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History of the Western Judicial Circuit

by Donald E. Wilkes Jr.

There are 159 superior courts in Georgia—one in each county. Of all the existing courts of this state, superior courts are the oldest.

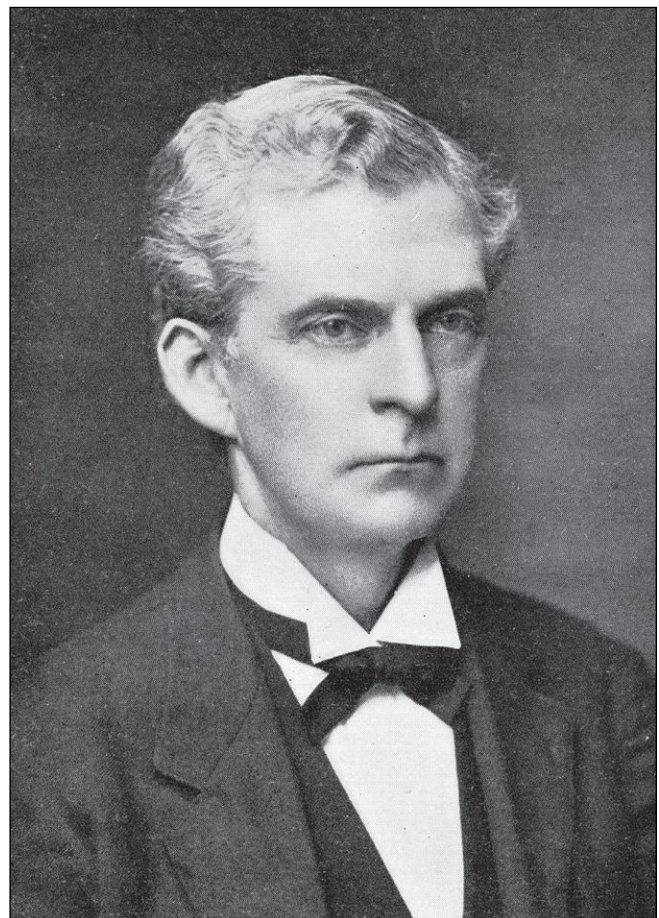
They were created 234 years ago by Georgia's first state constitution in 1777.¹ By contrast, the Supreme Court of Georgia was not established until 1845,² and the Court of Appeals of Georgia was not created until 1906.³

Presided over by superior court judges elected to serve four-year terms, superior courts are the most important trial courts in this state. Superior courts have general jurisdiction to try almost any civil or criminal case, and are the only courts with authority to exercise the powers of a court of equity or to try felonies. In addition to their expansive trial jurisdiction, superior courts have appellate jurisdiction to review certain decisions of probate courts, magistrate courts and municipal courts.

Brief History of the Western Judicial Circuit

The superior courts of this state are grouped into 49 geographically named circuits. One of these, the Western Judicial Circuit, currently consists of the superior courts of Clarke and Oconee counties. The superior court of Clarke County has been in the Western Judicial Circuit since the county was created in 1801,⁴ and the superior court of Oconee County has been in the Circuit since the county's creation in 1875.⁵

Created by a 1797 statute,⁶ the Western Judicial Circuit was, along with the Eastern and Middle



Andrew J. Cobb, associate justice on the Supreme Court of Georgia (1896-1907), Western Judicial Circuit superior court judge (1917-21) and past president of the Georgia Bar Association (1913).

Circuits, one of the first three judicial circuits established in this state. The Western Judicial Circuit originally consisted of the superior courts of eight counties: Elbert, Franklin, Greene, Hancock, Jackson, Lincoln, Oglethorpe and Wilkes. The Western Circuit received its name because at the time of its creation in the late

18th century most of what is now Georgia was still occupied by Native Americans, and these eight counties were then regarded as being in the western part of the state. Not one of those counties remains in the Western Circuit, and today the two counties forming the Circuit are in the northeastern part of Georgia. No longer is the Western Circuit located in the western part of the state.

At one time or another, the superior courts of 24 counties have been part of the Western Judicial Circuit. The most superior courts in the Western Judicial Circuit in any one period was between 1821 and 1822, when the Circuit included 11 counties: Clarke, Fayette, Franklin, Gwinnett, Habersham, Hall, Henry, Jackson, Newton, Rabun and Walton. By 1922 the number of counties in the Circuit was down to seven. In 1923 four of these counties were transferred to the newly created Piedmont Judicial Circuit, with the result that from then until 1972 the Western Judicial Circuit consisted of the superior courts of three counties—Clarke, Oconee and Walton. In 1972 the superior court of Walton County was transferred to the newly created Alcovy Judicial Circuit.

