

**BENJAMIN H. HILL** served on the Georgia Court of Appeals 1907-1913 and 1920-1922. He was born in LaGrange, Georgia, July 1, 1849, and died July 19, 1922.

He attended the University of Georgia in 1866, finishing a four-year course in three years, receiving an art degree, was graduated from the Law Department in 1871, receiving a law degree. He was a charter member of Chi Phi fraternity.

Judge Hill's baptized name was Cicero Holt Hill, but he changed it while at college in order to take the same name as his father out of admiration for him.

He married Mary Carter of Athens, who passed away in 1890. Two years later he married Janie May Hill of Wilkes County, and of this union two children were born - Mrs. Edward M. Leath and Benjamin Harvey Hill III. He practiced law first in the partnership of B. H. Hill & Son and later with his brother Charles D. Hill. He served four years in the General Assembly; he was Solicitor-General of the Atlanta Circuit, and U. S. District Attorney for the Northern District of Georgia. He was elected as one of the original three judges of the Georgia Court of Appeals, serving from January 1, 1907, until November 1, 1913, as its first Chief Judge. He resigned from this position to become the Judge of the Superior Court of Fulton County. He was defeated in a reelection bid for this office. He then practiced law for two years, after which he made a successful race for reelection as a member of the State Court of Appeals, serving again in this capacity from November 15, 1920, until the date of his death.

Highlights of his life are found in the memorial to him in 29 Georgia Appeals Reports, pages 801-810. It is said he was "unparalleled in efficiency, brilliancy, and the amount of work done." In one of his opinions he said, "I recognize but one master - the law, and I hear but one voice - justice." It was said he loved and practiced the Golden Rule, that "he hated sham and hypocrisy, and love of right and justice was almost an obsession." In one of his opinions he emphasized that "subtle distinctions or over-nice constructions which tend to destroy or render doubtful the enforcement of right and justice should not be favored."

## IN MEMORIAM.

COURT OF APPEALS OF GEORGIA, OCTOBER 2, 1922.

### MEMORIAL OF JUDGE BENJAMIN H. HILL.

May it please your Honors: In behalf of the committee appointed by the court to draft a memorial commemorative of the life and character of the late Judge Benjamin H. Hill, formerly Chief Judge and lately Judge of this court, I have the honor to present the following report:

No name stands higher in the annals of Georgia than that of Benjamin Harvey Hill. Few men in the nation have ranked so high in statesmanship as the senior of that name. The junior—the subject of this memorial—was born in LaGrange, Georgia, on July 1, 1849. His early impressions were moulded amidst the clash of arms and all the sorrows and privations incident to the great fratricidal struggle, and he grew to young manhood during the dark days of reconstruction. Sitting at the feet of his distinguished father and listening to burning words of eloquence which electrified the Southland, he naturally inherited his father's political views and proved himself worthy in every respect of the illustrious name he bore. Indeed, his admiration for his father caused him, of his own volition, to change his name after he went to college, he having been baptized as Cicero Holt Hill. Benjamin H. Hill, the second, was the elder of two brothers, the younger, Charles D. Hill, having died a few years ago. Both sons achieved distinction in their chosen profession of the law.

In 1866, when seventeen years of age, young Hill matriculated at the University of Georgia, entering the freshman class. Among his classmates were a number of distinguished Georgians, most of whom have gone on before. Among them may be mentioned Emory Speer, William H. Fish, Howard Van Epps, H. H. Cabaniss, John L. Rambo, Jesse W. Walters, John E. Donalson, A. Pratt Adams, Buford Davis, Seaborn Reese, and William R. Hammond, all of whom afterwards achieved great success in their chosen vocations. During his college career he and Henry W. Grady became intimate friends and this relationship continued until the latter's death. Indeed, Judge Hill stated to a member of this committee that Henry W. Grady was the most intimate friend of a lifetime, except the members of his own family. His career at college foreshadowed future success, for he graduated from the academic department of the university in 1869, having completed the four-year course in three years. In 1871 he graduated from the law department of the University and received from that institution the degree of bachelor of arts and bachelor of laws. He delivered the graduating address of his class in the academic department. At college he was a charter member of the Chi Phi Fraternity. After graduating, at the suggestion of his father he spent several months in Europe, in order to broaden his outlook upon life and better fit him for the duties of manhood which he was about to assume.

In 1872 the partnership of B. H. Hill & Son was formed for the practice of law in Atlanta, and Mr. Hill was an active member of this firm for four years and until 1876, when he was appointed solicitor-general of the Atlanta circuit by Governor Colquitt. He was twice elected to this office by the General Assembly, but declined a third term, to accept the office of United States district attorney for the northern district of Georgia, to which he was appointed by President Cleveland. One of the daily newspapers in Atlanta, after referring to his record as solicitor-general, paid him this high tribute: "This record is unparalleled in efficiency, brilliancy, and the amount of work done. There is no better prosecuting officer than Mr. Hill,—none that has made so fine a record. Modest, quiet, devoted to his duty, Mr. Hill has won the admiration and approval of every one who has taken notice of his work. A better officer never served the State."

In 1889 he formed a law partnership with his brother, Charles D. Hill, who for many years was the able and brilliant solicitor-general of the Atlanta circuit, having succeeded his brother in that office. This partnership continued in existence until January 1, 1907.

In 1906 the Court of Appeals was created, and Mr. Hill was prevailed upon to make the race for one of the judgeships. He was elected over a large number of contestants, among whom were some of the ablest members of the Georgia bar. When the court was organized he was by common consent—on account of his age, experience, and ability—recognized as the logical selection for the first head of the court. He was Chief Judge of this court from January 1, 1907, to November 1, 1913, and, as such, had a large part in establishing the court in the confidence of the bar and the public. On the date last mentioned Judge Hill resigned from the Court of Appeals, to accept the office of judge of the superior court of the Atlanta circuit, tendered him by Governor Slaton. Unfortunately Judge Hill had never been a provident man, and his generosity to his family and friends kept him well up with his income. He therefore felt it his duty to his family to accept the position of nisi prius judge, because the emoluments were larger. Strange that this should have been true, but happily this unfair discrimination against the appellate judges no longer exists. His record as a trial judge is one of which his posterity may well be proud. He was courteous, considerate, and absolutely fearless in upholding the dignity and majesty of the law. Here Judge Hill encountered his first defeat, and it is but fair to history and just to Judge Hill's memory to say that he was a martyr to the fearless performance of official duty. The main contributing cause of his defeat was that he vigorously used the power of his office to bring to justice men who had violated the penal laws of the State, and thereby he incurred the enmity of a large class of voters, who, joining with a few other dissatisfied elements, encompassed his defeat. This defeat hurt, but it did not embitter him; and although he had given the best years of his life to the public service, and had reached an age where it was difficult to begin again and build up a new practice, he returned to the bar undaunted, without malice, and bravely set about to re-establish himself in the practice. For two years he practiced in association with his nephew, Harvey Hill, Esq., in the City of Atlanta, and younger members of the bar drew from his ripe experience and called him to their assistance in important cases.

