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GEORGIA LAW REVIEW

Published by the Students of the University of Georgia Law School

The Legal History of the University of Georgia...Chief Justice Richard B. Russell, Chief Justice, Supreme Court of Georgia.

A Case in the Court of Appeals...R. C. Bell

Three Decades of the Law School's Growth...W. G. Cornett

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The Legal History of the University of Georgia

Address by Chief Justice Richard B. Russell,
Chief Justice Supreme Court of Georgia.

I am here to file a brief. When notified of the subject upon which I was expected to speak I realized that my appearance amounted to a reversal of the ordinary procedure in our courts. Ordinarily the courts require by rule, or permit upon request the filing of briefs by members of the Bar. In obedience to the order of this Association I fulfill a commission of furnishing a brief of authorities upon the selected subject for future reference. I shall strictly confine myself to the specific subject, asking, however, the privilege of directing especial attention to a few outstanding facts in the past history of the University. These declarations of principles, so clearly understood by the founders of the University, are of such paramount importance that they should never be overlooked or forgotten by those who hereafter will wish to continue the work of the founders. As Georgia—a pioneer,—instituted the first State University, the principles which the fathers embodied in the institution must be followed, if the destiny which our forefathers saw was possible and which they hoped and prayed and believed their descendants would accomplish, shall, indeed, become a reality.

The legal history of the University does not, as is generally supposed, begin with the charter granted on January 25, 1785. It is true that this charter antedates by several years any other establishment of higher institutions of learning by any government in any American State,—a fact which every Georgian may contemplate with justifiable emotions of pride. The Act of 1785 gave to the Georgia University system its actual existence as an entity. It became an artificial citizen of the State by the gift of corporate existence by the Legislature. But in 1783, two years prior to the grant of the charter in 1785, the Act of July 31, 1783 (Marbury & Crawford's Digest, p. 132) clearly demonstrated that the leaders of thought in Georgia and the patriots who manned its ship of state had given much thought to the subject of education and were fully convinced that the general diffusion of knowledge among all classes of people was essential to the happiness of the people as well as to the perpetuation of true democracy. The Act of 1783 referred to
was "an Act for laying out the reserve land in the town of Augusta into acre lots, the erecting of an academy or seminary of learning, and for other purposes therein mentioned." The Act recites that in 1780 the Legislature, "taking into consideration the advantages that must necessarily result from the encouragement of the town of Augusta," had passed an Act for laying out the reserve of the public land in and near said town into acre lots, and directing the same to be sold at public outcry, and whereas the lots were laid out and sold, but certain restrictions were not complied with, and the sales had become null and void, and the lands again became vested in the State, commissioners were named to again sell the lots subject to restrictions set forth in the act. By section 4 of the act, it is provided: "And whereas a seminary of learning is greatly necessary for the instruction of our youth, and ought to be one of the first objects of attention, after the promotion of religion: Be it further enacted, That after the said commissioners have reserved one of the first lots for building a house of worship to the Divine Being, by whose blessing the independence of the United States has been established, and a reserve of ten other principal lots for the public uses—the monies arising from such sales, after defraying the charges for building said church, shall be, and they are hereby vested in the hands and power of said commissioners named as aforesaid, as trustees for the purpose of carrying into execution the intentions of this law, and for erecting an academy or seminary of learning as aforesaid, their heirs and successors in office forever, in trust for the sole use of the said church and academy or seminary." In this act provision was made, accompanied by an appropriation of land,—the only asset the Commonwealth then possessed,—to sustain and continue an academy long noted and noted in its beneficence as "Richmond Academy." By this act provision was also made for the establishment of academies in the towns of Washington and Waynesborough, upon like conditions with the academy at Augusta.

By "An Act for the laying out of two more counties to the westward, and pointing out the mode of granting the same," approved February 25, 1784 (Watkin's Digest, p. 290), the counties of Franklin and Washington were created, it being recited that "this is necessary in order to strengthen this State and for the convenience of its inhabitants that new counties should be laid out and properly settled." The territory embraced within the line "beginning at the Savannah river where the west line of Wilkes county strikes the same, thence along the said line to the Cherokee corner, from thence on the same direction to the South branch of the Oconee river, thence up said river to the head or source of the most southern stream thereof, thence along the temporary line separating the Indian hunting ground to the northern branch of the Savannah river, known by the name of Keowee, and down the said river to the beginning, . . . shall be a county, and known by the name of Franklin. The second county shall be bounded by a line beginning on the Oconee river where the last mentioned line strikes the same, thence
along that river to where it strikes the former temporary line, thence along the said line to the Cherokee corner, and from thence to the beginning: And all that tract of land included within the aforesaid lines shall be a county, and known by the name of Washington.” In section XII of the act it is declared: “That the county surveyors, immediately after the passing of this act, shall proceed to lay out in each county, twenty thousand acres of land of the first quality, in separate tracts of five thousand acres each, for the endowment of a college or seminary of learning, and which said lands shall be vested in and granted in trusts to his honor the governor for the time being. And John Houston, James Habersham, William Few, Joseph Clay, Abraham Baldwin, William Houston and Nathan Brownson, esqrs., and their successors in office, who are hereby nominated and appointed trustees for the said college or seminary of learning, and empowered to do all such things as to them shall appear requisite and necessary, to forward the establishment and progress of the same; and all vacancies shall be filled up by the said trustees. And the said county surveyors shall, in six months after passing of this act, make return to the trustees here-inbefore mentioned, of regular plats of all such tracts, as he shall have laid out and surveyed by virtue of this act.” While the act of 1783, above referred to, contemplated the establishment of an academy, it will be noted that the act of 1784 contains the first expression or intimation looking to the establishment of a “college or seminary of learning” State-wide in its benefit and influence, indicating that our forefathers had long appreciated the benefits of popular education controlled by the State, call it paternalistic, if you will. In pursuance of this act the eight tracts were laid out.

In 1785, as is universally known, the University had its birth as a potential citizen of the Commonwealth, a legitimate child of the State, publicly acknowledged as such, and by this charter charged with “the general superintendence and regulation of the literature of this State, and in particular of the public seat of learning,” the same being vested in the Senatus Academicus. Like Minerva from the brain of Jupiter, it sprang upon the arena accredited by the State and by it assigned to the most important duty in government, because it underlies all well-ordered government,—the proper training of its citizenry.

Without any apparent attempt at display in the use of words employed, the language of this charter is heroic because there breathes through every line the deepest sincerity as well as the most profound and unalterable conviction as to the principles expressed.

On January 27, 1785, “the representatives of the freemen of the State of Georgia in General Assembly met, and by the authority of the same” passed an Act entitled “an Act for the More Full and Complete Establishment of a Public Seat of Learning in This State.”

The Act is as follows:

“As it is the distinguishing happiness of free government that civil order should be the result of choice and not necessity, and the common wishes of
the people become the laws of the land, their public prosperity, and even existence, very much depends upon suitably forming the minds and morals of their citizens. When the minds of the people in general are viciously disposed and unprincipled, and their conduct disorderly, a free government will be attended with greater confusions and evils more horrid than the wild unculivated state of nature: It can only be happy where the public principles and opinions are properly directed, and their manners regulated. This is an influence beyond the stretch of laws and punishments, and can be claimed only by religion and education. It should therefore be among the first objects of those who wish well to the national prosperity to encourage and support the principles of religion and morality, and early to place the youth under the formation and instruction, by which minds may be molded to the love of virtue and good order. Sending them abroad to other countries for their education will not answer these purposes, is too humiliating an acknowledgment of the ignorance and inferiority of our own, and will always be the cause of so great foreign attachments, that upon principles of policy it is inadmissible.