Judges of the Western Judicial Circuit

Until 1976, there was never more than one superior court judge of the Western Judicial Circuit at a time. A 1976 statute⁷ raised the number of judges to two, and a 1995 statute⁸ increased the number to its current level of three. There have been a total of 29 superior court judges of the Western Judicial Circuit since its creation in 1797. A list of these judges, with their terms of office, is set forth on page 28. The list includes some amazing jurists, three of whom also served as justices of the Supreme Court of Georgia.

The first of these three was James Jackson, who, after serving as Western Circuit superior court judge for eight years, went on to become associate justice (1875-80) and chief justice (1880-87) on the Supreme Court of Georgia. Jackson's commitment to individual rights was so great that it was said of him, "His cradle hymns were the songs of liberty."⁹

The second of these three judges, Richard B. Russell Sr., quite possibly the greatest of all Georgia judges, served seven years as Western Circuit superior court judge, then served on the Court of Appeals of Georgia for nine years (1907-16), and then was the chief justice of the Supreme Court of Georgia for 15 years (1923-38). Russell is the only person ever to serve as both chief judge of the Court of Appeals of Georgia (1913-16) and chief justice of the Supreme Court of Georgia. In 1931 Russell had the pleasure of swearing into office his son, Richard B. Russell Jr., as governor of Georgia. While serving as chief justice, Richard B. Russell Sr. displayed in his decisions an "ideology of



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Superior Court Judges of the Western Judicial Circuit and Their Terms of Office

Thomas P. Carnes (1798-1803; 1809-13)
 John Griffin (1803)
 Charles Tait (1803-09)
 Young Gresham (1813-16)
 John Mitchell Dooly (1816-19)
 Augustin Smith Clayton (1819-25; 1828-31)
 William H. Underwood (1825-28)
 Charles Dougherty (1831-37; 1845-49)
 Thomas W. Harris (1837-41)
 Junius Hillyer (1841-45)
 James Jackson (1849-57)
 N.I. Hutchins I (1857-68)
 C.D. Davies (1868-73)
 George D. Rice (1873-78)
 Alex S. Erwin (1878-83)

N.I. Hutchins II (1883-99)
 Richard B. Russell Sr. (1899-1906)
 Charles Hillyer Brand (1906-17)
 Andrew J. Cobb (1917-21)
 Blanton Fortson (1921-40)
 Stephen C. Upson (1940-42)
 Henry H. West (1942-53)
 Carlisle Cobb (1953-62)
 James Barrow (1962-90)
 Joseph J. Gaines (1976-2002)
 Lawton E. Stephens (1991-present)
 Steve C. Jones (1995-2011)
 David R. Sweat (2002-present)
 H. Patrick Haggard (2011-present)

mercy, and of sympathy for the poor, the helpless, the unprotected, and the underprivileged.”¹⁰

The third judge of the Western Circuit to serve on the Supreme Court of Georgia was Andrew J. Cobb. Unlike James Jackson and Richard B. Russell Sr., however, Andrew J. Cobb was an appellate judge before he was a trial judge. Specifically, Cobb first served as an associate justice on the Supreme Court of Georgia (1896-1907) and afterward as a Western Judicial Circuit superior court judge (1917-1921). Andrew J. Cobb “was conservative, but nevertheless he was unwilling to refuse to recognize a right or principle merely because it was novel.”¹¹ It was Cobb who wrote the opinion for the Supreme Court of Georgia in the landmark 1905 case of *Pavesich v. New England Life Ins. Co.*,¹² the first American appellate court decision to recognize a constitutional right to privacy. He also authored the learned opinion for the Court in *Simmons v. Georgia Iron & Coal Co.*,¹³ probably the single most important habeas corpus decision in the Court’s his-

tory. Andrew J. Cobb was also one of the most prominent of the courageous Georgian citizens who in the early 20th century publicly condemned lynchings, then the South’s scourge.¹⁴

Although none of the other judges of the Western Judicial Circuit have been Supreme Court of Georgia justices, many have had distinguished careers not only as jurists but also as lawyers and legislators. Furthermore, several of the 19th century Western Judicial Circuit judges lived astonishing lives spiced with adventure and occasionally marred by tragedy.

