

People of Interest:

Z.D. Harrison  
W.W. Gordan Jr.  
Joseph Hansell Merrill  
Judge Pope Borrow  
Andrew J. Cobb  
Washington Dessau  
Samuel B. Adams  
Arthur Gray Powell  
Hoke Smith  
Marcus W. Beck  
E.A. Hawkins  
T.J. Chappell  
John W. Akin  
A.L. Bartlett  
J.B. PArk Jr.  
W.A. Charters  
W.K. Miller  
John W. Bennett  
John Slaton  
Peter W. Meldrim  
H.H. Perry  
Henry C. Peeples  
Richard Brevard Russell  
Benjamin H. Hill

# History of The Court of Appeals 1906-2004

The first move by the organized bar to alleviate the caseload on the Supreme Court came at the Bar Association's 1895 annual meeting in Atlanta, held at the Cotton States and International Exposition. This symposium followed a vote by the electorate against a constitutional amendment increasing the number of Justices on the Supreme Court from three to five during the previous October.

The first proposal to create a court of appeals was also made during the 1895 Bar Association annual meeting. In "Relief of the Supreme Court of Georgia: Is the Remedy One or More Intermediate Courts?", Volume Twelve, Page 23 of the Georgia Bar Association Reports, ~~Z~~  
~~D. Harrison~~, then Clerk of the Supreme Court, argued: "Let the Legislature establish a competent intermediate court, a court which will command the confidence and respect of the bar and of the people, and establish it, too, upon such terms as will make its entrance easy so that every litigant and suitor can enter this court upon terms quite as easy as those upon which he can now enter the Supreme Court by writ of error."

Among other ideas proposed in the bar association's report were the establishment of two supreme courts, one for criminal cases and another for civil; abolition of the contingent fee, restriction on the right to appeal; and limitation of the class of cases which could be reviewed by the Supreme Court. The Association also declined to consider the novel idea "to establish the right of trial by another jury . . . and have a trial by a first and second jury before a case can go to the Supreme Court." [Page 37].

Of particular interest in this report are the presentations of ~~W. W. Gordon, Jr.~~, of Savannah and Joseph Hansell Merrill of Thomasville, which appear as Appendix 10 and 11 respectively. These papers described a bill prepared by Superior Court Judge Pope Barrow of Savannah, which would have created five district courts of appeal. The bench was to be composed of jurists serving in the superior courts and city courts in the district who would be designated to handle the business of these courts of appeal. Atlanta, Athens, Savannah, Columbus and Macon were suggested as the locations where the district courts would hold their sessions. Judges were to be paid from the State Treasury at the rate of four cents per mile for travel and \$4 per day for services.

Nothing further was done at this time towards the creation of another court, but in 1897, the Supreme Court was increased to six Justices. This increase in personnel apparently failed to provide a solution, as five years later, at the 1902 Bar Association session held at Warm Springs, there was another symposium on the subject. The discussion was based on a paper delivered by Justice ~~Andrew J. Cobb~~ captioned: "The Judicial System of Georgia: Its Defects; What Changes Are Necessary to Bring About a More Harmonious and Orderly System and to Relieve the Supreme Court?" This paper recites statistics demonstrating that it was not humanly possible for the Supreme Court Justices to manage the workload. See Appendix I, 19 Georgia Bar Association Reports 183. Justice Cobb noted, "The working hours of the Court for hearing argument and consultation have been, since October 1897, from 9 a.m. to 1 p.m. and from 3 p.m. to 5 p.m. in the Fall and Winter and 6 p.m. in the Spring and Summer. These hours, however, do not represent all of the working hours of the justices." [Page 187].

Among proposals mentioned in this paper were limitation of oral arguments, disposition of cases by a written synopsis of the points decided, reduction of the number of written opinions, addition of Justices and divisions, and restriction of jurisdiction by monetary amount or subject

matter. Justice Cobb observed that "[s]ome favor an intermediate appellate court, from which a writ of error to the Supreme Court will lie only in certain cases." [Page 192].

Judge Barrow again submitted his bill to create district courts of appeal from the trial courts of the respective districts, but limited to three districts rather than five. Each judge was to be paid three cents per mile and \$5 per day "for each day court is in session and he is sitting."

The 1902 symposium terminated with passage of a motion for appointment of a committee to draft a curative statute and designation of an eminent attorney from each Congressional District to serve on the statewide committee to prepare "Legislation for the Relief of the Supreme Court." Among these committee members were such legal luminaries as Washington Dessau from Macon, Samuel B. Adams from the First District, Arthur Gray Powell from the Second District, Floke Smith from the Fifth District, and Marcus W. Beck from the Sixth District. Adams of Savannah later served in 1903 as an interim appointee on the Supreme Court bench. Powell became one of the first three Judges of the Court of Appeals. Smith was later Governor and United States Senator. Beck subsequently served on the Supreme Court for 32 years.

