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REPORT

of the

Thirty-First Annual Session

of the

Georgia Bar Association

Held at Tybee Island, Georgia

June 18-20, 1914

EDITED BY
ORVILLE A. PARK, SECRETARY

MACON, GEORGIA
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1914

SHOULD THERE BE TWO COURTS OF LAST RESORT
IN GEORGIA, AND IF SO, HOW SHOULD THEY
BE RELATED TO EACH OTHER?

PAPER BY
J. R. POTTLE,
OF ALBANY.

Mr. President, and Gentlemen of the Association:

The Secretary of the Association invited me to discuss the question "Should there be two courts of last resort in Georgia, and if so, how should they be related to each other?" The Permanent Commission on the Revision of the Judicial System and Procedure makes the following recommendation: "Abolish all City Courts, all elective Justices of the Peace; giving the Court of Appeals exclusive appellate jurisdiction in criminal cases, and transferring all civil jurisdiction to the Supreme Court."

As regards the Appellate Courts, the proposition is substantially the same as if it were proposed to abolish the Court of Appeals altogether and add to the Supreme Court a division having exclusive jurisdiction of appeals in criminal cases. In the opinion of the writer, neither plan would be wise.

Many years ago this Association began to agitate the necessity for some amendment to the Judicial System which would relieve the Supreme Court, or, as it was better expressed by Judge Cobb in his remarks before the Association in 1906, "for the relief of those whose lives, whose liberty, and whose property is involved, those who have been given under the Constitution of the State the right to have an adverse decision reviewed." After discussing the question for many years, and from every possible angle, the Georgia Bar Association went on record as favoring the creation of a Court of Appeals. The Justices of the Supreme

Court and the leading members of the bar of the State favored this plan. One of the Justices of the Supreme Court appeared before the General Assembly and made so convincing an argument in favor of the establishment of the Court of Appeals that the bill was passed almost unanimously, only four votes being recorded against it. The court has been in existence for about seven and one-half years. By the end of this year it will have disposed of approximately six thousand cases. The question now presented is, whether the work which has been done by this court has justified its creation, and whether or not it has accomplished the purpose for which it was brought into being. For the first five years of the existence of this court it was presided over by Chief Judge Hill and Judges Russell and Powell, and to these judges is due the credit for organizing and establishing the court upon a plane which entitled it to the confidence of the public and the respect of the members of the legal profession. Its decisions are published in the Southeastern Reporter along with the decisions of the Supreme Court of Georgia and other courts of last resort, and they are recognized and cited as authority by courts of last resort in different parts of the United States. No accurate statistics are available, but it may be safely asserted that the decisions of this court are cited and adopted as often as those of any other court which has been in existence for so short a period. Speaking both from observation as a member of the bar of this court, as well as from an experience derived from a little more than two years' service as a member of the court, I know that the judges approach the performance of their laborious duties with a conscientious effort to decide the law in each case, guided by the decisions of the Supreme Court of the State as precedents. The work done by the court speaks for itself. It is for the bar to determine whether it will compare favorably with that of other courts of last resort. No court is infallible, and hence no one will claim infallibility for the Court of Appeals. It has undergone, and is still undergoing, the ex-

perience encountered by every new court. A stronger light of examination and criticism has been thrown upon the decisions of this court than upon those of a court which has been established long enough to become a settled fixture in the jurisprudence of the State. That the necessity for the creation of the Court of Appeals once existed can not admit of question. The necessity for its continued existence is, I think, as little free from doubt.

No court is free from criticism. The highest court in this Union is being constantly assailed, but it is a necessity, and its sharpest critic would not countenance an effort to abolish it. There is no general demand from the public, or the bar either, for the abolition of the Court of Appeals, or for any radical change in its jurisdiction or procedure. The people generally are satisfied. Agitation in reference to the court ought to cease. The bar ought to stand by the court and encourage it to put forth its best efforts to carry out the purpose for which it was created.