Soon the time came for the election of a judge of this court; and Judge Hill sought election to this office, both because he loved the work and because he wanted to vindicate his judicial record before the people of the whole State. He was elected by a substantial majority, and he and his friends accepted it as a complete vindication of his previous judicial record. He was sworn in again as a judge of this court on November 15, 1920, and served as such until the day of his death, July 19, 1922.

Mr. Hill was married twice,—the first time to Miss Mary Carter, of Athens, daughter of Samuel Carter, of Murray county, and niece of Governor Alfred H. Colquitt. She died in 1890. In 1892 Mr. Hill married Miss Janie May Hill, daughter of James DuBosc Hill, of Wilkes county. She and two children survive the deceased, the children being Mrs. Edward M. Leath, of Birmingham, Ala., and Benjamin Harvey Hill III, a promising young man preparing to enter the legal profession.

In 1891 Mr. Hill published a volume of the life and speeches of his illustrious father; and in his treatment of the subject manifested a modest and delicate sense of the proprieties. The compilation is not only a valuable contribution to the history of Georgia during the dark and stormy days through which she passed, but is a work of great literary excellence.

Judge Hill's health began to fail a few months before his death; but he was entirely incapacitated for the performance of his duties for only a few weeks. The messenger of death is rarely a welcome one,—Judge Hill loved to live and loved to serve, but death had no terrors for him; he peacefully and painlessly "fell on sleep" in the early morning of July 19, 1922.

Judge Hill was a writer and an orator of marked ability. His composition and style were eloquent and graceful. While solicitor-general and United States district attorney some of his speeches were models of forensic eloquence. By reason of his clear, luminous, and instructive articles appearing in the newspapers in his earlier years, his illustrious father counseled him to pursue the vocation of journalism. In not following this advice, the State of Georgia lost a great journalist, but gained one of the most brilliant stars in her legal firmament.

Such then, your Honors, in brief, is the record of the achievements of your distinguished collaborer, Judge Hill.

The cases in the decision of which he participated as Chief Judge are reported in volumes 1 to 13 (inclusive) of the reports of this court, and those in which he later took part as an associate judge are found in volumes 25 to 28 (inclusive).

The first opinion delivered by this court was prepared by Judge Hill in the case of *Hunter v. Dissner*, 1 Ga. App. 1. The case was one of small importance, involving a certiorari from a justice's court, in a suit upon a promissory note, but the opinion delivered by Judge Hill set an example which he followed throughout his judicial career. It was clear in expression and indicated patient research and careful consideration of the questions involved. He wrote with an easy, flowing

style, and lucidity of expression, which was characteristic of all his opinions. One might differ with his conclusions, but there was rarely ever any doubt as to the meaning of his language. Among the best of his opinions in the first volume of the court's reports may be mentioned those in the following cases: *Atlanta, Knoxville & Northern Ry. Co. v. Smith*, p. 162, involving the construction of the statute of Tennessee on the subject of death by wrongful act; *King Mfg. Co. v. Walton*, p. 403, in which certain phases of the law of master and servant are elaborately discussed; *Sharpton v. State*, p. 542, dealing with expression of opinion on the facts by trial judges, and laying down the rule by which they should be governed.

In one of the early opinions written by Judge Hill (*Atlanta, Knoxville & Northern Ry. Co. v. Smith*, 1 *Ga. App.* 171) he well expressed the bent of his mind toward the administration of justice in the courts, as follows: "Subtle distinctions or over-nice constructions, which tend to destroy or render doubtful the enforcement of right and justice, should not be favored. The trend of modern judicial utterance is to make plain the pathway of the law, and to make impossible the defeat of substantial rights by mere technicalities."

His facility of expression may be illustrated by the statement in *King Mfg. Co. v. Walton*, 1 *Ga. App.* 403, that "The law is not quick to condemn acts of employees as negligence, when such acts result from a zealous, rather than a careless performance of duty."

The case of *McCullough v. State*, 10 *Ga. App.* 403, illustrates his innate love of justice and his determination to have it meted out to all litigants, however humble they might be. In that case a negro who had been convicted of a heinous offense was granted a new trial because the trial judge deprived him of his right to poll the jury.

The sequel to that case was *In re Fite*, 11 *Ga. App.* 665. In the opinion prepared by Judge Hill he demonstrated his high regard for the integrity of the courts and the orderly administration of the law. He said (p. 679): "If courts fail to enforce respect, if they do not strive to preserve their independence and to maintain inviolate their judicial integrity, they will not only lose their own self-respect, but will be recreant to the duty they owe to the State." His ringing declaration on page 690 is well worthy of repetition, because it speaks in eloquent language his conception of law and justice. He said: "I yield to no man in my loyalty to the blood and traditions of my own race, but, in the performance of my high and solemn duties as a judge, I recognize but one master—the law, and I hear but one voice,—justice; and no sentiment, however sacred, can lead me, as a judge, to deprive any man, whatever his color or condition, or however humble his position, of the equal protection of the law and of that justice to which I think he is entitled. The oath I took when I assumed the great trust of this high office,—'I will administer justice without respect to person, and do equal rights to the poor and the rich',—was to me no meaningless formality. I consecrated myself to a sacred observance of that solemn obligation. And in the conscientious performance of the high trust, adopting the language of a great English judge, 'The lies of calumny carry no terror to me. I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels—all that falsehood and malice can invent, or the credulity of a deluded populace

can swallow.'" What a noble creed for a judge in active service, and what a splendid epitaph for one who has finished his labors!