This committee suggested two constitutional amendments which were reported at the 1903 annual meeting held at Tallulah Falls. One provided that a civil case could not be appealed to the Supreme Court unless the amount involved exceeded \$500. The second amendment proposed to create a Court of Appeals. The court would have a Presiding Judge and four Associate Judges, with salaries of not less than \$3,000 per annum. Jurisdiction was co-equal with that of the Supreme Court "for the trial and correction of errors from the Superior Courts and from the City Courts of Atlanta and Savannah and such other like courts . . . in all cases in which jurisdiction is not conferred by the constitution upon the Supreme Court."

The 1903 report was adopted with the requirement that a copy be mailed to every Georgia lawyer, along with an abridged version of Justice Cobb's 1902 address. The report was addressed "To the People of Georgia" and concluded as follows: "To a people numbering now largely more than two million, active in every commercial enterprise, advancing rapidly along all the best lines of civilization, spreading an influence all over the Union and determined to hold the State's place as the empire State of the South, this measure is commended as a step forward and upward, for the honor and glory of the Commonwealth of Georgia." [Page 143].

Despite this modern-seeming public relations strategy, the bill, which in October 1902 was introduced by John M. Slaton (who later became a Governor of Georgia), languished in the Legislature until 1906. In that year, Peter W. Meldrim of Savannah (later President of the American Bar Association) initiated an effort "to see that proper legislation is passed for the relief of the Supreme Court, looking to the establishment of a court of appeals." (23 Georgia Bar Association Reports 36). Again Justice Cobb spoke at length concerning the plight of the Supreme Court's swollen docket and the strain upon the health of the Justices seeking to perform an impossible task. He commented: "I think it is unfortunate that it has been termed a movement for the relief of the Supreme Court. It is a movement in behalf of the administration of the law, for the relief of those whose lives, whose liberty, whose property is involved, those who have been given under the constitution of the state the right to have an adverse decision reviewed." [Page 37].

The organized bar's campaign for legislation finally succeeded. On July 31, 1906, a bill to submit to the electorate an Amendment to the State Constitution, "to provide for the establishment

of a Court of Appeals, and to define its powers and jurisdiction; . . . ," was approved almost unanimously, with only four votes in opposition. (1906 Ga. Laws, p. 24).

Under this constitutional amendment, the jurisdiction of the two appellate courts in civil cases depended upon the identity of the trial court in which the case originated; while the Supreme Court was given exclusive jurisdiction in capital felonies. The Court of Appeals was mandated to certify to the Supreme Court all state and federal constitutional questions and was privileged to "certify any other question of law concerning which it desires the instruction of the Supreme Court for proper decision." Although the amendment also provided that "[t]he decisions of the Supreme Court shall bind the Court of Appeals as precedents," each was designated a court of final jurisdiction. The amendment was ratified by the electorate at the general election of October 3, 1906.

The election of judges followed on November 6, 1906. There were sixteen candidates; the three receiving the most votes were to form the first bench. Arthur G. Powell of Blakely (who together with Logan E. Bleckley is regarded as among the very great appellate court judges) wrote in his fascinating book, *I Can Go Home Again*, that the original Bar proposal was for the Governor to appoint the Judges. Governor Terrell had agreed that he would appoint H. H. Perry of Gainesville, Henry C. Peeples of Atlanta, and Powell, but the House had altered the Bar proposal to require that the Judges be elected by the people. The Bar Association then asked these three lawyers to become candidates, and only Mr. Perry declined. The newspapers first announced that the three candidates receiving the highest votes were Richard Brevard Russell, Powell, and Peeples. Instead, the final tally of votes showed that Benjamin H. Hill, the son of Georgia's great United States Senator Benjamin Harvey Hill, had defeated Peeples by a few votes.

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## Content of Act/Resolution

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

Part I.--Public Laws.

TITLE II. CONSTITUTION.

1895 Vol. 1 -- Page: 15

Sequential Number: 008

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

Law Number: No. 186.

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

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

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

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

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

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

[Sidenote: Number of justices.]

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

[Sidenote: Quorum.]

[Sidenote: Elections to be by the people.]

[Sidenote: Time and manner of.]

[Sidenote: First election under this amendment.]

[Sidenote: Terms of Justices then chosen.]

[Sidenote: Allotment of terms.]

[Sidenote: Subsequent elections.]

[Sidenote: Vacancies.]

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

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

[Sidenote: Publication of amendment.]

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

[Sidenote: Election as to adoption of amendment.]

[Sidenote: Qualifications of voters.]

[Sidenote: Ballots.]

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

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

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

[Sidenote: Executive proclamation of result.]

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

are, hereby repealed.

**Approval Date:** Approved December 16, 1895.

INCREASE OF JUDGES.

The Atlanta Constitution; Aug 19, 1894; pg. 18, 1

The Supreme Court Constitutional Amendment.

MARTIN V CALVIN; The Atlanta Constitution; Aug 26, 1894; pg. 17, 1

GEORGIA'S JUDGES. - *Looked at*

L E BLECKLEY; The Atlanta Constitution; Sep 18, 1894; pg. 4, 1

VOTE FOR THE AMENDMENT. - *Looked at*

The Atlanta Constitution; Sep 24, 1894; pg. 4, 1

VOTE FOR THE AMENDMENT.

The Atlanta Constitution; Sep 27, 1894; pg. 4, 1

HONEST AND DISHONEST DOLLERS.