- In 1780, when he was about eight years of age, future superior court judge John Mitchell Dooly witnessed the murder of his patriot father, Col. John Dooly, by a band of Tories.¹⁵ Dooly County is named after the murdered man.¹⁶
- In 1802, future superior court judge Charles Tait, who had a wooden leg, challenged future superior court judge John Mitchell Dooly, known for his

wit, to a duel.¹⁷ Dooly is reputed to have responded to the challenge by saying he would not fight unless, in order to assure that the duel was on equal terms, he was allowed to encase one of his own legs in a “bee gum,” i.e., a hollow tree stump! Tait, stung by Dooly’s humorous reply, is said to have angrily threatened to publish Dooly as a coward, whereupon Dooly purportedly rejoined that he would rather fill the newspapers than a coffin! Although the duel never took place because Tait and Dooly reconciled on the dueling field, the incident remains the most notable duel in American history that never occurred.¹⁸

- Thomas P. Carnes, the first superior court judge of the Western Circuit, died a strange and violent death on Sunday, May 5, 1822, nine years after leaving office. Carnes “was killed as a result of an injury he received while crossing the courthouse steps. Eyewitnesses say he was going to summon law officers




Clarke County Courthouse, Athens, Ga.

from within the building to halt a nearby gun-fight. [Carnes] was not himself involved in the fight. A bullet hit his left leg and he died several days later from complications.”¹⁹

- In 1922, Western Circuit Superior Court Judge Blanton Fortson granted a temporary injunction restraining certain named persons from doing further mob violence to a black man who lived in Barrow County (then part of the Western Circuit).²⁰ This was one of the first instances in history of mob violence being restrained by court order.
- At least five of the judges of the Western Circuit also served as members of the U.S. House of Representatives, and a sixth (the one-legged Charles Tait) served as a U.S. Senator.
- At least 15 of the judges of the Western Circuit attended the

University of Georgia School of Law (known as the Department of Law until 1937) or some other unit of the University.

- At least three of the judges of the Western Circuit are eponymous. The City of Carnesville in Franklin County is named after Thomas P. Carnes. Clayton Street in Athens in Clarke County, the City of Clayton in Rabun County and Clayton County are named after Augustin Smith Clayton. Dougherty Street in Athens in Clarke County, and Dougherty County are named after Charles Dougherty. 



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Endnotes

1. GA. CONST. of 1777, art. XXXVI.
2. Act of Dec. 10, 1845, 1845 Ga. Laws 18.
3. Act of July 31, 1906, 1906 Ga. Laws 24.
4. See 1 WARREN GRICE, *THE GEORGIA BENCH AND BAR* 113 (1931).
5. *Id.*
6. Act of Feb. 9, 1797, § 2, in A DIGEST OF THE LAWS OF THE STATE OF GEORGIA 620 (photo reprint 1981) (Robert Watkins & George Watkins ed., Philadelphia, R. Aiken 1800).
7. Act of Mar. 18, 1976, § 1, 1976 Ga. Laws 563.
8. Act of Apr. 20, 1995, § 1, 1995 Ga. Laws 1079.
9. *Memorial of Hon. James Jackson*, 78 Ga. 807, 808 (1887).
10. *In Memoriam Chief Justice Richard Brevard Russell*, 188 Ga. 869, 873 (1939).
11. *Memorial of Hon. Andrew J. Cobb*, 162 Ga. 843, 845-46 (1927).
12. 122 Ga. 190, 50 S.E. 68 (1905).
13. 117 Ga. 305, 43 S.E. 780 (1903).
14. See, e.g., Andrew J. Cobb, *Patriotism*, in REPORT OF THE THIRTY-FIFTH ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION 170, 175 (1918) (“There can be no set of circumstances that will ever justify mob violence. . . . I do not care what crime is committed. I do not care who the perpetrator is or what race he belongs to. Any man or set of men who takes the life of another, whether black or white, except in the manner prescribed by law, and according to the due process of the courts, is a murderer in the sight of God and man.”).
15. 1 DICTIONARY OF GEORGIA BIOGRAPHY 265 (Kenneth Coleman & Charles Stephen Gurr ed., 1983).
16. GEORGIA HISTORICAL MARKERS 180 (1976).
17. There are numerous and varying accounts of Tait’s challenge to Dooly and resulting events. See, e.g., 2 LUCIAN LAMAR KNIGHT, *GEORGIA’S LANDMARKS, MEMORIALS, AND LEGENDS* 24-26 (1914); 2 MEN OF MARK IN GEORGIA 326 (William J. Northern ed., 1910).
18. See E. Merton Coulter, *A Famous Duel That Was Never Fought*, 43 GA. HIST. Q. 365 (1959).
19. *Thomas P. Carnes*, WIKIPEDIA, http://en.wikipedia.org/wiki/Thomas_P._Carnes (last modified Dec. 16, 2010).
20. See James H. Chadbourn, *Lynching and the Law*, 20 A.B.A. J. 71, 76 (1934).