And in the same case he thus expressed in simple language his views of his relations with his associates: "In my official relations with my collaborators in the cause of law and justice I have ever striven to follow the light of the Golden Rule, 'Do unto others as you would that others do unto you'."

In the case of *Register v. State*, 10 *Ga. App.* 623, 643, Judge Hill had occasion to express his views with reference to the relative rights of judge and jury, and denied to the trial judge the right to refuse to receive a verdict convicting the accused of an offense for which, under the evidence and the charge of the court, he could not properly have been convicted. A majority of the court held that the judge had no right to refuse to receive the verdict, his authority being limited to setting the verdict aside upon review.

There is an authentic story (not of course in the record) in reference to *Woodward v. State*, 13 *Ga. App.* 130. The opinion for the majority was prepared by the Chief Judge, and they held that under the facts presented the accused had the right to withdraw his plea of guilty and enter a plea of not guilty. The dissenting judge in that case had, a short time before, prepared the opinion for the court in *Griffin v. State*, 12 *Ga. App.* 615, in which, under the facts then presented, the court held that the accused did have the right to withdraw his plea of guilty. The writer of the opinion in that case had related to Judge Hill an amusing comment upon the *Griffin* case by one of the distinguished counsel for the State, in which, when asked to express his view of the opinion, he laughingly remarked that it would never be cited except to be distinguished. When the dissenting opinion in the *Woodward* case was read to the Chief Judge and he observed that at the very beginning the dissenting judge felt obliged to distinguish the *Griffin* case, Judge Hill quietly remarked, "It would seem that your distinguished friend, the counsel for the State in the *Griffin* case, made a just comment upon your opinion in that case." The incident is related simply to illustrate the delightful sense of humor which always characterized Judge Hill's relations with his associates.

The decision in *Underwood v. State*, 13 *Ga. App.* 206, well illustrates Judge Hill's profound regard for the constitutional rights of the citizen. In order to uphold these rights in that particular case the court perhaps ran counter to some of the previous decisions of the Supreme Court, but, so strong was Judge Hill's conviction on the subject of constitutional liberty, he did in that case what he did in every case involving similar questions,—gave the accused the benefit of the doubt.

Some of those who did not know Judge Hill were afraid that his long term of service as solicitor-general and as prosecuting attorney in the United States court would incline him to too much strictness in favor of the enforcement of the criminal law against the accused. His whole judicial career disputes this assumption. His great heart and his love of justice aligned him always, in cases of doubt, on the side of the weak and the oppressed. His conception of the duty of a solicitor-general may be gathered from his opinion in *Manning v. State*, 13 *Ga. App.* 709, where the judgment was reversed because of language used by the solicitor-general in argument.

When considering what was the outstanding trait in the character of Judge Hill, we believe the well-nigh universal answer by those who knew him well would be: his love of truth and justice. He hated sham and hypocrisy, and love of right and justice was almost an obsession with him. His mind was eminently fair. He was incapable of any considerable partisanship; he naturally gravitated toward the truth; he was singularly free from prejudice. His was a mind to hear argument and to decide, which peculiarly fitted him for judicial position, and more especially for a court of review. He did not relish the partisanship, the details and the initiative, necessary to a law practice. He cared little for mere money-making. His temperament was philosophical. He took things as they came, with calmness and courage.

Judge Hill was not worried with small points. His mind seized the strong position in a case and held to it. He believed law to be a practical affair. Among his prominent characteristics were rare moral courage, fidelity to his friends, and honesty of purpose. He was charitable, broad-minded, generous, and altogether free from sensitiveness in his intercourse with his fellow men.

His was an unselfish life. His great love of truth, his passion for the correct and orderly administration of justice, his profound respect for law, his ample and scholarly mind, his chivalrous and gentle heart, and his love for humanity were all consecrated to patriotic service. He combined in his life the lavish, courageous, and generous habits of the best southern gentleman. He was intensely human. He was unafraid. Mob clamor and trials by public opinion outside of the court-house did not influence him. The State well honors him because of his splendid achievements. His friends honor him because of those noble qualities of the heart that made his presence and companionship a blessing and an inspiration.

It may be written of him as he himself said, when speaking on a memorial occasion of a distinguished friend: "Weary with the toil of years, worn with labors in the public service, crowned with duties well done and honors nobly earned, he has found rest. But to us he is not dead. In the light of our religion, it cannot be so. Death comes to the tired soul as an angel of God. The great and good do not die."

His scholarly attainments are reflected in the elegance and purity of his style in the opinions prepared by him for the Court of Appeals. There was nothing narrow or intolerant about him. Though always dignified, he was affable, and had many warm and intimate friendships. He gave dignity to the bench and enhanced respect for law. In all things he was a true gentleman in the finest acceptation of that word.

This brief tribute to Judge Hill is not extravagant. If it were, it would do violence to the memory of a man whose innate modesty abhorred fulsome praise and who would not have his friends magnify his virtues.

He was happy in his home surroundings. He loved home life and environment; he was devoted to his family, gentle, affectionate, and considerate of their welfare. Time will not wholly remove their grief, but they may be comforted in the thought that they labored unceasingly to make his last days as peaceful as possible and to make easier for him the journey across the bar.

We ought not to close this memorial without some reference to Judge Hill's religious belief. He cared nothing for dogmatic creed, but he

was essentially and inherently religious. He believed intensely in the fundamentals of religion,—in the Fatherhood of God, in a future life after death, and that those who loved truth and lived truth and did justice by their fellow men would have their reward in the life to come. His was the philosophy of Bryant, so beautifully expressed in *Thanatopsis*:

"So live, that when thy summons comes to join  
The innumerable caravan, which moves  
To that mysterious realm where each shall take  
His chamber in the silent halls of death,  
Thou go, not like the quarry-slave at night,  
Scourged to his dungeon, but, sustained and soothed  
By an unfaltering trust, approach thy grave  
Like one who wraps the drapery of his couch  
About him, and lies down to pleasant dreams."