GEORGIAN; The Atlanta Constitution; Oct 8, 1894; pg. 6, 1

BLECKLEY RESIGNS

The Atlanta Constitution; Oct 14, 1894; pg. 19, 1

COURT OF APPEALS

The Atlanta Constitution (1881; Sep 22, 1895; pg. 17, 1

MEN OF LEGAL GENIUS

The Atlanta Constitution; Sep 26, 1895; pg. 9, 1

POPE BARROW'S BILL

The Atlanta Constitution; Oct 3, 1895; pg. 11, 1

A SUPREME COURT BILL.

The Atlanta Constitution; Nov 8, 1895; pg. 9, 1

FOR RELIEF OF SUPREME COURT  
The Atlanta Constitution (1881; Aug 2, 1902; pg. 7, 1

PARKER TO MEET GEORGIA SOLONS  
The Atlanta Constitution; Feb 28, 1903; pg. 7, 1

LAWYERS PLAN THEIR MEETING  
The Atlanta Constitution; Jun 6, 1903; pg. 12, 1

BAR ASSOCIATION MEETING WAS HIGHLY SUCCESSFUL  
The Atlanta Constitution; Jul 12, 1903; pg. B2, 1

NEW COURT PROVIDED FOR

Jos Ohl; The Atlanta Constitution; Jan 16, 1904; pg. 5, 1

LAWYERS TO ASK FOR NEW COURT

The Atlanta Constitution; Jun 19, 1904; pg. 4, 1

*Print* PICTURE OF ROSCOE LUKE  
The Atlanta Constitution; June 1, 1906

WOULD ABOLISH ALL CITY COURTS - *Looked at*  
JOEL BRANHAM; The Atlanta Constitution; Jul 12, 1906; pg. 8, 1

SUPREME COURT NEEDS RELIEF - *Looked at*  
Isma Dooly; The Atlanta Constitution (1881; Jul 20, 1906; pg. 2, 1

JUDGE HENRY A CANDIDATE - *Looked at*  
The Atlanta Constitution; Aug 7, 1906; pg. 6, 1

*Print* STATE GOSSIP CAUGHT IN CAPITOL CORRIDORS  
The Atlanta Constitution; Aug 11, 1906; pg. 4, 1

*Print* EVERY THING CUT AND DRIED FOR THE STATE CONVENTION WHICH  
MEETS IN MACON TODAY  
The Atlanta; Sep 4, 1906; pg. 1, 2

*Print* HERE IS LINE-UP FOR JUDGESHIPS  
The Atlanta Constitution (1881; Sep 7, 1906; pg. 6, 1

PRIMARY FOR NEW JUDGES TO BE CALLED OCTOBER 3  
The Atlanta; Sep 9, 1906; pg. A4, 1

PRIMARY FOR JUDGES CALLED FOR OCTOBER 3  
The Atlanta; Sep 13, 1906; pg. 8, 1

*Print* RUSSELL TO RUN FOR JUDGESHIP  
RICHARD B RUSSELL; The Atlanta Constitution; Sep 25, 1906; pg. 8, 1

*Print* BENJAMIN H. HILL, CANDIDATE FOR JUDGE OF THE PROPOSED COURT OF  
APPEALS - WITH PICTURE  
BENJ H HILL; The Atlanta Constitution; Sep 30, 1906; pg. B2, 1

POLLS OPEN WEDNESDAY  
FOR REGULAR ELECTION The Atlanta; Sep 30, 1906; pg. B8, 1

STATE ELECTION HELD TOMORROW  
A L MILLER; The Atlanta Constitution; Oct 2, 1906; pg. 10, 1

*Print* JUDGE C. G. JANES STRONGLY INDORSED  
The Atlanta Constitution; Oct 2, 1906; pg. 5, 1

POLLS WILL OPEN TODAY FOR GENERAL ELECTION  
The Atlanta; Oct 3, 1906; pg. 3, 1

POWELL AND RUSSELL IN LEAD FOR APPELLATE COURT JUDGES  
THIRD PLACE STILL IN DOUBT The; Oct 4, 1906; pg. 1, 2

OFFICIAL VOTE CAST IN FULTON  
The Atlanta Constitution; Oct 5, 1906; pg. 8, 1

For Clerk of Court of Appeals.  
The Atlanta Constitution; Oct 21, 1906; pg. A4, 1

APPEALS COURT ACTS ON CASES  
The Atlanta Constitution; Nov 4, 1906; pg. G7, 1

ELECT JUDGES NEXT TUESDAY  
The Atlanta Constitution; Nov 4, 1906; pg. F6, 1

STATE ELECTION HELD TOMORROW  
The Atlanta Constitution (1881; Nov 5, 1906; pg. 3, 1

STATE ELECTION OCCURS TODAY  
The Atlanta Constitution (1881; Nov 6, 1906; pg. 6, 1

GOSSIP AT THE CAPITOL  
The Atlanta Constitution; Nov 23, 1906; pg. 8, 1

BEN HILL LEADS JUDGES' TICKET  
The Atlanta Constitution; Nov 20, 1906; pg. 7, 1