One of the objections urged to the Court of Appeals is that its decisions sometimes conflict with the decisions of the Supreme Court. That there are conflicts, no candid lawyer will deny, and that these conflicts are unavoidable must likewise be admitted. I submit, however, in the language of Judge Cobb, speaking before this Association in 1910, "It is somewhat remarkable that there should have been so few real conflicts between the two courts." The Constitution of the State requires the Court of Appeals to follow the decisions of the Supreme Court as precedents, and the Judges of the Court of Appeals have obeyed this mandate of the Constitution as faithfully as it was possible for them to do. There are conflicts among the decisions of the Supreme Court themselves, and I believe that any fair-minded lawyer, who has studied the question, must reach the conclusion that there are as many, if not more, of such conflicts among the decisions of that court than there are between its decisions and those of the Court of Appeals. It frequently happens that the question whether there is any

conflict between two decisions is itself one about which there is legitimate room for conflict, and no lawyer is capable of expressing an opinion on the subject until after he has made a careful examination. It is unfair, both to the Supreme Court and to the Court of Appeals to say that conflicting decisions have been rendered until after the most careful examination of the question has been made. It is altogether probable that in many cases where it is thought conflicts exist, a careful examination, such as is made by the judges who decide the cases, will show that there is no real conflict.

Both lawyers and litigants are interested in the speedy determination of cases. No one contends that justice ought to be sacrificed to speed, but it is a matter of great interest to the public that the courts should not be so overburdened with work as to be unable to render their decisions within a reasonable time. The exigencies of modern business demand the speedy determination of causes. An examination of the dockets of the Supreme Court and the Court of Appeals has been made for the purpose of ascertaining the relative length of time elapsing from the filing in those courts to decision of the most important classes of civil cases dealt with by the Court of Appeals, to-wit, damage suits, and cases in which railroads and other public service corporations and insurance companies are parties. The total number examined in the Court of Appeals was six hundred and eighty, and the average time from filing to decision was six months and one week. The total number examined in the Supreme Court was four hundred and fourteen cases, and the average time from filing to decision was twelve months and one week. This difference results from two causes. The Supreme Court is still working under the old system of circuits and return terms, while each case in the Court of Appeals is docketed as a fast writ. The Supreme Court consists of six, and the Court of Appeals of three judges. All must agree that it takes more time for six men to reach a conclusion on any given ques-

tion than it does for three. Indeed, we might say that time for decision increases with the larger number of judges in geometrical progression.

The writer has requested the Clerk of the Court of Appeals to compile for him certain statistics which are appended to this paper. The members of this Association will not hesitate to accept as accurate the figures thus shown. An analysis of them will show that it would be wholly unwise and impracticable to adopt the report of the Permanent Commission recommending the vesting in the Supreme Court of exclusive appellate jurisdiction in all civil cases. To do so would absolutely defeat the very purpose for which the Court of Appeals was created, and would so burden the Supreme Court with work as to make it impossible for that court to decide the cases within the time prescribed by law. In 1906, in remarks made by the Chairman of the Permanent Commission, whose report is now under discussion, he made the following prediction: "It may be fifty, it may be one hundred, it may not be more than twenty-five years, but unless something is done, it is only a matter of a few years, when a whole term's business will be stricken from the docket by one stroke of the pen. The entry upon the docket and upon the minutes of the court in seven hundred or eight hundred cases will be 'affirmed without a hearing,' by operation of the mandate of the Constitution." This prediction was based upon the following state of facts, as appears from the remarks then made: "There were brought to the October term, 1896, and to the March term, 1897, of the Supreme Court, seven hundred and seventy-eight cases. The Supreme Court has, since the first day of last October, disposed of seven hundred and four cases, that is, since the October term we have disposed of nearly as many cases as were brought to the two terms of the court ten years ago. The docket now contains four hundred and fifty-two cases, and of this number, the records in two hundred cases have been assigned to the different justices. There are two hundred and fifty-two