Respectfully submitted,

J. R. Pottle, Chairman.  
A. G. Powell,  
Walter F. George,  
Frank Harwell,  
Chas. W. Smith,  
Reuben R. Arnold,  
Lowry Arnold,  
Morris Brandon,  
Boykin Wright,

Chas. L. Bartlett,  
Sam'l B. Adams,  
George W. Owens,  
Jos. W. Bennet,  
A. L. Miller,  
Andrew J. Cobb,  
A. W. Cozart,  
Fred B. Harrison,  
Tillou Von Nunes.

Addresses were made by Presiding Justice Marcus W. Beck, of the Supreme Court, Judge Richard B. Russell, and Judge Arthur G. Powell.

JUDGE STEPHENS responded for the court, as follows:

The court thanks the committee for its labor in presenting the memorial sketch of our lamented associate, and also expresses its appreciation of the beautiful tributes offered by members of the bar present.

Judge Hill's associates on this bench are deeply grieved at his passing away. Judge Jenkins and myself, who served with him on the second division, and from daily contact with him have come to love him for his sweet companionship and his nobility of soul, feel his loss most keenly. We miss his intimate companionship and wise counsel and consultation.

I had learned to love him in years past before the exigencies of politics brought us into intimate association as colleagues on the bench. "He was my friend, faithful and just to me."

By inheritance and political tradition he might have been my enemy and political antagonist, but his soul was too big, his heart was too magnanimous, to permit a political animosity, dead for half a century, to affect his feelings and his friendships of to-day. In the incipency of my political career, when I was struggling under the aspersions of political opposition, his personal sympathy and encouragement, together

with his open political support, meant much to me, and has contributed no little to what political success I have achieved. I therefore mourn him as a friend, and shall ever cherish his memory. While he is absent in the flesh, there is "union here of hearts that finds not here an end."

Judge Hill lived in two distinct eras in his country's history. He was born during the halcyon days of the South—the period before the war. He glimpsed the South's "ancient régime," and was reared in its vanishing shadow. It left its impress upon him. He came to the full maturity of his manhood and spent the better part of his life in a more practical and commercial age. He combined in his make-up the tender chivalry of southern knighthood with the practical ability to face the new conditions following the cataclysm of the sixties.

He was a man of the strictest integrity and honesty, and in all of his dealings with his fellow men was frank and open. He was without hypocrisy and without guile. As a friend he was loyal and true. His spirit was young, and he delighted in the company of youth. His nature was sympathetic and tolerant and invited confidence, and whoever confided in him was always rewarded with sympathy and encouragement. The young and inexperienced were at ease in his presence and were free to open their hearts to him and unbosom before him. He always extended a helping hand to the young and struggling lawyer. He lent no assistance to those who sought to handicap and crush the worthy beginner at the bar.

Judge Hill at times appeared somewhat haughty and austere to strangers; but these seeming characteristics were not genuine. They were but mannerisms that did not speak the heart. They constituted only a fragile wall about him which was easy of penetration by friendly attack.

He was a man of high intellectual attainments. While his life so shaped itself that his talents were displayed upon the bench, he would have been eminent in other political fields. He possessed forensic talent and would have been an honor to his State in the Senate. Were he here to-day and at this hour, perhaps the mantle of the elder Hill would fall upon him.

He possessed an intimate knowledge of the law and the ability to readily grasp a legal principle and apply it to the case under consideration. He was a rapid worker. Although he was confined to his home with illness the greater part of last winter and spring, being only intermittently in his office at work, he kept well up with his duties in the court.

While he adhered to the law and was amenable to authority, he knew how to interpret authority. He did not indulge in technical niceties which were founded upon no sound principle and which led to non-sensible conclusions. He believed in those sound rules of law, sometimes called technicalities, which are imbedded in our jurisprudence and placed there by the accumulated wisdom of the centuries, and which some of the modern school of juristic thought scoff at and seek to abolish.

He believed in the ancient landmarks of the law. He believed that constitutions were made to be enforced and not to be violated or evaded to meet the exigencies of the occasion. He believed in the Bill of Rights, and indulged in no legal sophistry to establish rules of construction which when applied would destroy the full force and effect of the fundamental constitutional rights of man. As an illustration of this, permit

me to quote an excerpt from one of his opinions, rendered from this bench in the case of *Walker v. Dawson*, 7 Ga. App. 417: "In zealous efforts to enforce these laws, however beneficent, other laws equally valuable and binding should not be violated. In laudable purpose to protect society, we should not become indifferent to or regardless of those fundamental rights of the individual, 'personal liberty, personal security, and private property.' The promotion of the one and the prosecution of the other are entirely consistent and interdependent. The home of the citizen, next to the temple of God, is the most sacred place on this earth, whether that home be the cottage of the poor and humble or the palace of the rich and powerful. . . . No act is more obnoxious to our fundamental law than the unlawful entry and search of a man's private dwelling, based upon a bare suspicion that a criminal offense has been committed; and where it is done confessedly without any color of authority, and without even a suspicion that the law is being or has been violated, it should meet with, as it fully deserves, the unqualified denunciation of the courts, and the offenders should be punished for thus overstepping the bounds of official authority. Instead of being the conservators of the law, such officials become its violators in the most reprehensible and dangerous form. It is the proud boast of the Anglo-Saxon that a man's home is his castle, protected by the omnipresent and omnipotent, although invisible, spirit of the law,—a protection, in a land where the people are truly free, more invincible than armed men or granite walls. In this case it is shown by the undisputed evidence that without any authority of law, and, so far as the record discloses, without any reason to suspect that the law was being violated therein, the private home of a citizen, in his absence, was raided and his property found therein unlawfully taken therefrom. The officers who thus invaded the sanctity of this man's home committed a double trespass,—a trespass against his personal security, and a trespass against his private property. If such unlawful invasions of the citizen's rights are to be tolerated or condoned, or can escape the severest condemnation of all who love free institutions and believe in the preservation of the inalienable, individual rights of the citizen, the struggle of the centuries will have been in vain, and the sacred precincts of the home will be at the mercy of every official who imagines that his office alone clothes him with authority to disregard the commands and restraints of the law, and that in becoming its minister he ceases to be its servant. Let him remember that the law is the ruler of us all, the official as well as the citizen; and when either willfully disobeys its mandate, he is a criminal richly deserving punishment."