"This country in the times of our common danger and distress, found such security in the principles and abilities which wise regulations had before established in the minds of our countrymen, that our present happiness, joined to the pleasing prospects, to see that the intent of this institution for education and support shall be carried into effect; and the persons named, who shall compose another board, denominated "The Board of Trustees." These two boards united, or a majority of each of them, shall compose the Senatus Academicus of the University of Georgia.

"Sec. III. Property vested in the University shall never be sold without the joint concurrence of the two boards, and by an Act of the Legislature; but the leasing, farming and managing of the property of the University for its constant support, shall be the business of the board of trustees: For this purpose they are hereby constituted a body corporate and politic, by the name of "The Trustees of the University of Georgia:" by which they shall have perpetual succession, and shall and may be a person in law, capable to plead and be impleaded, defend and be defended, answer and be answered unto, also, to have, take, possess, acquire, purchase, or otherwise receive lands, tenements, hereditaments, goods, chattels or other estates, and the same to lease, use, manage, or improve, for the good and benefit of said University; and all property given or granted to or by the government of this State for the advancement of learning in general, is hereby vested in such trustees in trust as herein described.

"Sec. IIII. As the appointment of a person to be the president of and head of the University is one of the first and most important concerns on which its respect and usefulness greatly depend, the board of trustees shall first examine and nominate: but the appointment of the president shall be by the two boards jointly, who shall also have the power of removing him from office for misdemeanor, unfaithfulness, or incapacity.
of the Council, shall preside; their records to be kept by the secretary of the
University.

"Sec. VI. As the affairs and business of the University may make more
frequent meetings of the trustees necessary, the president and two of the
members are empowered to appoint a meeting of the board, notice always to
be given to the rest, or letters left at the usual places of their abode, at least
fourteen days before the said meeting; seven of the trustees thus convened
shall be a legal meeting. In case of the death, absence, or incapacity of the
president, the senior trustee shall preside. The majority of the members pre-
sent shall be considered a vote of the whole; and where the members are di-
vided, the president shall have a casting vote.

"Sec. VII. The trustees shall have the power of filling up all vacancies
of their own board, and appointing professors, tutors, secretary, treasurer, stew-
ard, or any other officers which they may think necessary, and the same
to discontinue or remove as they may think fit; but not without seven of their
number, at least, concurring in such act.

"Sec. VIII. The trustees shall prescribe the course of public studies, ap-
point the salaries of the different officers, form and use a public seal, adjust
and determine the expenses, and adopt such regulations, not otherwise provided
for, which the good of the University may render necessary.

"Sec. IX. All officers appointed to the instruction and government of the
University shall be of the Christian religion; and within three months after
they enter upon the execution of their trust, shall publicly take the oath of
allegiance and fidelity, and the oaths of office prescribed in the statutes of
the University; the president, before the governor or president of the council;
and all other officers before the president of the University.

"Sec. X. The president, professors, tutors, students, and all officers and
servants of the University, whose office require their constant attendance,
shall be, and they are hereby excused from military duty, and from all other
such like duties and services; and all lands and other property of the Univer-
sity is hereby exempted from taxation.

"Sec. XI. The trustees shall not exclude any person of any religious
denomination whatsoever from free and equal liberty and advantages of edu-
cation, or from any of the liberties, privileges and immunities of the University
in his education, on account of his, her or their speculative sentiments in
religion, or being of a different religious profession.

"Sec. XII. The president of the University, with the consent of the trust-
ees, shall have power to give and confer all such honors, degrees, and licenses,
as are usually conferred in colleges or universities, and shall always preside
at the meeting of the trustees, and at all the public exercises of the University.

"Sec. XIII. The Senatus Academicus at their stated annual meetings shall
consult and advise, not only upon the affairs of the University, but also to
remedy the defects, and advance the interests of literature through the State
in general. For this purpose it shall be the business of the members, previous
to their meeting, to obtain an acquaintance with the state and regulations of
the schools and places of education in their respective Counties, that they may
be thus possessed of the whole, and have it lie before them for their mutual
assistance and deliberation. Upon this information they shall recommend
what kind of schools and academies shall be instituted, agreeably to the con-
stitution, in the several parts of the State, and prescribe what branches of
education shall be taught and inculcated in each. They shall also examine,
and recommend the instructors to be employed in them, or appoint persons
for that purpose. The president of the University as often as the duties
of his station will permit, and some of the members, at least once a year, shall
visit them, and examine into their order and performances.

"Sec. XIV. All public schools, instituted or to be supported by funds or
public monies, in this State, shall be considered as parts or members of the
University, and shall be under the foregoing directions and regulations.

"Sec. XV. Whatever public measures are necessary to be adopted for
accomplishing these great and important designs, the trustees shall from
time to time represent and lay before the General Assembly."—(Watkins' Digest, p. 299).
As will be noted, this Act gave to the Senatus Academicus, composed of the Board of Visitors and the Board of Trustees, "The general superintendence and regulation of the literature of this State, and in particular of the public seat of learning." But alas, the legislature omitted one of the most important features in the Act establishing the University, in that they made no real provision which would enable the trustees selected by the legislature to bring an actual university from the airy heaven of the imagination and place it upon substantial foundation upon the earth in any definite period of time. The 40,000 acres of land which had been set apart for the purpose in 1784 was all of it in unsettled territory. 5,000 acres of it was in territory in dispute between South Carolina and Georgia. If the immediate erection of buildings and employment of teachers had been attempted and individual generosity had withheld its aid from the project, it is not probable that the 40,000 acres of land could have been sold at once for a sum exceeding ten cents per acre, or a sum total of $4,000.00. It must be remembered that, while the 40,000 acres was to be land of the first quality, Georgia was at this time granting millions of acres to settlers, especially from Virginia and North Carolina, without any charges other than the fees for surveying and recording the land grants, and in the sales of the University lands this competition would have greatly reduced their price. The truth of St. Paul's statement that "the spirit indeed is willing but the flesh is weak" is approved by the failure of the charter of 1785 to promptly provide the University which its founders designed. For a long period of time, it was impossible to assemble a quorum of the Board of Trustees, who then comprised some of the most distinguished men in the State, nearly all of whom were engaged in distinguished public service. The charter of 1785 did not locate the University.

We find the next reference to the University as such in the act passed at Augusta, on January 26, 1786, (Watkins' Digest, p. 320) providing for the creation of the town of Louisville, and for the location of the State capital at Louisville. In this act it is provided that the commissioners "who shall lay off the town of Louisville, at a point within twenty miles of Galphin's old town" were directed to lay off and mark out the land for the capitol building, penitentiary, the courthouse, and gaol, and "the University." How much land should be laid off to the University at Louisville or in what portion of the new town of Louisville it should be located is as indefinite as the location of the town itself. This, as has been stated, was to be within twenty miles of "Galphin's old town," but might be either north, south, east or west; northeast, southwest, northwest, or southeast, or any other direction from said old town. So far as appears from the record, the injunction as to the laying off of lands or locating the University at Louisville was not obeyed by the commissioners. As is well known, the capitol building and penitentiary, were located in accordance with the act, but nothing was done as to the University further than the fact that the Senatus Academicus finally held a meeting at Louisville in 1799 which resulted in a tour of inspection of the lands of the University, and finally resulted in
planting the institution on a tract of 633 acres near Cedar Shoals in what had been formerly Franklin County, later Jackson, and at that time in the newly created county of Clarke.