cases which have not been assigned to the justices." In 1906 the Supreme Court was about a term behind. Since that time the Court of Appeals has been created and has been disposing of nearly eight hundred cases a year which formerly went to the Supreme Court. Litigation has been constantly increasing. The population of the State has grown. Let us see how stands the situation to-day as compared with 1896, when the Supreme Court was increased from three to six justices. The highest annual return of cases for one year up to that time was seven hundred and seventy-eight. Before the Court of Appeals was established, in 1906, the highest annual return to the Supreme Court was 1,156 cases, an increase of nearly fifty per cent. in ten years. Since the establishment of the Court of Appeals the average annual return to that court has been seven hundred and eighty cases, and the present average return to the Supreme Court is six hundred and sixty cases; the average annual return to the two courts being 1,440 cases. At this time the Supreme Court is still about a term behind. It has on hand four hundred and forty-six cases undisposed of, which have been argued and assigned to the justices, eight criminal and four hundred and thirty-eight civil cases. The Court of Appeals has on hand sixty-seven criminal and two hundred and thirty-three civil cases. The season is approaching when the judges of both courts ought to adjourn and take a much-needed rest. It is proposed now to add to the Supreme Court, taking the present figures as a basis, and not counting the increase in the future, an average of about four hundred and fifty cases per year, which are now being decided by the Court of Appeals. It is proposed to take from the Supreme Court, in exchange for this work, about sixty capital felony cases and give them to the Court of Appeals. If this is done, what will be the result? The Supreme Court will be deciding on an average of about 1,100 cases per year, or a number approximately as large as the highest annual return before the Court of Appeals was created. Bear in mind, too, that all these cases will be

civil cases, and every judge and every lawyer knows that it requires a great deal more time to decide 1,100 civil cases than it would the same number of criminal cases. As a result, the Supreme Court would be in a worse condition than it was when the Court of Appeals was created, and the alarming prediction made by Judge Cobb in 1906 will be nearer realization.

What will be the effect on the Court of Appeals? At the October term, 1913, and the March term, 1914, there were docketed in the Court of Appeals two hundred and eighty-seven criminal cases. Add to this the sixty capital felony cases coming from the Supreme Court, and we have three hundred and forty-seven cases. In the opinion of the other judges who have served on that bench, as well as of the writer, it may be conservatively stated that not more than one-fifth of the court's time is devoted to the consideration of criminal cases. The larger number of criminal cases coming to that court are minor misdemeanors, most of them involving simple questions and easy of solution. Any misdemeanor case, under our system, may be carried to the Court of Appeals; and, without meaning to reflect on any of the members of the bar, no one who has served on that bench can escape the conclusion that many of these cases are wholly without merit and are brought to the court merely for the purpose of gaining time in which to comply with the sentence. If a lawyer desired an easy berth, so far as time and labor were concerned, he could well afford to seek a place on the Court of Appeals, or a division of the Supreme Court having only to decide criminal cases. Of course, the responsibility of passing on a case where the life or liberty of a citizen is involved is not one courted by a conscientious judge, but the point is, that if the suggestion of the Permanent Commission be adopted the division of labor between the two courts will be wholly unfair. The percentage of reversals in the Court of Appeals is somewhat larger than in the Supreme Court, but the reasons for this are readily apparent.

The other suggestion of the Permanent Commission; to abolish City Courts and make final the decision of the Superior Courts in *certiorari* cases, does not meet the difficulty. Our experience in our section of the State convinces us that the abolition of the City Court does not materially lessen litigation. *Certiorari* cases in the Court of Appeals comprise only about twelve per cent. of the cases, and probably require less than that percentage of time. But, in addition to this, there will be some difficulty in persuading the people to limit the right of appeal.

I fully agree with the statement made by the President of this Association in a recent letter in which he referred to this subject. He said, "It would be very unfortunate for the State to lose this court (Court of Appeals), but, of course, it should be so conducted as to procure for the people the best possible result."

In the opinion of the writer of this article, the Court of Appeals has come to stay. It is a necessity in the jurisprudence of this State. It has ably, impartially and conscientiously met the purposes for which it was created. I do not believe that it would be wise to make any radical change in the system as it now exists. There is no complexity about it. Every lawyer knows exactly what cases to carry to the Supreme Court, and what to the Court of Appeals, and if he makes a mistake the rules of court correct it. If his case is controlled by a decision of the Supreme Court the Court of Appeals is bound to follow it, and is no more apt to overlook it than the Supreme Court would itself.

It is the duty of counsel to call the attention of the court to decisions claimed to be controlling. As an illustration of this point, the writer recalls a decision of the Court of Appeals in which he prepared the opinion, where it was held that under the statute which requires a mortgage to "specify the debt to secure which it is given" a specification of all "future indebtedness" was insufficient. Counsel did not cite any decision holding the contrary, and this application of the statute seemed to be plain. Afterwards, the atten-

tion of the Court was called to the fact that in an early decision, which had never been overruled, the Supreme Court had reached a contrary conclusion. Many real or apparent conflicts in the decisions of both courts arise in this way.