These judicial utterances of this great judge are timely and appropriate. They should be brought from the obscurity of the reports of this court and impressed upon every official of the land. I could, for the purpose of demonstrating his judicial ability and the caliber of his mind, quote further from many of Judge Hill's decisions, but time does not permit.

Judge Hill was an able and upright judge and an ornament to this bench and an honor to the judiciary of the State. It would be difficult to fill his place. Georgia has suffered a distinct loss in his death, and I have lost a sweet companion and a noble friend.

CHIEF JUDGE BROYLES responded as follows:

Judge Stephens, in accepting, in behalf of the court, the memorial from the committee, has well expressed the esteem and affection which every member of the court and its attachés entertained for Judge Hill. His memory will be honored and preserved by the court as long as the court itself shall endure.

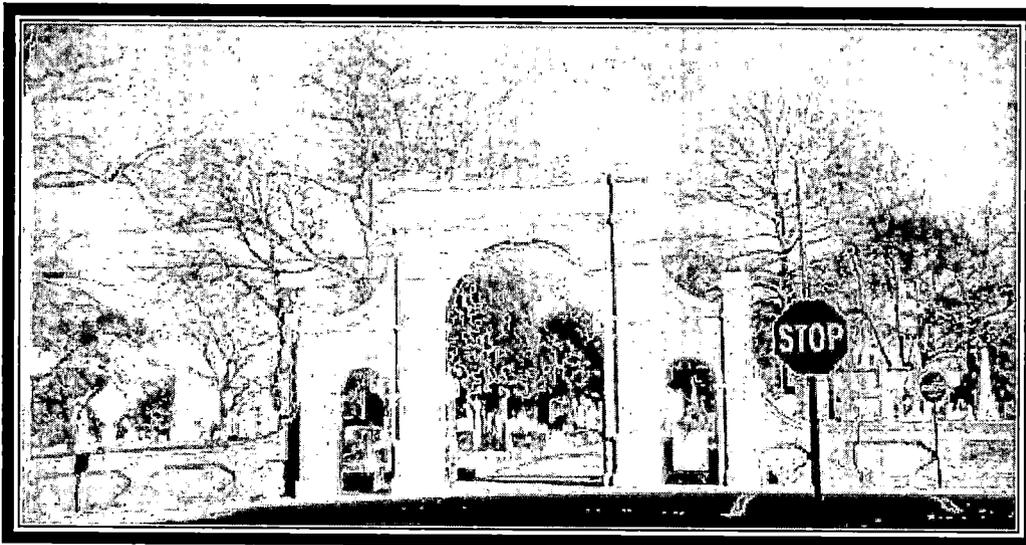
It is ordered by the court that the memorial be filed, that it be published in the official reports, that a certified copy be sent to the family of Judge Hill, and that a page of the minutes be set apart to his memory and inscribed with the date of his birth and death; and as a further mark of respect the court is adjourned until to-morrow.

# Hill Grave Sites in Georgia



In December of 1997 I made a trip to Atlanta, Georgia and while there visited the historic Oakland Cemetery, one of Atlanta's oldest cemeteries, established 1850. It is preserved by The Historic Oakland Foundation, a non-profit organization, located at 248 Oakland Avenue, S.E., Atlanta Georgia 30312. (404) 688-2107

To visit their web site [CLICK HERE](#)



*Oakland Cemetery, Atlanta, Georgia*

I knew my roots were in the South, and that several Hills in my line had illustrious careers as a Senator, a Judge, and other political offices. When I found the Hill family plot in Oakland Cemetery I was thrilled to discover the final resting place for fifteen ancestors starting with Senator Benjamin Harvey Hill, born in 1823 and buried there in 1882.

Below are some of the pictures of these old gravesites with information about each ancestor.

## Sen. Benjamin Harvey Hill and his wife Caroline Holt

Benjamin Harvey Hill was born September 14, 1823 in Hillsboro, Jasper County, GA. He married Caroline Holt who was born February 21, 1825. They had four children who made it to adulthood, Emily Leila Hill, Benjamin Harvey Hill, Jr., Hennia Hill, and Charles Dougherty Hill.

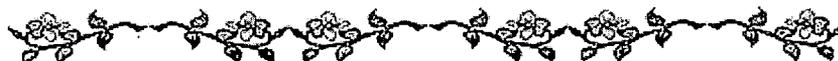
Senator Hill served as a member of the Georgia state house of representatives, 1851, was candidate for governor of GA, 1857, delegate to the Georgia secession convention, 1861, Delegate from Georgia to the Confederate Provisional Congress, 1861-62, Senator from Georgia in the Confederate Congress, 1862-65, U.S. Representative from Georgia, 1875-77, again in 1877-82. He died in Atlanta August 16, 1882. His wife Caroline died November 11, 1904. The picture shows

their grave markers side by side, the taller of the two being the Senator's.

Inscribed on the side of his marble tomb:

"When too feeble to speak, he wrote the following: 'If a grain of corn will die, and then rise again in so much beauty, why may not I die, and then rise again in fertile beauty and life. How is the last a greater mystery than the first, and by as much as I exceed the grain of corn in this life, why may not I exceed it in the new life. How can we limit the power of Him, who made the grain of corn, then made the same grain arise in such wonderful newness of life!'"

Senator Hill died an agonizing and untimely death from cancer at home in Atlanta. I discovered this picture of his Atlanta home in the book written by his son, B. H. Hill, Jr., on the life and speeches of his father. ("Senator Benjamim H. Hill of Georgia, His Life, Speeches and Writings", pub. 1893, T. H. P. Bloodworth, Atlanta)  
Sen. B. H. Hill was my grandfather's great uncle and namesake.



### Benjamin Harvey Hill, Jr.

Benjamin Harvey Hill, Jr., was born July 1, 1849 and died July 19, 1922. He was a Judge in Georgia. His first wife was Mary Emily Carter, born September 11, 1853 and died May 25, 1890 at the age of 37.

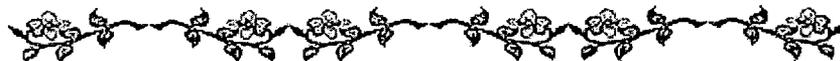
Inscribed on his gravestone is the following:

"Friend of the oppressed - just - scholarly - chivalric and true. He struck the discords from life's troubled music leaving only the melody of its golden strings."