On February 3, 1786, the legislature by “An Act for dividing the county of Washington,” designated boundaries for a new county to be called and known by the name of “Greene County,” and provided that the “court house and gaol shall be built . . . at a town to be laid out on the college survey on Richland Creek.” It was further provided “That the trustees of the University, or a majority of them, shall be and they are hereby empowered and requested to lay out or cause to be laid out, a town, which shall be known by the name of Greensborough, on said college survey; and after reserving a number of lots sufficient for public buildings, to sell and convey the remaining lots and land adjacent . . . provided only that the money arising from the sale of said lots and lands adjacent, shall be applied to the sole purpose of promoting learning and science, and the quantity of land to be laid off does not exceed one thousand acres.” Watkins' Digest, p. 322.

On February 13, 1786, the trustees of the University held a meeting in Augusta looking to taking active steps towards putting the University in actual operation, and Abraham Baldwin was elected President of the College. However, the institution was not then actually started and the legislature, by an act approved December 5, 1800, being an act “to repeal an ordinance passed at Augusta the 26 day of January, 1786, so far as represents the fixing of the seat of the University” and to repeal “an act for the more full and complete establishment of a public seat of learning in this State, so far as respects the appointment of trustees, and to appoint a board of visitors and to define the board of visitors, and to fix a permanent seat for the said University,” was passed. Marbury and Crawford's Digest, p. 563. In this act it was declared that the University should be located in one of seven named counties, to-wit: Jackson, Franklin, Hancock, Greene, Oglethorpe, Wilkes, or Warren. The legislature also abolished the prior board of trustees and appointed instead a new board composed of Abraham Baldwin, Hugh Lawson, Benjamin Taliaferro, Joseph Clay, Jr., James Jackson, John Twiggs, John Clarke (of Wilkes), the Rev. Robert M. Cunningham, John Milledge, Josiah Tatnall, Jr., Ferdinand O'Neal, John Stewart and James M'Neil. In this act the board of visitors was also reconstituted, so as to be composed of the Governor, the Judges of the superior courts, the President of the Senate, the Speaker of the House of Representatives, and all the Senators except those from the counties in which the Governor, Judges, President of the Senate and Speaker of the House of Representatives at the time resided,” whose duty it shall be to superintend and regulate the literature in this State, and in particular of the public seat of learning.” The fourth section of the act provided that it should be the duty of the board of trustees to call for and possess themselves of “any funds, papers or books belonging to the said university in any manner whatever.” The new board of trustees was vested with all the powers given by the charter granted in 1785. Upon the passage of this
act the trustees held a meeting, and after many ballots decided upon Jackson county as the location for the University. John Milledge, Abraham Baldwin, George Walton, John Twiggs and Hugh Lawson were appointed as a committee to select a site for the buildings. The Augusta Chronicle of July 25, 1801, tells us that “the committee repaired to the county of Jackson and proceeded with attention and deliberation to examine a number of situations as well upon the tracts belonging to the University as upon others of private individuals. Having completed their views, they proceeded by ballot to make the choice, when the vote was unanimous in favor of a place belonging to Mr. Daniel Easley at the Cedar Shoals upon the north fork of the Oconee river and the same was resolved to be selected and chosen for the seat of the University of Georgia. For this purpose the tract, containing 633 acres, was purchased of Mr. Easley by Mr. Milledge, one of the committee, and made a donation of to the trustees; and it was called Athens.”

As just stated, Abraham Baldwin, the reputed author of the charter of 1785, had been elected president of the University at a salary of $1,200 per annum. However, this was prior to the act of December 5, 1800, which abolished the prior board of trustees and reconstituted a new board. Furthermore, Mr. Baldwin had been elected as United States Senator from Georgia and resigned the presidency of the University and Josiah Meigs, also a native of Connecticut, whom Mr. Baldwin had recommended for Professor of Mathematics, was elected President, and upon him fell the task of actually organizing and initiating the actual University of Georgia. President Meigs was appointed on trial (“upon examination”) and requested to teach until enough pupils should attend to authorize the employment of a tutor. The lack of funds with which to make the improvements directed by the trustees necessitated a loan of $5,000 by the legislature by the act approved December 27, 1802, Cobb’s Digest, p. 1086. This sum was supplemented by a gift of $1,000 by Mr. James Gunn, of Louisville, and the trustees ordered the erection of the brick building which still stands and is known to every alumnus as “Old College.” The first commencement of the college occurred May 31, 1804, and the degree of Bachelor of Arts was conferred upon a class of twelve, while four men, three of them well known in the history of this State, Elijah Clarke, William Prince, John Forsyth and Henry Meigs received the Degree of Master of Arts.

In 1808 the Legislature declared that “whereas the board of trustees of the University consists of thirteen members, which is deemed too unwieldy and expensive, vacancies which may occur shall not be filled until the number is reduced to seven,” (Clayton’s Digest, p. 456) and by the act of December 16, 1811, a new board of trustees was appointed, consisting of Peter Early, Edward Paine, Stephen Upson, John Griffin and William H. Crawford, thus reducing the number of trustees to five. By the act of 1811 it was also provided that “the Senatus Academicus shall meet at Milledgeville annually on the second Monday in November, before whom the board of trustees shall lay all their proceedings relative to the said
University . . . The examination of the students of the College for degrees, shall be conducted by three of the trustees, with assistance of the president and professors . . . " Cobb's Digest, p. 1087.

By an act "to authorize the Trustees of the University of Georgia to sell the lands belonging to said University, and to systematize the funds belonging thereto," approved December 16, 1815, (Cobb's Digest, p. 1088) the trustees were authorized to sell the several tracts of land donated by the act of 1784 and it was provided that if the lands should be disposed of upon a credit the bonds given for the same should be secured by good personal security, together with a mortgage upon the land so purchased, and further authorized the Governor to advance two-thirds of the face value of the bonds and mortgages as deposited in the State Treasury, which amount was to be invested in bank stock. Under the provisions of this act the Governor subscribed for 1,000 shares of stock for the University in the Bank of the State of Georgia. It was provided that the trustees should never dispose of the stock without the consent of the Legislature but should use only the dividends or proceeds therefrom. By this act ten additional members, consisting of David B. Mitchell, Thomas U. P. Charlton, Nicholas Ware, Henry Kollock, Augustin S. Clayton, James Merriwether, James M. Wayne, John Elliot, John A. Cuthbert, and George S. Troup were added to the board of trustees.

President Meigs was first reduced to the Professorship of Mathematics, and a little later was compelled to resign on account of a too free expression of his political opinions, just as he had been relieved of his chair at Yale. Contrary to what we would at this time suppose, Meigs, though from Connecticut, was an ardent partizan of Thomas Jefferson, such followers then being called Republicans as contradistinguished from Federalists. After his resignation he was unable to leave Athens until Mr. Jefferson secured for him the appointment as Surveyor-General at Cincinnati, and two years thereafter he was made Commissioner of the General Land Office. His daughter was the wife of John Forsyth, Governor and Senator from Georgia, and Attorney General of the United States under Andrew Jackson.

By the act approved December 21, 1821, it was provided that "the permanent endowment of the University shall consist of a sum not less than eight thousand dollars per annum, and that when it shall so happen that the dividends furnished by the bank stock granted to the University (by the act of December 16, 1815) shall not be equal to the sum aforesaid, the Treasurer of this State is required to make up the deficiency semi-annually out of any monies in the Treasury not otherwise appropriated." The Constitution of 1877 recognized this debt of $100,000, thus guaranteeing that the $8,000 will ever be paid in the future as it has in the past. By this act the Trustees "of Franklin College" were authorized to collect and retain the sum of ten thousand dollars arising from the sale of fractional surveys previous to the year 1821. This legislative reference to "Franklin College," was a recognition of the resolution
passed by the Board of Trustees in 1804 "that the present collegiate buildings at Athens be hereafter denominated and known as Franklin College." By this act the Legislature also directed the Treasurer of this State to pay to the Treasurer of the University the sum of $15,000 out of the first money paid into the Treasury on account of the purchases made at the sale of the University lands, which sum, together with the $10,000 arising from the sale of fractional surveys were to be applied, under the direction of the Trustees, to the building "of a new collegiate edifice at Athens," since popularly known as "New College." An act "explanatory of the act passed December 21, 1821" was approved December 19, 1822, but makes no material alteration of the prior enactment.

