 Ga. App. 865, established that the seal upon a promissory note does not raise a conclusive presumption of consideration, but that a suit on such instrument

may be defended for want of consideration. Methods by which jurisdiction may be obtained in a suit against a foreign corporation are outlined in *Bell v. New Orleans & Northeastern Railroad*, 2 Ga. App. 812, and in *Cincinnati, New Orleans & Texas Pacific Railway Co. v. Pless*, 3 Ga. App. 400.

In the field of criminal law, *Lee v. State*, 8 Ga. App. 413, contains the reasons for the rule as to when other crimes may be proved (and I might add that much has been said and written on that subject); *Loeb v. State*, 6 Ga. App. 23, re-emphasized the rule that there are no accessories to a misdemeanor; and in *Hall v. State*, 8 Ga. App. 747, and *Tooke v. State*, 4 Ga. App. 495, the proper methods of pleading statutory offenses are pointed out.

The following cases are guides to the requisites of good pleading: *Cedar-town Cotton & Export Co. v. Miles*, 2 Ga. App. 79; *Bush v. West Yellow Pine Co.*, 2 Ga. App. 295; *Pacetti v. Central of Georgia Railway Co.*, 6 Ga. App. 97; *Charleston & Western Carolina Railway Co. v. Attaway*, 7 Ga. App. 231. In his most-cited case, *Georgia Railway & Electric Co. v. Harris*, 1 Ga. App. 714, Judge Powell dealt with the kind and quantity of circumstantial evidence necessary to support a verdict.

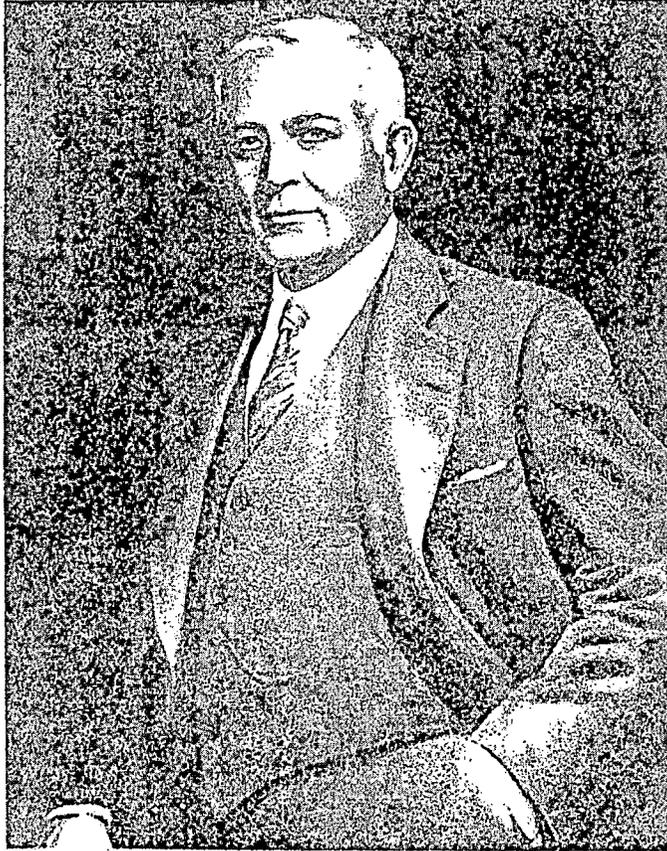
The cases and opinions here mentioned are only a few of his noteworthy cases. Judge Powell's service on this court covered a period of five years, from 1907 to 1912, which was 40 to 45 years ago, and his opinions, appearing in Volumes 1 through 10 of the Reports of this Court, are still models of style and are frequently quoted from and cited as precedents. He was one of the State's great judges, and his judicial work will not fall with the passing of the years.

Eminent lawyer, able jurist, noted author, man of letters, and friend of mankind: this was Judge Arthur Gray Powell.

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It is directed by the Court that the Memorial report be filed, that a copy be furnished to the family of Judge Powell, and that a page of the minutes of the Court be set apart to his memory and inscribed with the dates of his birth and death, and that this Memorial proceeding be published in the official Reports. As a further mark of respect for him, the Court is adjourned for the day.