### Janie May Hill

Janie May Hill, (maiden name also HILL) born May 7, 1874 and died February 5, 1925, second wife of B. H. Hill, Jr. is on the direct right of his grave. Janie May was the daughter of James DuBose Hill and Rebecca Harvey Williams, another prominent Hill line in Georgia history. Much of this Hill family's history is found in the book, "The Hills of Wilkes Co., Georgia & Allied Families" by Lodowick Johnson Hill, last reprinted 1972. B. H. Hill, Jr.'s first wife, Mary Emily Carter, is buried a row behind his grave and to the left.

Janie May's gravestone inscription reads simply; "My faith looks up to thee".



There are fifteen people interred in the Hill family plot in Oakland Cemetery; Sen. Benjamin Harvey Hill, wife Caroline Holt, their son Benjamin Harvey Hill, Jr., and his first wife, Mary Emily Carter, second wife, Janie May Hill, Emily Leila Hill Ridley (daughter of Sen. Hill & Holt), Charles Dougherty Hill (son of Sen. Hill & Holt), Charles' wife Carrie H. Hughes, Harvey Hill

(son of Chas. Dougherty Hill) and his wife Mary Ridley Hill, Robert Emmett Mitchell and his wife Kate Carter Mitchell, (she was the sister of B.H. Hill, Jr.'s first wife), and three infant/child graves with stones too badly worn to read.

Here are photographs of the family plot at a distance from two different angles.  
Side view of Hill family plot in Atlanta.

Back row, opposite side view of Hill family plot in Atlanta.

And finally, here is a rough sketch I made of the fifteen graves with names and dates and relationships where known.

### Hill Family Plot Sketch



*Click on the headstone to see The U.S. GenWeb's Tombstone Inscription Project. Look at the data others have collected from old cemeteries, become a volunteer, or submit the work you have already done.*



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UNPARALLEL LIVES: JUDGE BENJAMIN HILL IN ATLANTA,  
ADOLF HITLER IN VIENNA, 1907-1913

This article, dated October 18, 1985, has not been published.

Fate is strange. Sometimes enormously different men who are or will be of great historical interest live contemporaneous lives, wholly unbeknownst to one another. During the period from 1907 until 1913, for example, two such men were living thousands of miles apart, one in Atlanta, Georgia, the other in faraway Vienna, then capital of the doomed Austro-Hungarian Empire. The two men never met, never knew one another, and had nothing in common. One, Benjamin Harvey Hill, Jr. was serving his tenure as the first Chief Judge of the Court of Appeals of Georgia, and the period was perhaps the most memorable stage of his distinguished career of service to his state and to humanity. The other man, Adolf Hitler, was a wretched, bigoted, hate-filled young man who twenty years later would seize power in German and embark on a course of dictatorial government, totalitarianism, and military aggression, topped off by government-ordered and government-authorized mass murders unequalled in this century and perhaps ever. Let us examine these two unparallel lives during the seven year period ending the year before the Sarajevo outrage unleashed a world war.

On January 2, 1907 the newly created Court of Appeals of Georgia convened for the first time and elected Benjamin H. Hill, Jr. as its Chief Judge. Hill remained in this office until November 1, 1913, when he resigned to accept another judgeship. In January 1907 Hill was 57 years old, having been born in LaGrange in Troup County on July 1, 1849. In 1866 Hill moved to Athens, where he entered the University of Georgia. While a student he lived in what is now called the Taylor-Grady House on Prince Avenue, which his father had purchased for \$40,000. In 1869 he received both a B. A. and an LL. B. Between then and 1889 Hill held several federal and state offices, some elective, some appointive. From 1889 until 1907 Hill practiced law in Atlanta in partnership with his brother, C. D. Hill. In 1891 Hill published a laudatory biography of his deceased father, a former U. S. Senator from Georgia.

Thus, when he became a member of the Georgia Court of Appeals in 1907 Hill already had a distinguished career behind him. His service on the Court of Appeals was also distinguished. He wrote the first opinion of the Court, in the case of *Hunter v. Lissner*, 1 Ga. App. 1, 58 S. E. 54 (1907). He joined the Court in expanding individual rights in criminal cases beyond previous Georgia Supreme Court decisions. He authored several opinions for the Court especially noteworthy in the history of liberty, rights, and justice.

The greatest of his opinions, and one of the greatest examples of magniloquence and stirring language in the annals of judicial decisions upholding freedom, is his opinion in *Underwood v. State*, 13 Ga. App. 206, 78 S. E. 1103 (1913). There Chief Judge Hill did two things in incomparably rich and evocative language. First, he delivered the most powerful rebuke in judicial history to the crime control philosophy that tolerates, even depends upon, violations of basic rights to combat crime. Hill wrote:

We hear and read much of the lawlessness of the people. One of the most dangerous manifestations of this evil is the lawlessness of the ministers of the law. This court fully knows and appreciates the delicate and difficult task of those who are charged with the duty of detecting crime and apprehending criminals, and it will uphold them in the most vigilant legal discharge of all their duties, but it utterly repudiates the doctrine that these duties can not be successfully performed without the use of illegal and despotic measures. It is not true that in the effort to detect crime and to punish the criminal, "the end justifies the means."

Second, in Miltonic language that in grandeur surpasses any apostrophe to freedom ever written in any judicial opinion, Chief Judge Hill wrote of the inestimable and incalculable values of individual rights as follows:

They [i.e., the basic human rights protections guaranteed in the Bill of Rights to persons charged with crime] are the sacred civil jewels which have come down to us from an English ancestry, forced from the unwilling hand of tyranny by the apostles of personal liberty and personal security. They are hallowed by the blood of a thousand struggles, and were stored away for safekeeping in the casket of the Constitution. It is infidelity to forget them; it is sacrilege to disregard them; it is despotic to trample upon them. They are given as a sacred trust into the keeping of the courts, who should with sleepless vigilance guard these priceless gifts of a free government.

In writing the *Underwood* opinion, Chief Judge Hill was attacking two criminal procedure abuses of his time. First, he was criticizing third-degree type police interrogation practices, then prevalent. Second, he was criticizing the notorious violations of the due process rights of the hapless Leo Frank, whose shamefully unfair murder trial was coming to a close when the *Underwood* opinion was handed down. *Underwood* was decided on August 15, 1913; Leo Frank was found guilty by the jury on August 25, 1913. (For more on the *Underwood* case, see Wilkes, *Underwood v. State: Georgia's Highwater Mark in the Protection of the Basic Rights of Criminal Suspects*, The Georgia Defender, p. 2 (July 1983).)