At its session in 1822 the Legislature passed two acts (Acts 1822, pp. 136, 137) concerning the collection of debts due the University arising from the sale of the University land, and granting indulgence to the purchasers thereof. These acts are interesting mainly because they evince the grave apprehension of the Legislature that the purchasers of the lands would never pay for them and thus leave the University without this means of support, and the acts seek to provide means by which any purchaser could complete his payments.

By an act approved February 9, 1854, the Legislature repealed "so much of the charter of the University of Georgia as requires an oath or oaths to be taken by the officers thereof," and altered and fixed "the time of the Meeting of the Senatus Academicus," setting same for Thursday of the first week of each stated meeting of the General Assembly. Acts 1854, p. 114 and notes.

On December 11, 1858, an act was approved which provided that the Governor of the State, or, in his absence, "the oldest member present" should be the President of the Board of Trustees of Franklin College, and provided that no member of the Faculty should be a member of the Board of Trustees. Acts 1858, p. 107.

In 1859, at the regular meeting of the Board of Trustees of the University, it was determined to reorganize the plan of the University, and in this reorganization the law school was established under the supervision of Joseph H. Lumpkin, Thomas R. R. Cobb and William Hope Hull. By an Act of December 19, 1859, the Lumpkin Law School was incorporated and these three gentlemen were both the incorporators and the professors. On August 4, 1850, these three named gentlemen had been elected professors and the law school opened in the autumn of that year. From that time until the death of Judge Lumpkin (first Chief Justice of Georgia) in 1867, the law department of the University of Georgia was conducted under the name of the Lumpkin Law School. Since 1867, the law school has been conducted under the name of the Law Department of the University of Georgia.

On December 14, 1859, (Acts 1859, p. 26) "An act to abolish the Senatus Academicus, to give its powers to the Board of Trustees of the University of Georgia, and to vest the government of said University in said Board of Trustees," was approved. It is recited in the preamble of this act that "Experience has shown that the
body known as the Senatus Academicus, on account of the hurried manner in which its sessions are generally held, has a tendency to defeat, rather than promote the objects for which it is designed.” By this act the Board of Trustees was given power to elect its own officers. The compiler of the Acts of 1859 recites that “This ancient Aegis of our State University, held its last session, at the Capitol, in Milledgeville, on the 3rd, 4th and 5th of November, 1859, having existed, under various modifications, upwards of seventy years.”

“On February 26, 1877, “An Act to repeal so much of section 1203 of the Code, (section IX of the charter) as in violation of par. 6, art. 1 of the Constitution of the State of Georgia, as prohibits a portion of the people of Georgia from holding office on account of religious opinions” was approved, and by its terms struck from said section the words “all officers elected or appointed for the University of Georgia shall be of the Christian religion.” Act 1877, p. 17.

The University of Georgia was the subject for much discussion during the Constitutional Convention of 1877, with the final result as contained in art. 8, sec. 6, par. 1 of the Constitution of 1877 which declares “The Trustees of the University of Georgia may accept bequests, donations, and grants of land or other property for the use of said University. In addition to payment of the annual interest on the debt due by the State to the University, the General Assembly may, from time to time, make such donations thereto as the condition of the treasury will authorize. And the General Assembly may also, from time to time, make such appropriations of money as the condition of the Treasury will authorize, to any college our university (not exceeding one in number) now established, or hereafter to be established, in this State for the education of persons of color.” This paragraph was amended by the act of 1920, p. 32, making provisions for appropriations to high schools and the State University. The provision for appropriation to a university for colored people was repealed.

In the third section of the Act of 1785 chartering the Trustees of the University of Georgia, it is provided that “all property given or granted to or by the government of this State for the advancement of learning in general, is hereby vested in such Trustees in trust as herein described.” And, in the fourteenth section of the charter, the power was given to the Board of Trustees to establish public schools or branch colleges as parts or members of the University, which should be subject to all the provisions of the original charter affecting the parent institution thereby established. Section 14 is as follows:

“All public schools instituted or to be supported by funds or public monies in this State shall be considered as parts or members of the University, and shall be under the foregoing directions and regulations.”

The general scheme of the charter was to give the corporate body designated “by the name of the Trustees of the University of Georgia,” and expressly endowed with perpetual succession, the supervision of the entire educational system of the State, which
might be dependent for support upon any portion of the public funds.

Prior to the Civil War, the University had constituted only one college of the proposed University system. This was known as Franklin College, named in honor of the great statesman and philosopher, Benjamin Franklin. Had it not been for the wisdom of the Act of 1785 in visualizing the future existence of a university somewhat on the model of the English universities, which consisted of an aggregation of colleges, it is possible that the State of Georgia would have lost the Land-Script Fund accruing under the Act of Congress of 1862. The foresight of the Legislature of 1785 made possible for the Trustees of the University of Georgia to comply with the Act of 1862 supra and thus save that fund for the State of Georgia, by reason of the fact that the University of Georgia was the only institution of learning in this State at the time of the passage of the Land-script Act which could comply with the conditions imposed by Congress. In 1862, the Congress passed an act giving to the several States an amount of public land to be apportioned each State a quantity equal to thirty thousand acres for each Senator and Representative to which each State was respectively entitled, for the maintenance and support of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and mechanic arts, in such a manner as the Legislature of the State may respectfully prescribe, in order to promote liberal and practical education of the industrial classes in the several pursuits and professions in life. Of course, in 1862, our common country was dismembered and belligerent, and the Southern States were not actually represented in the Congress of the United States. However, it may be said that it was greatly to our benefit at this juncture that the Northern States did not recognize our secession, but considered us still within the bounds of the Union and entitled to representation in Congress upon the scale of representation fixed by the census of 1869. This Act required that each State should express its acceptance of the provisions of the Act of 1862 by its Legislature within two years from the date of its approval by the President. Owing no doubt to the state of war, Congress in 1866 extended the time by amending the original Act so as to provide that "the acceptance of the benefits of the said Act may be expressed within three years from the passage of this Act, and the colleges required by the said Act may be provided within five years from the date of filing such acceptance with the Commissioner of the General Land Office." Act of July 12, 1866, ch. 109; 14 Stat. L., 208.

In March, 1866, (Acts 1865-66, p. 5) the General Assembly in behalf of the State of Georgia accepted the provisions of the Act of 1862, (12 Stat. L., 203) as amended by the Act of Congress of 1866, (14 Stat. L., 208) and by an Act approved December 12, 1866, (Georgia Laws, 1866, p. 64) the Governor was directed to apply for and receive the script, sell it to the best advantage and invest the proceeds of the sale in bonds of this State and disburse the interest
of the investment for the support of the college contemplated by the Act of Congress.