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JUDGE ARTHUR GRAY POWELL, 1873-1951

ARTHUR G. POWE

I CAN  
GO  
HOME  
AGAIN

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### *We Go To Atlanta*

ABOUT THE BEGINNING OF THE TWENTIETH CENTURY, THE Justices of the Supreme Court began to complain seriously that more cases were coming to the Court than they could possibly handle. The Georgia Bar Association appointed a special "Committee on the Relief of the Supreme Court," with a member of the committee from each congressional district. I represented the second district. For several years we discussed plan after plan, each of which was in turn discarded for some practical reason. Finally, in the spring of 1906, at a meeting of the Committee, with members of the Supreme Court present, we agreed to ask the General Assembly to create a Court of Appeals, which would have the same jurisdiction as the Supreme Court and would take over a part of the docket.

The resolution proposing the necessary constitutional amendment passed the Senate and seemed likely to pass the House. It contained a provision that the Governor should appoint the judges. Anticipating the passage and adoption of the amendment, Governor Terrell had consulted the members of the Supreme Court and had agreed with them on H. H. Perry, of Gainesville, Henry C. Peeples of Atlanta, and me, as the first three Judges. When the proposal came on for adoption in the House, Joe Hill Hall, of Macon, one of the most influential members of that body, offered an amendment requiring that the Judges be elected by the people. It was adopted; and the bill passed in that form.

Of course, the agreement between the Governor and the Justices as to the personnel of the new court had been kept

confidential, but not so secret that I did not catch word of it. I resigned from the committee as soon as I heard that my name had been mentioned.

After the amendment had been proposed by the General Assembly, and before it was submitted to the people for ratification, the bar association committee met and adopted a resolution asking the three of us whom the Governor had agreed to appoint to allow our names to be used in the election and promising their support. Mr. Perry and Mr. Peeples declined, but I asked time to consider the matter. I talked it over with Annie. I had made and collected over ten thousand dollars the year before. I had in process of erection, and so far completed that it was already being occupied in part, a three-story building fronting on the courthouse square which I had rented for enough to retire the mortgage I had put on it and to give me some income besides. I could afford to stay on the bench for a while at least. One consideration that strongly appealed to me was the education in the law I would get from service on the bench. There would be a financial sacrifice involved, as the salary was only four thousand dollars a year, but I could quickly recoup any loss I should incur in that respect, if I resigned after, say, five years, and came back to the practice with the prestige the service on the bench would give. Beyond this, I was not yet thirty-three years old, and the very hope of attaining such an honor at such an age flattered me.

My friends in south Georgia, practically every member of the bar of the Albany and Pataula circuits and many others from near-by circuits, were urging me to run, and promising to give me a clear field in so far as south Georgia was concerned, by keeping all other lawyers from that section out of the race. Annie was willing, and I consented to make the campaign.

Judge John S. Candler had recently retired from the Supreme bench and had organized a large law firm in Atlanta, with offices in the newly opened Candler Building. He was an astute and successful politician of the better sort, and he volunteered to supervise my campaign. He arranged a suite of offices for me next to his own, which was an ideal arrangement for me, since I had

decided on a "mail-order" campaign. I knew how I looked; and, while I had had no political experience beyond the limits of Early County, I knew enough to know that it would not do for me to let strangers see me if I expected them to vote for me.

Logan Bleckley would always deny it if anyone charged him with being a politician, and yet in certain types of politics he was the greatest expert I ever knew. He had a genius for organization. He knew men of prominence all over the State, and he was widely beloved and, therefore, widely influential. He was really the power behind the throne in my campaign.

From north and middle Georgia there were twenty-five positively announced or seriously-considering-it candidates. I was the only one from south Georgia.

In the midst of the campaign, Kil, who was then on the faculty at Teachers College in New York, came by my headquarters and volunteered to send out a letter in my behalf to his special friends in Georgia, principally the boys who had been under him when he taught at Mercer. He dictated the form letter to one of the stenographers and gave us the list of names and addresses. We prepared the letters and sent them to New York for signing and mailing.

We caught a stenographic faux pas before much harm was done. Kil had said, "He was my bed fellow in college." The young lady transcribed it, "He was a bad fellow in college."

About two hundred of Kil's letters went out into various parts of the State. His influence over his former pupils was tremendous. No sooner had his letters gone out than I had about two hundred influential young men actively at work for me.

At the October election the amendment was ratified by the people. When the entries for the November election closed, there were sixteen left in the race; but I was still the only one from south Georgia.

I was in my Atlanta headquarters late one afternoon when Gordon Kiser called me and asked me if I knew whose building it was that burned at Blakely the night before. I replied that I

knew nothing of the fire. He read me a news item in the afternoon paper. It was my new three-story building that had burned. I went to my hotel, and there were the telegrams telling me of its total destruction.

There was another telegram from Annie telling me she was all right. This was welcome news, because of her condition. It was a few days later that Grace was born.