After his resignation from the Court of Appeals on November 1, 1913, Hill became a Judge of the Superior Court of Fulton County in Atlanta. He remained in office for nearly six years. In 1918 he was defeated for reelection by a margin of 22 votes. He lost because of the operation of two powerful groups, one of whom thought Hill was too lenient on criminals, the other of whom thought Hill was too harsh on criminals. In 1920 Hill was elected to the Georgia Court of Appeals; he served as an Associate Judge there until his

death from heart disease in Atlanta on July 19, 1922.

Judge Hill was a warm, family man with many friends. He appears to have been revered by all. He suffered defeats and setbacks in his lifetime, of course. But his public and private service and his sublime prose in defense of liberty lift him to the happy immortality of the great protectors of justice and rights. The University of Georgia and the State of Georgia have every right to be proud of their son, Judge Benjamin H. Hill, Jr. (The official Memorial to Judge Hill may be found at 29 Ga. App. 801 (1923).)

On the other hand, ever reasonable person with a conscience is horrified by the cruel and bloody life of that psychopath, Adolf Hitler. In 1922, when Judge Hill died, Hitler was just another obscure right-wing Bavarian politician. During the time Hill was Chief Judge of the Court of Appeals, Hitler was a total obscurity, living a more or less down and out life in Vienna. Until recently, little was known about Hitler's sojourn in Vienna. The matter was treated as a chapter or section in a Hitler biography. Since the 1950's, however, significant new information has appeared. The most significant development yet was the publication in 1983 of J. Sydney Jones's Hitler in Vienna, 1907-1913. This book is more than a masterful account of Hitler's wanderings and doings and rantings in Vienna; it is a complete study of Viennese culture, art, music, and society during those crucial pre-World War I years.

Hitler arrived in Vienna in late September 1907, at the age of 18; he left permanently for Munich on May 24, 1913 aged 24.

In Vienna Hitler lived sometimes as an impoverished would-be student; but most of the time he was not a student but simply one of the homeless mass of dislocated urban poor, occasionally sleeping on benches in parks, inadequately clothed, staying in homes for the poor, eating at soup kitchens, carrying travelers's baggage for tips. He displayed unremitting hostility to almost everything except power and domination and hatred and prejudice. He read and agreed with virulent anti-Semitic and racist pamphlets. He espoused the crudest forms of Social Darwinism. He flew into rages. He orated incessantly. He was lazy and spiteful. He developed no normal relationships with men or women. He had no true friends. He could brook no disagreement with his loathsome attitudes. That is, he himself was (to quote Judge Hill) a "most dangerous manifestation of ... evil." In short, the foundations were there, once he achieved governmental power, for the Holocaust, tyranny, and another world war. However, the term that perhaps best describes Hitler during his Vienna period (as well as during the rest of his evil, miserable life) is psychopathia sexualis.

In ancient times there was not one but three Fates. The Fate who spun the thread of life was Clotho; her symbol was the spindle. Fate did some strange spinning from 1907 to 1913. In the United States, in Georgia, a distinguished jurist at the apogee of his distinguished career nobly and eloquently advanced the cause of freedom. At the same time, across the ocean, in the grinding poverty of Viennese flophouses, a lonely, psychopathic hater was beginning a career devoted to crushing human rights and inflicting death and torture-a career devoted to trampling upon liberty and justice. Why? Why did Fate arrange that these two entirely different men should occupy some of the same points in time (from 1889, when Hitler was

born, until 1922, when Hill died), and that both should share the years 1907 to 1913 as a particularly important stage of their vastly different lives?

Fate is definitely strange.

Last updated Thursday, July 22, 2004 5:09:25 PM

**From:** "info" <info@trouparchives.org>  
**To:** <mcateerb@gaappeals.us>  
**Date:** 1/26/2005 6:19:19 AM  
**Subject:** RE: Troup Archives Reference Request

WE do not have a lot of things on Benjamin H. Hill, Jr., as he did not live here after going off to college...however, what we can piece together for you is the following:

Benjamin Harvey Hill, Jr. was born Cicero Holt Hill on 7-1-1849 at LaGrange, Ga. at "Bermuda Acres" on Colquitt Street, LaGrange, Ga., named for his maternal uncle, Dr. Cicero Holt, who lived with the Hills for a time. The Greek Revival cottage had been the summer home of Walter T. Colquitt (whose mother was also a Holt) and the childhood home of Alfred Holt Colquitt. In 1856, the Hill family moved into their new home, "Bellevue", (still standing, a National Register and National Landmark house in LaGrange) Benjamin H. Hill, Jr. was educated in LaGrange Schools. The night in May 1865 when his father was arrested by Union troops under Gen. Emory Upton, at their home, "Bellevue", young Hill went with his father from the home to the LaGrange Depot, trying to elicit information as to the destination of his father (and Confederate Navy Sect. Stephen R. Mallory who was also arrested in the Hill home that night). He went to the University of Georgia in his mother's hometown of Athens from 1866 to 1869. He was the Demosthenian Society speaker at graduation. He was a classmate of Emory Speer and Henry W. Grady. He was a charter member of Chi Phi fraternity while a student. He spent the year 1869-1870 in Europe and returned to the University of Georgia to study law, graduating in 1871 and was admitted to the bar. In 1872, he went into law practice with his father. He married 11-10-1874 to Mary E. Carter, daughter of Col. S. M. Carter and niece of Gov. A.H. Colquitt (so I believe she was also a cousin of his) In 1877, his cousin Gov. A. H. Colquitt appointed him Solicitor General of the Atlanta Circuit and the legislature re-elected him to that position in 1880. He refused a third term in 1884 and went into law practice in the firm of B.H. & C.D. Hill with his brother, Charles Dougherty Hill. His brother succeeded him as Sol. Gen of the Atlanta Circuit and Ben Hill, Jr. was then (in 1885) appointed United States District Attorney for Northern Georgia District by President S. G. Cleveland. In 1891, he wrote and in 1893 published a biography of his father called "Benjamin H. Hill of Georgia: His Life, Speeches, and Writings" (I couldn't get my computer to underline this title, so put in quotation marks). He was at some point in time Judge of the Fulton County Superior Court, and on Georgia Court of Appeals from 1907-1913 and 1920-1922 when he died. He died at his home in the Blackstone Apts. His funeral was at the First Methodist Church of Atlanta with Rev. S. R. Belk, Dr. W. F. Glenn, and Dr. C.J. Harrell officiating. He was buried in Oakland Cemetery. I hope some of this will be helpful to you. I would love to have a more complete sketch of him, myself, to go in our files.