One of the conditions of section five of the Land-Script grant was that "if any portion of the fund or any portion of the interest thereon shall by any action or contingency be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the fourth section of this Act, except that a sum not exceeding ten per centum upon the amount received by any State under the provisions of this Act may be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective legislatures of said States." Section four, to which we have just referred, provides "that all monies derived from the sale of lands aforesaid by the States to which the lands are apportioned, and from the sale of Land-Script hereinbefore provided for, shall be invested in stocks of the United States or of the States, or some other safe stocks, or the same may be invested by the States having no State stocks in any other manner after the Legislatures of such States shall have assented thereto and engaged that such funds shall yield not less than five per centum upon the amount so invested and that the principal thereof shall forever remain unimpaired." Under the provisions of the Land-Script grant as contained in section three of the Act of 1862 (12 Stat. L., 504), "all the expenses of management and disbursement of the monies shall be paid by the States to which they may belong out of the Treasuries of said States, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned." A further condition of the grant is contained in the second subdivision of section five of the original Act that "no portion of said fund nor the interest thereon shall be applied directly or indirectly under any pretense whatever to the purchase, erection, preservation or repair of any building or buildings." The provision which prevented the State of Georgia from sooner accepting the Land-Script grant is contained in section five of the Act, (12 Stat. L., 504) that "no State while in a condition of rebellion or insurrection against the government of the United States shall be entitled to the benefit of this Act." This Act is generally known as the "Morrill Act." On March 30, 1872, Governor Smith, in conformity with the provisions of the Act of 1886 (Acts 1865-66, p. 5), made a contract with the Trustees of the University of Georgia authorizing them to found the State College of Agriculture and the Mechanic Arts. (Minutes of the Executive Department 1870-1874, p. 329.)

The executive order relating to this contract recites that "Whereas, the time allowed the State accepting said donation to establish a college or colleges under the provisions of said act of Congress will expire on the 2nd day of July, 1872, when by the terms of said grant, if a college such as is therein described shall not have been established, the grant shall cease, and this State will be bound to repay to the United States the proceeds of the donation aforesaid," then recites that the Legislature by act of March 10,
1866, had accepted the terms of the Act of Congress of 1862, as amended, and that Hon. Benjamin Conley, exercising the executive powers of the government, on January 1, 1872, had sold the scrip issued to one Gleason F. Lewis for $243,000, upon terms of $50,000 cash, and balance in eighteen months from date of sale, and then recites the act of December 12, 1866, and "whereas, the University of Georgia is the only institution of learning in this State having power by law to organize and establish a college in all respects such as is described in said act of Congress" and "the Board of Trustees having established a college, distinct in its organization and specific as to its object, in conformity in every respect with the act of Congress above named, as follows, that is to say," and then follows the order of the Board of Trustees organizing the new college. By this order of Trustees the college was named "The Georgia State College of Agriculture and Mechanics Arts." The Chancellor of the University was charged with the government of the said college, under regulation of the Board of Trustees of the University. The officers of the new college were designated as (1) a President charged with the active supervision of the college, subject to the Chancellor, (2) a Professor of Agriculture and Horticulture, who, in addition to the duties of his chair, was required to each year, in different parts of the State, deliver such "popular lectures on agriculture and horticulture" as may be found practical, (3) Professor of Analytic and Agriculture Chemistry, (4) Professor of Mineralogy and Economic Geology, (5) Professor Industrial Mechanics and Drawing, (6) Professor of Natural History and Philosophy, (7) Professor of Physical Geography and Meteorology, (8) Professor of English Language, (9) Professor of Military Tactics. This order also created an "engineer department" by transferring the Civil Engineering School under Professor Charbonnier from the University to the new college, and further, guarantees free tuition to as many students, residents of the State, as there are members of the General Assembly; and extends rules and regulations of the Board of Trustees, applicable to the University, to the Agricultural College, where not inconsistent with "this act of organization." The Chancellor of the University was ordered to open the college by May 1st, 1872. This order, or resolution, was signed by C. J. Jenkins, as President, and Wm. L. Mitchell, as Secretary, of the Board of Trustees of the University. The executive order then proceeds: "Ordered, that the $243,000 derived from the sale of the Land-Script, as aforesaid, shall be invested in the bonds of the State of Georgia bearing seven per cent. interest and that the money so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished and the interest of which shall be inviolably appropriated to the endowment, support and maintenance of the college organized by the Board of Trustees of the University of Georgia as hereinbefore set forth."

It will be observed that not one cent of the funds appropriated by the Morrill Act (as well as subsequent donations by the National Government) can be expended for buildings.

The City of Athens, by the issue of $25,000.00 in bonds and by
donating them to the Trustees of the University of Georgia, enabled them to comply with the requirement of the Act, which forbade the expenditure of any portion of the fund in the erection or repair of buildings, and thereby secured the location of the second college of the University system at Athens.

By the Act of August 30, 1890, ch. 841, 26 Stat. L., 417,) Congress provided "that there shall be, and hereby is, annually appropriated, out of any money in the Treasury not otherwise appropriated arising from the sales of public lands to be paid as hereinafter provided, to each State and Territory, for the more complete endowment and maintenance of colleges for the benefit of agricultural and mechanic arts now established, or which may be hereafter established, in accordance with an Act of Congress approved July 2, 1862, the sum of $15,000.00 for the year ending June 30, 1890, and an annual increase of the amount of such appropriation thereafter for ten years by an additional sum of $1,000.00 over the preceding year, and the annual amount to be paid thereafter to each State and Territory shall be $25,000.00, to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural and economic sciences, with special reference to their application to the industries of life and to the facilities for such instruction." This Act further provided that no monies should be paid out under this Act to any State where a distinction of race or color is made in the admission of students, though the maintenance of separate colleges for white and colored students should be held to be a compliance with the provisions of the Act, if the funds received in such State are equally divided. (26 Stat. L., 417.) To this Act was added the proviso that in any State where a college had been established under the provisions of the "Morrill Act" and also in which an educational institution of like character has been or may be established for the education of colored students in the educational and mechanic arts and is now aided by such State from its own revenue, the Legislature of such State may propose and report to the Secretary of the Interior a just and equitable division of the fund to be received under the Act between one college for white students and one institution for colored students. The Act of Congress of 1890 provides for the time and manner of the annual payments to the States and that if any portion of the monies for the support and maintenance of colleges or the institutions for colored students shall by any action or contingency be diminished or lost or be misapplied, it shall be replaced by the State or Territory to which it belongs, and, until, so replaced, no subsequent appropriation shall be apportioned or paid to such State or Territory, and no portion of said monies shall be applied directly or indirectly under any pretense whatever to the purchase, erection, preservation or repair of any building or buildings." The third section of this Act also requires a report by the President of such colleges to be made to the Secretary of Agriculture as well as the Secretary of the Interior annually. Upon the Agricultural Appropriation Act of March 4, 1907, ch. 2907, was engrafted what is known as the "Nelson Amendment," which pro-
vides for the annual appropriation out of any money in the Treasury not otherwise appropriated the sum of $5,000.00 in addition to the sums named in the original "Morrill Act" and the Act of 1890 for the fiscal year ending June 30, 1908, with an annual increase of the amount of such appropriation thereafter for four years by an additional sum of $5,000.00 over the preceding year making in all $25,000.00 and the annual sum thereafter to be paid $50,000.00.

In 1914, by the Act of May 8, 1914, ch. 79, 38 Stat. L. 372, what is known as the "Agricultural Extension Work Act" was put in operation. By this Act provision is made for a permanent appropriation at the expiration of nine years of the sum of Four Million One Hundred Thousand ($4,100,000.00) Dollars for each year, "in addition to the sum of Four Hundred Eighty Thousand ($480,000.00) Dollars hereinbefore provided" to aid in diffusing among the people of the United States useful and practical information on subjects relating to agriculture and home economics and to encourage the application of the same. The work was to be inaugurated in connection with the college or colleges in each State which were receiving the benefits of the "Morrill Act" and the Act of August 30, 1890, (26 Stat. L., p. 417). The annual sum before referred to is allotted annually to each State by the Secretary of Agriculture and paid in the proportion which the rural population of each State bears to the total rural population of all the States as determined by the next preceding census, and no payment out of the additional appropriations provided for years subsequent to 1907 until an equal sum has been provided by the Legislature of such State, or by State, county, college, local authority or individual contributions from within the State for the maintenance of the co-operative agricultural extension work provided for in this Act. (38 Stat. L. 373.)