It is natural to attempt to distinguish a decision which seems wrong to the one having it under consideration. Every judge does it; and every lawyer has thus attempted to dispose of cases which appear to militate against his contentions. If this subjects the lawyer and the judge to just criticism, then all of them are open to attack.

If an amendment should be adopted giving every litigant the right in every case to have the Supreme Court determine whether one of its decisions was controlling, this would put an additional and wholly unnecessary burden upon the Supreme Court, and only in a very few cases would there be any real difference between the two courts as to whether the decision was controlling or not; not so much difference perhaps as arises every day among lawyers in almost every important case which is tried. The truth is, the work of the Court of Appeals has become laborious. That court determines more cases than any three judges ought to have to determine in a given time, and yet, notwithstanding this fact, when Judge Hill retired from the bench practically every case pending in the court was disposed of, and the same thing was true when the writer retired. The time is not far distant when something must be done for the relief of the Court of Appeals. Instead of depriving it of civil jurisdiction, and giving the Supreme Court more work than it can possibly do, the wise thing to do, in the opinion of the writer, would be to create another division of three judges for the Court of Appeals, with such division of labor between the two courts as will insure careful consideration and the speedy determination of cases. If this is done, it is suggested that the system now prevailing in the Court of Appeals be adopted by the Supreme Court, that is, that writs of error in both courts be fast writs.

Now, Mr. President, there is nothing radically wrong either with our courts or with our procedure. Let us stop talking about abolishing this court and that court. We create in the public mind a lack of confidence in our courts, and there never was a time in the history of the State when the courts needed more the support of the Bar, to the end that justice may be fearlessly and impartially administered. We can do a greater service if we can evolve some plan to put the judiciary of the State upon such a high plane that the people will tolerate nothing less than absolute fearlessness and impartiality.

EXHIBIT

When the Court of Appeals was established the highest return to the Supreme Court was 1,156.

Since the establishment of the Court of Appeals the average return to the Supreme Court has been 600, and to the Court of Appeals 785, an average return to the two courts of 1,385.

Four thousand cases brought to the Court of Appeals are classified as follows:

Civil cases: From City Courts, 1,830, about 46%; *certioraris* and appeals, 566, about 14%; all other civil cases, 65, about 1½%. Total, 61%.

Criminal cases: Felonies, 399, about 10%; misdemeanors, 974, about 25%; municipal *certioraris*, 166, about 4%. Total, 39%.

Of felonies decided, the affirmances are, 259, about 70%; the reversals, 116, about 30%.

Of capital felonies decided by the Supreme Court for about the same period the affirmances are, 208, about 82%; the reversals, 46, about 18%.

On May 1, 1912, there were upon the dockets of the two reviewing courts undecided: Court of Appeals, 260 cases; Supreme Court, 550 cases. A total of 810 cases.

Of misdemeanors, the affirmances are 549, about 60%; the reversals, 352, about 40%.

To Supreme Court:

	Civil	Criminal	To Term	For Year
Oct. 10	303	40	343	
Mch. 11	278	27	305	648
Oct. 11	351	36	387	
Mch. 12	276	30	306	693
Oct. 12	349	33	382	
Mch. 13	239	19	258	640
Oct. 13	455	31	486	
*Mch. 14	254	28	282	768
	4—2505	4—244		4—2749
Average	626	61		687

The average return to the Supreme Court for the first three years listed above is 660 cases. The return for the fourth year is now 768 cases.

The civil docket for the October term, 1905 (which was probably the heaviest term before the establishment of the Court of Appeals), contained 462 cases. This return included the classes of civil cases now handled by the Court of Appeals. Note that the last October term docket of the Supreme Court contained only 7 cases less, and that the Court of Appeals handled 237 civil cases at that term.

To Court of Appeals:

	Civil	Criminal	To Term	For Year
Oct. 10	210	137	347	
Mch. 11	241	156	397	744
Oct. 11	210	176	386	
Mch. 12	198	177	375	761
Oct. 12	198	124	322	
Mch. 13	269	161	430	752
Oct. 13	237	149	386	
Mch. 14	206	138	344	730
	1769	1218		2987

*The docket for the March term, 1914, will not be closed until July 4. It is estimated that there will be added thereto from ten to twenty-five cases.