Also in my box at the hotel was a letter in a long envelope. Any depression caused by the news of the fire was offset by my elation at reading this letter. It was signed "Logan E. Bleckley." It was from the old Chief Justice, whom all Georgia regarded as the greatest jurist of all times and whom the people of north Georgia idolized.

I hesitate to quote this letter because of the apparent immodesty of my doing so; but it was written for publication and was published widely at the time. I use it here not for what it says of me but because it is so characteristic of Judge Bleckley's style that I feel constrained to do so:

"Dear Sir:

"During my service of about twelve years on the bench of the Supreme Court, I studied the minds of lawyers, as well as the cases they argued before me. This experience assured me that, as musicians widely differ in musical touch, so lawyers differ in legal aptitude, or what may be called their legal touch; many of them being moderately gifted, some highly gifted, and a few very highly gifted. The three grades or orders are analogous to the grammatical degrees of positive, comparative and superlative—'good, better, best.'

"The best legal minds are readily distinguished and easily recognized as soon as, with tongue or pen, they touch upon any complex or difficult topic of law, whether in legal argument, their professional documents and writings, or merely in conversation. Whenever the superlative lawyer expresses himself his light is set upon a candlestick; it is hidden under a bushel only when he is silent.

"In view of your candidacy for a seat on the bench of the proposed Court of Appeals, allow me to say that I have seen your light shine with resplendent brightness. I can bear testimony to your being one of the elect few among the members of our profession. You are a genuine lawyer, with a true insight into the nature of law and of its real import, both in letter and spirit. With ample opportunity for judicial service, I am sure you will not fail to prove yourself a great judge.

"Though my letter is addressed to you, it is really intended for other readers, and I request you to publish it.

"My works shall correspond with my faith. In the coming primary I am confidently and cordially for you."

Judge Bleckley need not have signed it, for all readers of the letter who knew him would know that he wrote it.

I wondered what had prompted Judge Bleckley to write the letter. Logan and I had thought of asking him for a simple endorsement of me; but he was usually so chary of endorsing any one that we had thought it best not to ask him. I learned later that Charlie Bass, a young friend of Sam Benet's and mine, who had first started out to be a lawyer and had changed to the ministry, and who then held a pastorate at Clarkesville, where Judge Bleckley resided, happened to be talking with the Judge about the new court, and my name was mentioned. Charlie expressed the hope that I would be elected. The Judge said he intended to vote for me and added, "If I thought it would do any good, I would write him an endorsement."

Charlie almost shouted, "Do him any good! Why, Judge, if you would let him print an endorsement from you, it would do him good all over Georgia, especially in this section here where everyone knows you and but few know him." The Judge sat down and immediately wrote and mailed the letter; and, of course, I gave it wide circulation.

I think that Annie is indirectly responsible for his willingness to write it. A few years previously the Georgia Bar Association had met at Tallulah Falls, near Judge Bleckley's home. Annie,

who was there with me, saw sitting on the rostrum a tall, gaunt, old man, with his locks to his shoulders, and his long white beard streaked with tobacco juice; but his eyes and brow spoke of genius, and he looked like one of the prophets of old. Annie asked me, "Who is that old codger sitting on the rostrum?"

"That," I answered, "is Chief Justice Bleckley."

"The Judge Bleckley?" she whispered.

"Yes, the Judge Bleckley," I replied, "and the handsome middle-aged woman sitting there near him is his second wife, whom he married a few years ago."

I was on the program that morning with a paper on the taxation of franchises, a subject in which the bar of the State was interested because of the recent passage of a tax act which included franchises for the first time. At the end of the session, Annie and I happened to come to the doorway just as Judge and Mrs. Bleckley did. I spoke to them and introduced Annie. Teasingly, the Judge said to her, "How in the world did a little country girl like you ever catch Arthur Powell, who has just made such a learned talk on a puzzling legal problem?"

I could see Annie's Miller County dander rising, but she managed a smile, as she said, "Well, Judge, I've just been wondering why your wife married you."

"Good! Good!" he exclaimed, and laughed heartily. Her display of spunk had pleased him.

In due time Grace was born. It will be difficult for those who have known her as the handsome girl she became or as the handsome young mother she now is, to imagine what a scrawny, wizen-faced baby she really was. We called her "Tiddledy-winks" and contracted that into "Tildy," but both nicknames she soon outgrew.

The papers first announced the election of Judge Richard B. Russell (who had just run a brilliant, though unsuccessful race for the governorship), Henry Peeples, and me. However, when the final returns came in, it appeared that Benjamin H. Hill, the

son of that great statesman, Senator Benjamin Harvey Hill, had nosed Henry Peeples out by a few votes.