The benefit of all of the foregoing Acts is received by the Georgia State College of Agriculture, which is, in reality, by virtue of the Act of 1906, (Georgia Laws, 1906, p. 10) the successor of the State College of Agriculture and Mechanic Arts to which previous reference has been made. Upon the acceptance of the original land grant provided by the "Morrill Act," the college at Dahlonega, known as the North Georgia Agricultural College, sought to be made a department of the University and was accepted by the Trustees October 24, 1872.

The Medical Department of the University of Georgia is located at Augusta. It started its career as an independent institution, being chartered by the General Assembly in 1828 as the Medical Academy of Georgia. Acts 1828, p. 111.

In the following year the name was changed to the Medical College of Georgia. Acts 1829, p. 107; Acts 1833, p. 130. Under this title it operated until 1872. On August 1, 1873, negotiations which had for some time been pending looking to the inclusion of this college into the State University system were concluded by the adoption of a resolution to that effect by the Board of Trustees of the University of Georgia. It thus became an integral part of the University system, known as the Medical Department of the University of Georgia. There was no express legislative sanction of this union.
until the passage of the act approved August 1, 1911 (Acts 1922, p. 154). By this enactment provision was made for the control and management of the Medical College of Georgia as a branch of the University. Its powers were defined and its property was transferred to the University. The existing Board of Trustees of the Medical College was displaced by a Board of Directors composed of nine members; six to be appointed by the Governor with the advice and consent of the Senate, and three to be appointed from the Board of Trustees of the University by the Chairman of said Board.

During its more than forty years of independent existence it had been more than once recognized by the State and assisted by donations from the State Treasury, (see Acts 1860, p. 66) and had given to the State a very large number of able and distinguished practitioners of medicine. Since its incorporation into the body of the University the General Assembly no doubt would have made more liberal provisions for its maintenance were it not for the fact that this branch of the University has only a leasehold of its buildings and grounds.

In 1882, the Hon. N. E. Harris, of Bibb County, introduced in the General Assembly of the State of Georgia a resolution providing for the appointment of a committee of seven to investigate the feasibility of establishing a school of technology and male training in the mechanic arts, who were authorized to examine institutions of the character mentioned in the Northern and Eastern States. In pursuance of this resolution, such committee was appointed and upon their return reported in favor of the establishment of such an institution as a branch of the University of Georgia. In accordance with this recommendation, Mr. Harris introduced a Bill for the establishment of a school of technology on the 25th day of July, 1883. Though the Bill was favorably reported by the Committee on Finance, and every argument in favor of its passage was suggested in the debate which followed upon the third reading of the Bill, the measure failed of passage at this session of the General Assembly. In the session of 1884, the measure was a second time introduced by Mr. Harris, and, in spite of much opposition, it was finally passed by the House on the 29th day of July, 1885, and, thereafter passing the Senate, was approved by the Governor on October 13, 1885. (Acts 1884-85, p. 69.) The government of this branch of the University was committed to a Board of Trustees consisting of five members, and the location of the school by these Trustees was to be determined in favor of the community offering the greatest inducements in the way of contribution to the establishment of the new school of technology then denominated "The Technological School, a branch of the State University." As a result of a competitive contest in which the Trustees adjudged that the City of Atlanta offered the largest inducements for the location of the school, this branch of the University was located at Atlanta and the construction began in the year 1886. Since that time, Acts have been passed increasing the number of the Board of Trustees and changing the name, and, in 1911, the name was changed to the Georgia School of Technology. (Acts of 1911, p. 159.) Provision has also been
made, as found in Acts of 1912, p. 182, for the granting of honorary degrees by the Trustees of the University of Georgia to those who may be recommended by the Board of the Georgia School of Technology, and in 1919 the Legislature passed an Act authorizing the Trustees of the School of Technology itself to confer degrees appropriate to its course of studies.

On the 30th of August, 1887, your speaker introduced in the House of Representatives a Bill to Establish an industrial institute and college for the education of the girls of Georgia and for other purposes as a branch of the State University. This Bill was favorably reported, read for the second time and three hundred copies printed for the use of the House. It was the first effort to create a woman's college directed and supported by the State as an essential unit of the University system as contemplated by the Act of 1785. The demands upon the State Treasury in the completion of the State Capitol then in course of construction and in the appropriation for the erection of the School of Technology left the State without sufficient funds to initiate this undertaking at that session of the General Assembly. For that reason, its author did not press its passage, though the introduction of the Bill to establish a college as a part of the University for the education of the girls of Georgia attracted the attention and enlisted the hearty support of every leading daily newspaper at that time published in Georgia, and was endorsed by the pens of John H. Estill, of the Savannah Morning News; Henry W. Grady, of the Atlanta Constitution; Albert R. Lamar, of the Macon Telegraph; Patrick Walsh, of the Augusta Chronicle; and John Temple Graves, of the Rome Tribune. At the next succeeding session of the Legislature, Mr. Atkinson, of Coweta, later a distinguished Governor of Georgia and who as a member of the House in 1887 was one of the supporters of the Bill introduced by Mr. Russell, of Clarke, again presented the proposition to the General Assembly, and by his legislative skill and magnificent popularity succeeded in placing upon the statute books the Bill authorizing the creation of the Georgia Normal and Industrial College to be located at Milledgeville, which thus became a unit in the system of colleges embraced within the University of Georgia. In 1922 the name of the college was changed from the Georgia Normal and Industrial College to that of the Georgia State College for Women.

The Georgia State Industrial College for Colored Youths, a coeducational institution of learning for negroes, was instituted by the Act of November 26, 1890, Acts 1890, p. 114. By this act the act of 1874 (Acts 1874, p. 32) making an appropriation from the Land Script Fund to Atlanta University to equitably distribute the benefits of this fund between the white and colored races was repealed. It was located at Savannah and is governed by a Board of Directors subject to the Board of Trustees of the University, and to it the Trustees of the University appropriate that portion of the Land Script Fund agreed to be equitable in the division of such fund agreed to by the Commissioner of Education under the contract of 1890.
In 1891 a college for the education of male teachers was organized, to be located upon the property of the University formerly known as Rock College (and which was an academy for the instruction of youths preparatory to their entrance to Franklin College) known as the State Normal School. Acts 1890-91, (Vol. 1) p. 126. In 1893 the act establishing the School was amended to provide for the admission of females into the school as well as males. Acts 1893, p. 63.

In 1906 (Acts 1906, p. 75) another branch of the University was established at Valdosta, known as the Agricultural, Industrial and Normal College in South Georgia. This name was later, by Act of the Legislature (Acts 1913, p. 155) changed to The South Georgia State Normal College, and in 1922 the name of this college was changed to the Georgia State Woman's College at Valdosta. Acts 1922, p. 174.

The District Agricultural and Mechanical Schools were established by virtue of the Act of 1906 (Acts 1906, p. 72) "as branches of the State College of Agriculture, a department of the University of Georgia."

The Alexander H. Stephens Institute, at Crawfordville, was established as a branch of the University by the Act of 1916 (Acts 1916, p. 98).

In 1917 an act was passed which authorized the Governor to establish the Agricultural, Industrial and Normal School, for the training of colored teachers, which is located at Albany. Acts 1917, p. 195.

In 1919, the Bowden State Normal and Industrial College was established as a branch of the University, with a provision that its Board of Directors obtain a transfer of title to the trustees of the University of the property of the Bowden College, which was done, and thus Bowden College, established at Bowden in 1856, became a unit in the University system. Acts 1919, p. 262.