REPORT

of the

Thirty-Second Annual Session

of the

Georgia Bar Association

Held at St. Simons Island, Georgia

June 3-5, 1915

EDITED BY
ORVILLE A. PARK, SECRETARY,
HARRY S. STROZIER, ASSISTANT SECRETARY

MACON, GEORGIA
THE J. W. BURKE COMPANY
1915

The President: As you know, it has always been a custom of the Georgia Bar Association to take an interest in proposed reforms, and other special matters of legislation affecting our profession. There has been considerable discussion and agitation in our State lately on the subject of the registration of land titles.

I am glad to say that we are honored to-day with the presence of one of the most distinguished lawyers of America, one who has made a special study of this as well as many other subjects of our profession, and we will be honored by having an address by him to-day on the subject of "Commercial Land Titles." I have the pleasure to introduce to you the Hon. Eugene C. Massie, of Richmond, Virginia. (Applause.)

(For Mr. Massie's address, see page 61.)

At the conclusion of Mr. Massie's address the Convention was adjourned until 3:00 o'clock.

AFTERNOON SESSION, JUNE 4, 1915.

The afternoon session was called to order by the President at 3:00 o'clock.

The President: The Association will come to order. Mr. Secretary, have you anything on your desk?

The Secretary: Mr. President, there were two applications for membership forwarded to me at Brunswick, which were delayed in reaching me until to-day. They are those of

Madison Bell.....Atlanta.
W. F. Slaton, Jr.....Atlanta.

Judge A. G. Powell (Atlanta): I move that the Secretary be requested to cast the unanimous vote of the body for these gentlemen.

This motion was seconded and carried, and upon the Secretary casting the ballot they were declared elected.

The Secretary: Mr. Chairman, that letter of the Supreme Court yesterday got on my nerves. The idea of our Supreme

Court and our Court of Appeals having to work right straight on through without a day's vacation all last year, and then again this year, and not be able to come to the Bar Association at all, and not get away for anything at any time, is enough to make this thing get on our nerves. We all miss the judges at our meetings. We are accustomed to having them with us, or some of them at any rate; and not having any one of them with us this time has prompted me to undertake to draw a resolution, which I desire to submit. I dictated it, and I do not know whether I can read the handwriting of the man who wrote it, as it has gotten cold, but I will undertake to read it, as follows:

WHEREAS, No Justice of the Supreme Court or Judge of the Court of Appeals has been able to attend this meeting of the Association, and,

WHEREAS, The Justices and Judges have advised the Association that they greatly desired to attend but were prevented from doing so by reason of the crowded condition of the dockets of their courts, and the necessity of deciding the cases at the second term or have them affirmed by operation of law, and,

WHEREAS, Said courts have been forced to remain in continuous session with no opportunity for even the briefest vacation, and without cessation from their onerous and exacting labors, and,

WHEREAS, Said courts are now annually deciding more than sixteen hundred cases, which is a greater number than can be disposed of with satisfaction to the bar or credit to the court, even with the incessant slavish toil to which the Justices and Judges are being subjected, and,

WHEREAS, Some relief from the present intolerable condition is absolutely and manifestly necessary and must be immediately had; therefore, be it

Resolved, That the letter from the Justices of the Supreme Court calling attention to and emphasizing these conditions be referred to the Permanent Commission on Revision of the Judicial System and Procedure with direction to confer with the Supreme Court and Court of Appeals as early as practicable and devise some measure of relief, and if it should be found necessary, present the matter to the next session of the General Assembly and urge the passage of such laws as

may be required to carry into effect the relief measures suggested.

Resolved, further, That the sum of \$1,000, or so much thereof as may be necessary be appropriated for the carrying out of the purposes of this resolution. The same shall be expended under direction of the Commission and under orders signed by the Chairman thereof.

Resolved, further, That this Association pledges itself and, so far as it can do so, all its members to cooperate with the courts and the Commission in working out measures of relief and submitting to such directions as may be thought necessary for the disposition of business by the courts.

The Secretary (continuing): I may say, Mr. Chairman, that not only did we have the joint letter of the members of the Supreme Court, expressing their regret at their inability to be present, but the Judges of the Court of Appeals, at least one of them, wrote me in practically the same language, that the Court of Appeals was in the same congested condition as the Supreme Court. We all realize the situation as thoroughly and as fully as we can, I think, and yet we are doing nothing to relieve it. I hope that I can get a second to this resolution.

Mr. R. D. Meader (Brunswick): I second the resolution.