Sincerely, F. C. Johnson, County Historian, Troup County, Georgia.

-----Original Message-----

From: mcateerb@gaappeals.us [mailto:mcateerb@gaappeals.us]  
Sent: Thursday, January 20, 2005 3:29 PM  
To: info@trouparchives.org  
Subject: Troup Archives Reference Request

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## HILL-L Archives

*From:* <[threads@excite.com](mailto:threads@excite.com)>

*Subject:* [HILL-L] Janie May Hill m. Benj. Harvey Hill, Jr., GA 1892

*Date:* Wed, 23 Feb 2000 10:20:29 -0800 (PST)

I recently acquired a copy of the book, "The Hills of Wilkes County, GA and Allied Families", written by Lodowick Johnson Hill, 1972, reprinted with additions & some corrections in the back by Heritage Papers, Danielsville, GA. I had heard of this book and had wondered if my line of Hills was connected in some way.

I've not had a chance to go through it thoroughly yet, but already it has helped me put some relationships together about which I was previously unclear. One of those was the marriage of Janie May Hill (b. May 7, 1874) to Benjamin Harvey Hill, Jr. (b. July 1, 1849). I knew she was his second wife, having visited Oakland Cemetery in Atlanta two years ago and photographed the gravestones of many of these family members, but I was assuming her maiden name was something other than Hill and had been searching for that information. According to this book, page 130, Janie May

Hill was the daughter of James DuBose Hill, b. 1843 and his first wife, Rebecca Harvey Williams. Janie May Hill's birthdate is listed as March 7, 1873, but I have chosen to stay with the dates on her gravestone which I have personally seen and photographed (May 7, 1874). The book also gives a

marriage date for Janie May Hill and Benj. Harvey Hill, Jr. as August 2, 1892. Her siblings are listed as:

1. Lodowick Chandler Hill, b. Dec. 9, 1869, d. circa 1890 at 21 yrs. of age.
2. Harvey DuBose Hill, b. March 15, 1871, m. Georgia V. Halliday, dau. of Abraham Halliday and his wife, Miss Mitchell.
3. Henry Casey Hill, b. Jan. 4, 1879, m. Feb. 20, 1903 to Alice Halliday, younger sister of his elder brother's wife.
4. Edward Chatfield Hill, b. Dec. 17, 1880, m. Aug. 1920 Marion Bloodworth, dau. of E. H. Bloodworth of Barnesville, GA.

The children of Janie May Hill and Benj. Harvey Hill, Jr. (son of Georgia Sen. Benjamin Harvey Hill) are listed as:

1. Benjamin Hill III, b. July 12, 1893, d. May 25, 1986.
2. Rebecca Harvey Hill, b. March 20, 1896, m. June 20, 1918 to Lt.

Edward McGruder Leath, of Birmingham, AL.  
3. Benjamin Hill IV, b. Feb. 27, 1900  
4. Charles D. Hill, b. Aug. 25, 1904, d. Aug. 29, 1908

I don't yet know if these two Hill lines (Janie May Hill's family and Benj.

Harvey Hill, Jr.'s family) are related in any other way besides this marriage but will continue to read the book looking for any other connections. If anybody else already knows, please write.

I will post more information as I discover it. The "Allied Families", by the way, are Anthony, Barksdale, Bilups, Calhoun, Clark, Colquitt, DuBose, Exum, Grigsby, Harvie, Henderson, Hill, Jordan, Lane, Lewis, Lipscomb, Lumpkin, Macquinney (McKinne), McGehee, Pope, Quakers, Ransone, Richardson, Shepherd, Walton, Webster, Wellborn, Willis, and Wooten. The Supplementary Information at the back of the book looks promising as well. Its been added since the original book was published apparently and brings some lines up into modern times.

Regards,  
Jackie Hill Bower

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**This thread:**

- [\[HILL-L\] Janie May Hill m. Benj. Harvey Hill, Jr., GA 1892](#) by < [threads@excite.com](mailto:threads@excite.com) >
- 

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**B. Harvey Hill, Jr.**  
**Partner, Atlanta Office**



Harvey Hill is a member of the Capital Markets and the Financial Services Groups of Alston & Bird. Mr. Hill concentrates on mergers and acquisitions, joint ventures, and business matters for companies generally and for insurance companies specifically. He is listed in *The Best Lawyers in America* for corporate law expertise.

Mr. Hill has been lead counsel for both buyers and sellers in all types of business combinations, including private and public transactions, reinsurance arrangements, purchases and sales of divisions, joint ventures of all kinds, and mergers of law firms. Mr. Hill has over 35 years of experience in business negotiations, particularly in negotiating complicated indemnities and purchase price earn-outs.

Recent publicly announced transactions for which he was the lead lawyer include the representation of Fortis in its acquisition of American Bankers Insurance Group; the representation of LHS, Group, Inc. in its merger with Sema Group plc; the representation of Genuine Parts Company in its acquisition of UAP, Inc., a Canadian company; and the representation of Balentine & Company in its affiliation with Wilmington Trust Company.

Mr. Hill has been a lawyer with Alston & Bird since 1964. During his tenure with the firm, he has served as Chair of the Partners' Committee, Financial Partner, and head of the Tax Department and the Corporate Department, in addition to other management roles.

Mr. Hill received an LL.B. in 1964 from the University of Virginia Law School where he was a member of the Order of the Coif and the *Virginia Law Review* editorial board. A graduate of Yale University, he received a B.A., cum laude, in 1961. He is vice chair of the Path Foundation, which is involved in building recreational trails in the metropolitan Atlanta area, and a member of the advisory board of the Carter Center.

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