The South Georgia Agricultural and Mechanical College, at Tifton, and the Georgia Normal School, at Statesboro, were each established as branches of the University in 1924. Acts 1924, p. 177; Ibid, p. 165. The State Agricultural and Normal College, at Americus, was established in 1926, as a branch of the University. Acts Extraordinary Session, 1926, p. 34.

By section 1365 of the Code of 1910 the Chairman of the local Board of Trustees of each branch of the State University are designated as ex-officio members of the Board of Trustees of the University "where by laws now of force they are made such trustees."

Under this provision the President or Chairman of the Boards of Trustees or Directors of the State College of Agriculture, the North Georgia Agricultural College, The Medical College of the University, the Georgia State College for Women, the Georgia School of Technology, the Georgia State Woman's College, the Georgia State Industrial College for Colored Youths, the Bowden State Normal College, the South Georgia Agricultural and Mechanical College, and the State Normal School are ex-officio members of the Board of Trustees of the University.
In 1906 the Legislature, in recognition of valuable assistance rendered to the University, passed an act providing for the appointment of a non-resident, native Georgian to membership upon the Board of Trustees of the University, and Honorable George Foster Peabody, of Saratoga Springs, New York, whose beneficence had greatly aided the University, was appointed as such Trustee by the Governor. The act provides that no appointment shall be made to fill the office created in case it becomes vacant. Acts 1906, p. 77.

In addition to the above, the Board of Trustees of the University is composed of one member from each Congressional district, four from the State at large, (Code of 1910, para. 1365), three members from the City of Athens (Acts 1923, p. 56), four members elected from the Alumni Society (Acts 1925, p. 269), and the Governor, ex-officio. (Code of 1910, para. 1367.)

In Sec. 1397 of the Code of 1910, the authorized branches or colleges of the University system are set forth, and, by the provisions of Sec. 1398, all of the branch colleges for white students are made coeducational, except the School of Technology, which is confined exclusively to male students; and the Georgia State College for Women located at Milledgeville, which, by the terms of the Act creating it, reserves its benefits entirely for the girls of the State. Under the terms of the original charter of 1785, and by action of the Board of Trustees, female students are permitted to attend and to obtain degrees in old Franklin College, the original and initial member of the University system. A summary of the powers, duties and regulations from time to time enacted for the government of the University may be found as codified in Secs. 1363 to 1395, inclusive, of the Code of 1910. However, the Legislature in enacting that Code into laws recognized, as it had previously done, that quite a number of laws relating to the powers and privileges of the Trustees of the University in the administration of the great educational institution entrusted to them, were not embraced within the Code, and, therefore, it is provided in Sec. 1396 of the Code that “the various Acts of the General Assembly relative to said University in force at the time of the adoption of this Code, if not embraced herein and not inconsistent with what is so embraced, are still of force.” The rights of the University of Georgia, and what is far more important—its duties to the State as trustee when acting under the direction of the General Assembly, are fully recognized and expressed in every manner known to legal science: First, in our organic law, the Constitution of the State; second, in the Acts as embraced in the Code, as well as in any statutes relating to the University which have not been codified and are not repugnant to the Code; third, by decisions both of the Court of Appeals and the Supreme Court; and fourth, by numerous executive and administrative orders issued by properly authorized agents of both the State and National government.

There has been some confusion and contest as to the origin of the Act of 1785, and as to the authorship of the prior Act of 1784 under which the grant of forty thousand acres of land for a college or seminary of learning was first made. Abraham Baldwin is gen-
erally accredited with the honor of having first suggested in Georgia the idea of a State University of the nature of that set forth in the charter of 1785. In "Georgia, The Thirteenth Colony," written by Dr. Mildred Rutherford; as well as "Abraham Baldwin," a most delightful book written by Dr. Harry C. White, the illustrious Nestor of the faculty of the University, the claims of Abraham Baldwin to the right to be called the father of the University are strongly asserted, and Pippincott, in his history of Georgia, has given Abraham Baldwin credit for the Act of 1784, which really fore-shadowed the Act of 1785 chartering the University. However, in volume 2 of Stevens' History of Georgia, page 344, the learned author attributes the suggestion of the establishment of the University to Governor Lyman Hall's address to the Legislature on July 8, 1783. To whichever of these two great Georgians, Hall or Baldwin, the ideal thought of establishing a University for the higher education of our youth first came as an inspiration is immaterial. Their intimacy was such that no doubt the matter was privately discussed between them before there was any public expression by either as to a proposition at that time so seemingly nebulous. Both Hall and Baldwin were from Connecticut; both alumni of Yale where they became personally well acquainted; both tutors in Yale and ordained ministers of the Congregational Church in Connecticut, but both of whom, as very slyly suggested by Dr. White, found in reaching Georgia that the supply of ministers in Georgia at that time exceeded the demand; and so Hall became a physician and Baldwin a lawyer. It may be said to their credit, however, that as the practice of law and of medicine found field for labor just as sacred to humanity as the ministry itself, that under a foreordained dispensation of the Almighty, they were not called to preach, but ordained, the one to minister to the sick and the afflicted, and the other to guide his fellow citizens in the path of truth and righteousness in their civil affairs on this earth, the better to prepare them to reach and enjoy the blessings of the Great Hereafter. Were we to determine the question of the priority of suggesting the State University for Georgia as between Abraham Baldwin and Lyman Hall by the evidence as to the first public expression in favor of this proposition, the evidence would require finding in favor of Georgia's signer of the Declaration of Independence, Dr. Lyman Hall.

In addressing the Legislature on the 8th day of July, 1783, and, of course, before the passage of either the Act of 1784 or that of 1785, Lyman Hall, who was then Governor of Georgia, in the course of his address, said: "In addition, therefore, to wholesome laws restraining vice, every encouragement ought to be given to introduce religion and learned clergies to perform Divine Worship in honor to God and to cultivate principles of religion and virtue among our citizens. For this purpose, it will be your wisdom to lay an early foundation for endowing seminaries of learning; nor can you, I conceive, lay in a better, than by a grant of a sufficient tract of land, that may as in other governments, hereafter, by lease or otherwise, raise a sufficient revenue to support such valuable institutions."

From the foregoing brief of the legal history of the University
of Georgia we discover certain salient facts which constitute landmarks of the law which tend to keep it before our eyes and in our remembrance. These landmarks should serve no less the purpose of guiding those in official position aright in the future. As long as Georgia shall assist as a sovereign State it will be as true as when our forefathers of the General Assembly made their utterance that it is "the distinguishing happiness of free government that civil order should be the result of choice and not necessity, and the common wishes of the people should become the laws of the land, their public prosperity, and even existence, very much depends upon suitably forming the minds and morals of their citizens. When the minds of the people in general are viciously disposed and unprincipled, and their conduct disorderly, a free government will be attended with greater confusions and evils more horrid than the wild uncultivated state of nature; it can only be happy where the public principles and opinions are properly directed, and their manners regulated. This is an influence beyond the stretch of laws and punishments, and can be claimed only by religion and education. It should therefore be among the first objects of those who wish well to the national prosperity to encourage and support the principles of religion and morality, and early to place the youth under the forming hand of society, that by instruction they may be moulded to the love of virtue and good order.

"This country, in the times of our common danger and distress, found such security in the principles and abilities which wise regulation had before established in the minds of our countrymen, that our present happiness, joined to the pleasing prospects, should conspire to make us feel ourselves under the strongest obligation to form the youth, the rising hope of our land, to render the like glorious and essential services to our country."