The resolution was put to vote and unanimously carried.

The Secretary: I did not wire the Supreme Court, as directed, because I wanted to see if I could not wait and wire them that the Association had done something.*

The President: The next thing on the program, as outlined by the Executive Committee, is a paper on "Workmen's Compensation Laws," by the Hon. L. W. Branch, of Quitman, who will now address us.

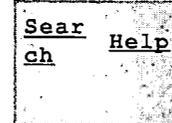
Mr. L. W. Branch (Quitman): Mr. Chairman, Ladies and Gentlemen: I regret very much that in the treatment

*Immediately after adjournment of the session the following telegram was sent by the Secretary to the Supreme Court:

The Supreme Court, Atlanta, Ga. June 4, 1915.
Georgia Bar Association greatly regrets inability of the Justices to attend meeting. We deplore conditions which deprive us of the pleasure of your presence. Resolution directing Commission, of which Judge Cobb is Chairman, to confer with Courts and provide relief unanimously passed. One thousand dollars appropriated for the work. ORVILLE A. PARK, Secretary.

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Georgia Legislative Documents



Content of Act/Resolution

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

PART I.—PUBLIC LAWS

TITLE II. AMENDMENTS TO CONSTITUTION.

1916 Vol. 1 -- Page: 19

Sequential Number: 009

Short Title: SUPREME COURT AND COURT OF APPEALS; JUDGES AND JURISDICTION.

Law Number: No. 586.

Full Title: An Act to amend section two of article six of the Constitution of the State of Georgia, and for other purposes.

Section 1. The General Assembly of the State of Georgia hereby proposes to the people of Georgia an amendment to section 2 of article 6 of the Constitution of this State, as follows: [Sidenote: Proposal to amend art. 6, sec. 2.]

1. By changing paragraph 5 of said section, so it will read as follows: "Paragraph 5. The Supreme Court shall have no original jurisdiction, but shall be a court alone for the trial and correction of errors of law from the superior courts and the City Courts of Atlanta and Savannah, and such other like courts as have been or may hereafter be established in other cities; in all cases that involve the construction of the Constitution of the State of Georgia or of the United States, or of treaties between the United States and foreign governments; in all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question; and, until otherwise provided by law, in all cases respecting titles to land; in all equity cases; in all cases which involve the validity of, or the construction of wills; in all cases of conviction of a capital felony;

in all habeas-corpus cases; in all cases involving extraordinary remedies; in all divorce and alimony cases, and in all cases certified to it by the Court of Appeals for its determination. It shall also be competent for the Supreme Court to require by certiorari or otherwise any case to be certified to the Supreme Court from the Court of Appeals for review and determination with the same power and authority as if the case had been carried by writ of error to the Supreme Court. Any case carried to the Supreme Court or to the Court of Appeals, which belongs to the class of which the other court has jurisdiction, shall, until otherwise provided by law, be transferred to the other

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court under such rules as the Supreme Court may prescribe, and the cases so transferred shall be heard and determined by the court which has jurisdiction thereof."

[Sidenote: Supreme Court's jurisdiction.]

[Sidenote: Review by certiorari, etc.]

[Sidenote: Transfer of cases.]

2. Paragraph 9 shall be amended to read as follows: "The Court of Appeals shall consist of the judges provided therefor by law at the time of the ratification of this amendment, and of such additional judges as the General Assembly shall from time to time prescribe. All terms of the judges of the Court of Appeals after the expiration of the terms of the judges provided for by law at the time of the ratification of the amendment (except unexpired terms) shall continue six years, and until their successors are qualified. The time and manner of electing judges, and the mode of filling a vacancy which causes an unexpired term, shall be the same as are or may be provided for by the laws relating to the election and appointment of Justices of the Supreme Court. The Court of Appeals shall have jurisdiction for the trial and correction of errors of law from the superior courts and from the City Courts of Atlanta and Savannah, and such other like courts as have been or may hereafter be established in other cities, and in all cases in which such jurisdiction has not been conferred by this Constitution upon the Supreme Court, and in such other cases as may hereafter be prescribed by law; except that where a case is pending in the Court of Appeals and the Court of Appeals desires instruction from the Supreme Court, it may certify the same to the Supreme Court, and thereupon a transcript of the record shall be transmitted to the Supreme Court, which, after having afforded to the parties an opportunity to be heard thereon, shall instruct the Court of Appeals on the question so certified, and the Court of Appeals shall be bound by the instructions so given. But if by reason of equal division of opinion among the Justices of the Supreme Court no such instruction is given, the Court of Appeals may decide the question. The manner of certifying questions to the Supreme Court by the Court of Appeals, and the subsequent proceedings in regard to the same in the Supreme Court, shall be as the