My first reaction to my election was a feeling which bore down heavily upon me—that I was tremendously overdrawn at the bank of love and affection; that I owed such an overwhelming debt of gratitude that I could never repay it; that I was bankrupt, but could not take bankruptcy.

In Miller County, Annie's home, only 375 votes were polled. I got 375 votes there.

In my own home county, I lost four votes, three of them being the votes of men who struck my name because, they said, I had once stricken them off a jury.

My card-index at headquarters had indicated that I had no strength in Chattooga County in extreme north Georgia. When the returns came in, I had led the ticket there by about fifteen hundred votes. It was some time later that I learned why.

Just before Christmas of the previous year, I was in the First National Bank at Blakely when a young man came in and presented a check issued by Major Jones, the county school commissioner. I heard the teller say to him, "Mr. Jolly, have you anyone here who can identify you?"

He explained that he knew no one in Blakely except Major Jones, that he had been teaching in one of the county schools, that if he went to get Major Jones to identify him he would miss the train which was due to arrive in a few minutes. I was looking him over. He had a straight-forward, honest appearance, and his explanation seemed reasonable. I stepped forward, introduced myself, and said to the teller, "I will identify Mr. Jolly by endorsing the check."

It turned out that Jesse Jolly was the son of the sheriff of Chattooga County. When he saw from the papers that I was in the race for the judgeship, he had his father send a deputy to every polling place in the county to ask the voters to vote for me. He had made my campaign his campaign.

Various are the reasons that influence men to vote one way or another. I have seen men vote for Judge Fish for the chief-justice—

ship because they liked to go fishing. Judge Hill used to say laughingly that the people elected his father, who had been dead several years, instead of him, to the bench. I was once spending the summer in the mountains of north Georgia when the State primary election occurred. My old friend, Luther Brittain, now president of Georgia Tech, was a candidate for the office of State Superintendent of Education, and was opposed by a man named Zettler. I saw one of the voters strike Zettler's name from his ballot. Out of curiosity, I asked him if he knew either of the candidates, and he said that he did not.

"How did you decide to vote for Brittain instead of Zettler?" I asked.

"I would not vote for any damned man whose name begins with a 'Z,'" he replied.

The Court of Appeals was to be organized on January 1, 1907. The time intervening between my election and that date, I spent in winding up my affairs and in getting ready to move to Atlanta. My citizenship would remain in Blakely, but the work of the court would keep me in Atlanta the year round, with only an occasional short vacation. Even to this day, when I speak of "going down home," I mean going to Blakely, but I have actually lived in Atlanta ever since the day I moved there.

I arranged for Bob Pottle to take over my law office and to live in my home. I resigned from the vice-presidency of the First National Bank and similar connections. I sold my spirited mare, Ladybuck, and the rubber-tired buggy I had given Annie. Tie after tie was severed. I did not know that I was really giving up an old life and entering upon a new one; but I was.

The bar at Bainbridge gave me a banquet with real champagne and toasts. The felicitations were many. In my heart there was gladness—and sadness.

I made a few trips to Atlanta. With the help of Logan Bleckley, I rented a home on Gordon Street, in West End, a few doors below the Wren's Nest, the home of "Uncle Remus" (Joel Chandler Harris), just a few doors from the home of

Luther Rosser, in the same block with Hugh Culbertson, Judge Bleckley's son-in-law.

Our household goods and personal effects were loaded into a boxcar, and on the morning of December 30, 1906, just seven years from the day my father died, Annie and I, Billy and Frances, and our poor, puny little baby, Grace, who Annie and I both inwardly feared would soon return to sleep with Little Albert, boarded the train for Atlanta. With us came faithful Allen and his newest wife, Jennie (not his first wife, Jennie Bell), and her baby boy, Buster.

Next morning we found that the car with our effects had arrived. The moving vans soon had them in our new home, and we slept there that night.

We were sleeping soundly when we heard a tremendous blast of whistles. In Blakely, that was the fire-alarm—the blowing of the whistles at the waterworks and the light plant. From the way the whistles were shrieking everywhere I thought that all Atlanta must be on fire. I rushed from one window to another, but could see no sign of the conflagration. I turned on the light and looked at the clock. It was midnight, and it dawned on me that Atlanta was saluting the New Year.

\* \* \*

Here ends the story I started out to write—the story of old Blakely and its environs during the thirty-odd years I lived there. Since then I have met many interesting persons and have had many interesting experiences; some day, if time and strength permit, I may write of them. But southwest Georgia and its people will always be my first and greatest love.

I can go home again.