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The Western Judicial Circuit Today and in Bygone Times

A Short History of Local Superior Court Judges—Part Two

Part One of this article last week detailed the changing makeup of the Western Judicial Circuit. This concluding part recounts some anecdotes from the lives of the colorful men who have sat on the Western Circuit bench. This article is adapted from a speech given by the author to the Western Judicial Circuit Bar Association.

Three of the superior court judges of the Western Judicial Circuit also served as justices on the Supreme Court of Georgia.

The first of these judges, James Jackson, after serving as Western Circuit superior court judge for eight years, went on to become Associate Justice (1875–1880) and Chief Justice (1880–1887) on the Georgia Supreme Court. Jackson's commitment to individual rights was so great that it was said of him, "His cradle hymns were the songs of liberty."

The second judge, Richard B. Russell, Sr., perhaps the greatest of all Georgia judges, served seven years as Western Circuit superior court judge, then served on the Georgia Court of Appeals for nine years (1907–1916), and then was the Chief Justice on the Georgia Supreme Court for 15 years (1923–1938). Russell is the only person ever to serve as



Judge Richard B. Russell, Sr.

both Chief Judge of the Georgia Court of Appeals (1913–1916) and Chief Justice of the Georgia Supreme Court. In 1931 Russell had the unique 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, it is truly said, an "ideology of mercy, and of sympathy for the poor, the helpless, the unprotected and the underprivileged."

The third judge of the Western Circuit to serve on the state supreme court was Andrew J. Cobb. Unlike James Jackson and Richard B. Russell, Sr., Andrew J. Cobb was an appellate judge before he was a trial judge. Specifically, Cobb first served as an Associate Justice on the Georgia Supreme Court (1896–1907) and afterward as a Western Judicial Circuit superior court judge (1917–1921). It has been accurately said that Andrew J. Cobb "was conservative, but nevertheless he was unwilling to refuse to recognize a right or principle merely because it was novel." Unsurprisingly, therefore, Cobb was the author of the opinion for the Georgia Supreme Court in the 1905 landmark case of *Pavesich v. New England Life Insurance Co.*, the first American appellate court decision to recognize a constitutional right to privacy.

Andrew J. Cobb was also one of the most prominent of the courageous and enlightened Georgians who in the early-20th century publicly condemned lynchings, then the South's scourge.

- Thomas P. Carnes, the first superior court judge of the Western Circuit, died a strange and violent death in 1822, nine years after leaving office. Wikipedia reports that Carnes "was killed as a result of an injury he received while crossing the courthouse steps. Eye-witnesses say he was going to summon law officers from within the building to halt a nearby gunfight. [Carnes] was not himself involved in the fight. A bullet hit his left leg, and he died several days later from complications."

- In 1780, when he was about eight years of age, future superior court judge John Mitchell Dooly witnessed in his own home the murder of his patriot father, Col. John Dooly, by a band of Tories. Dooly County, GA is named after the murdered man.

- In 1802, future superior court judge Charles Tait, who had a wooden leg, challenged future superior court judge John Mitchell Dooly to a duel. Dooly, known for his sense of humor, is reputed to have replied 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! Although the duel never took place because Tait and Dooly reconciled on the dueling field, it remains the most famous

duel in American history which never occurred, and was the subject of a 1959 article in the *Georgia Historical Quarterly* authored by UGA history professor E. Merton Coulter.

- One of the first instances in history of mob violence being restrained by court order occurred as a result of an injunctive order issued by a superior court judge of the Western Circuit. In 1922 Judge Blanton Fortson granted a temporary injunction restraining certain named persons from doing further mob violence to a black man who lived in Statham.

- At least five of the judges of the Western Circuit also served as members of the U.S. House of Representatives, and one served as a U.S. Senator.

- At least seven of the judges of the Western Circuit are buried in Oconee Hill Cemetery: Augustin Smith Clayton, Alex S. Erwin, Andrew J. Cobb, Stephen C. Upson, Henry H. West, Carlisle Cobb and James Barrow. In addition, Charles Dougherty is probably buried there in an unmarked grave.

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