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Supreme Court shall by its rules prescribe, until otherwise provided by law. No affirmance of the judgment of the court below in cases pending in the Court of Appeals shall result from delay in disposing of questions or cases certified from the Court of Appeals to the Supreme Court, or as to which such certificate has been required by the Supreme Court as hereinbefore provided. All writs of error in the Supreme Court or the Court of Appeals, when received by its clerk during a term of the court and before the docket of the term is by order of the court closed, shall be entered thereon; when received at any other time, shall be entered on the docket of the next term; and they shall stand for hearing at the term for which they are so entered, under such rules as the court may prescribe, until otherwise provided by law. The Court of Appeals shall appoint a clerk and a sheriff of the court. The reporter of the Supreme Court shall be reporter of the Court of Appeals until otherwise provided by law. The laws relating to the Supreme Court as to qualifications and salaries of judges, the designation of other judges to preside when members of the court are disqualified, the powers, duties, salaries, fees and terms of officers, the mode of carrying cases to the court, the powers, practice, procedure, times of sitting, and costs of the court, the publication of reports of cases decided therein, and in all other respects, except as otherwise provided in this Constitution or by the laws as to the Court of Appeals at the time of the ratification of this amendment, and until otherwise provided by law, shall apply to the Court of Appeals so far as they can be made to apply. The decisions of the Supreme Court shall bind the Court of Appeals as precedents."

[Sidenote: Court of Appeals. Judges.]

[Sidenote: Terms of office.]

[Sidenote: Election. Vacancy.]

[Sidenote: Jurisdiction of the Court of Appeals.]

[Sidenote: Cases certified.]

[Sidenote: Docketing of cases.]

[Sidenote: Clerk. Sheriff. Reporter.]

[Sidenote: Laws applicable.]

[Sidenote: Decisions as precedents.]

Sec. 2. Be it further enacted by the authority aforesaid, That whenever the above proposed amendment to the Constitution of this State shall be agreed to by two-thirds of the members elected to each of the Houses of the General Assembly, and the same has been entered upon their journals, with the yeas and nays taken thereon, the Governor shall and he is hereby authorized and instructed to cause

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the above proposed amendment to be published in one or more newspapers in each congressional district in this State for the period of two months next preceding the time of holding the next general election; and the Governor is hereby authorized and directed to provide for the submission of the amendment proposed for ratification or rejection to the electors of this State at the next general election to be held after said publication, at which election every

person shall be qualified to vote who is entitled to vote for members of the General Assembly. All persons voting at such election in favor of adopting the said proposed amendment shall have written or printed on their ballots the words, "For amendment to the Constitution, altering the Appellate Court System of the State of Georgia." All persons opposed to the adoption of said amendment shall have written or printed on their ballots the words, "Against the amendment to the Constitution, altering the Appellate Court System of the State of Georgia." If a majority of the electors qualified to vote for members of the General Assembly, voting thereon, shall vote for ratification, the Governor shall, when he ascertains the same from the Secretary of State, to whom the returns from said election shall be referred in the same manner as in cases of election for members of the General Assembly, to count and ascertain the result, issue his proclamation for one insertion in one daily paper of the State, announcing such result and declaring the amendment ratified.

[Sidenote: Submission to popular vote.]

[Sidenote: Forms of ballots.]

Sec. 3. Be it further enacted by the authority aforesaid, That all laws and parts of laws in conflict with this Act be and the same are hereby repealed.

Approval Date: Approved August 19, 1916.

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Georgia Legislative Documents



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

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

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Sequential Number: 035

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

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

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

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

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

[Sidenote: Six judges.]

[Sidenote: Chief Judge.]

[Sidenote: Two divisions.]

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

[Sidenote: Election of judges.]

[Sidenote: Terms of office.]

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

[Sidenote: Laws applicable.]

Sec. 4. Be it further enacted by the authority aforesaid, That all laws and parts of laws in conflict with this Act be and the same are hereby repealed.

Approval Date: Approved August 19, 1916.