It is notable in the charter which follows that the benefits of the proposed University are extended alike to all citizens of the State, expressly disregarding any diversity of race or creed, religious or political opinion, or station in life. It is an equally outstanding fact that this charter, after all has been said and done to promote equality of the sexes before the law, contains perhaps the first declaration in the laws of any nation, tribe or tongue of the equality of women in the grant of educational privileges by the State to its citizens. When the Legislature came to bestow the blessings designed by the creation of its highest seat of learning it declared in section eleven of the charter that "The trustees shall not exclude any person of any religious denomination whatsoever from free and equal liberty and advantages of education, or from any of the liberties, privileges and immunities of the University in his education, on account of his, her or their speculative sentiments in religion, or being of a different religious profession." All religious denominations were placed upon an equal footing and in the same class, sharing fully in all the blessings to be conferred, were those who had only "speculative sentiments in religion," thus including all who might not have made any decision, profession or affiliation with any of the denominations previously alluded to.
In using the word "her" in this section (eleven) the fathers perhaps foresaw the prophetic ken the equality of women in all respects with men, which obtains today, but whether they did or not, they were evidently determined that the girls should receive equal privileges in education of as high a grade as that accorded to the boys and did not hesitate to write the sentiment into law. Whatever may be said of the efforts of others thereafter to further the cause of higher female education, the Legislature of 1785, in the provision for the establishment of the University of Georgia, placed our commonwealth as a sturdy pioneer of the outstanding movement which has followed. I have alluded to these two incidents to show the broad scope within which the act was designed to operate, as embracing all the then citizens of the State (slaves never being citizens), but the outstanding fact of the State undertaking to educate its youth for the benefit of the State itself was so novel and so outstanding as to challenge profound consideration. It is a fact that this was the first instance in history where the State undertook by the establishment of a State university to furnish the sinews of war by which ignorance should be eradicated. It is true that previous provisions had been made for free schools to provide education of an extremely restricted character, the three R's as it was commonly said, based, I imagine, upon the supposition that those who received only the benefit of these primary schools began each of the three words, reading, writing, and arithmetic, with a capital R. But the Legislature of 1785 in the passage of the charter of the University of Georgia ushered in the dawn of a new day, recognized the truth of Pope's statement that "a little learning is a dangerous thing," and realized that really educated citizens are among the greatest assets in the commonwealth of any country, deemed it a duty to provide the means of a liberal education within the State so as to guarantee homogeneity in the ideals of our youth and patriotic devotion to the State. This idea, which is strongly impressed by a reading of the charter of the University, was but a natural outgrowth of a statute in existence which disqualified any citizen of this State who went abroad for an education and remained for as much as three years or more from holding any office of profit or trust in this State after his return for a like period of time, during which he was held to occupy the position of an unnaturalized alien, though he might have been born,—and his father before him,—upon the soil of Georgia or any of the United States. (Cobb's Digest, p. 364.)
A Case in the Court of Appeals

By R. C. BELL
(Address to Bar Association, 1927.)

The subject about which or away from which I shall talk to you on this occasion is, "A Case in—not on—the Court of Appeals." While it is true that, if we should include our entire official family, there may be cases ON the court, as well as IN the court, my selection of the particular subject resulted not from a disposition to discuss the characteristics of my colleagues or of the other officials, but rather from the notion that from the mass of litigated cases and the court's experiences with them, I might be able to glean something, of law or fact, of sense or nonsense, or a mixture of all, with which to interest you, at least as a diversion, while you wait for the next item on the program. I shall make no more than passing reference to any particular case, but will relate certain incidents connected with different cases, and tell something of the internal method of handling the court's business, with a few observations and comments thrown in for good measure.

As the result of a constitutional amendment proposed and ratified in 1906, the Court of Appeals came into existence on January 1, 1907. The number of judges was increased from three to six by an Act of the General Assembly passed in 1916. Since there is now but little reason why anybody should be informed upon the subject, I believe those who do not personally recall the legislation are generally of the impression that the increase in the number of judges was by virtue of the constitutional amendment adopted the same year; but this latter amendment was mainly to change the jurisdiction of that court and of the Supreme Court, by abolishing the prior illogical arrangement of having jurisdiction in civil cases depend upon the identity of the court in which the case originated, and by establishing in lieu thereof the more natural system of determining jurisdiction by the character of the case. The first of the amendments referred to fixed the number of judges at three, "until otherwise provided by law," and it was under this provision that the Legislature increased the number to six. See, Fountain vs. The State, 149 Ga. 519. The Act of 1916, held valid in the Fountain case, not only increased the number of judges, but also provided: "The court shall sit in divisions of three judges each, but two judges shall constitute a quorum of a division. The 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 the 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". Ga. L., 1916, P. 56.
Thus, it is seen that for the purpose of hearing and deciding cases, the General Assembly has all but nominally converted one court into two, making two Courts of Appeal, instead of one Court of Appeals. For the purpose of establishing and maintaining organization and rules, and of distributing the cases, the court is one; but for all other purposes, it is two. Under the Act from which I have just quoted, the division of the court into sections was mandatory, and it would not now be possible for the judges merely of their own volition to reunite themselves, for the decision of cases, into one body. A tribunal of unusual character has resulted. While the divisions of the court are and must be, for some purposes, separate and independent, for other purposes they compose a union which in the words of Webster might be described as “one and inseparable.” Is it not an interesting circumstance, that, whether purposely so designed, or whether created and developed only through an overruling and all-wise necessity, the Court of Appeals, in its dual form and character, appears to have been fashioned in the similitude of the greatest of all governments? And may not this sentiment, even if it is sentiment only, add to its honor as an institution and contribute to the inspiration of those who seek to serve through its processes?

Questions for decision are occasionally discussed informally by the judges of one division with the judges of the other division, but as a rule one division knows little or nothing of what the other is deciding until the decisions are published in the advance sheets of the Southeastern reporter. May I remark that, notwithstanding this fact, conflicts between the decisions of the respective divisions are exceedingly rare, and that the scarcity of such conflicts would seem to be evidence that each division is tracking the law pretty closely in its rulings?

It sometimes happens that, because of the disqualification or absence of one of the judges, a case will be decided by only two judges, who, according to the Act of 1916, constitute a quorum. This is no innovation, however, for the same rule prevailed in the Supreme Court from its creation until 1896, when the number of justices was increased from three to six. It was the uniform practice of that court “for about half a century to render decisions by two concurring justices whenever the same was necessary.” (Fountain case.)

On the reorganization of the court under the Act of 1916, it was provided by rule or order that, for the purpose of distributing the work, two criminal cases should be considered as the equivalent of one civil case, and in making up the calendars for the arguments the cases are allotted to the two divisions on this basis until all the criminal cases are exhausted, after which the remaining civil cases are distributed equally to the two divisions. The clerk, under the direction of the Chief Judge, prepares the monthly calls in accordance with this system. The judges do not, after the arguments, take the cases to their offices and divide them as they might divide a bushel of potatoes. But within each division, the cases are assigned to the different judges by a system of rotation. In addition to the court dockets, each judge has an individual docket in which he
keeps a record of the cases assigned to him. A judge is not, under the rules, obliged to keep a case merely because it falls to him on the argument; he may exchange it to another judge on his division if he can find one who is willing. For the most part, however, the cases are held and decided in accordance with the original assignments.

As is well known, the judges know nothing of what is contained in any of the cases until they are called for argument. It is then, as cases argued orally, that we receive the first impression. The judges are agreed that the best arguments are those which state most clearly and concisely the nature of the case and the questions presented for decision. This should be the first consideration. Other things may be added. The best brief is the one in which the attorney endeavors to place himself in the situation of the court and thus approaches and deals with the case as though he had the responsibility of deciding it. It should be the desire and aim of the attorneys to assist the court in every way possible to reach correct conclusions, and it may be further said that in a court of review the attorney who does not seek in good faith to accomplish that end generally will render no considerable service to his client. The court delights to find a thorough and impartial brief, but will, of course, look for the law wherever it may be found and will continue the pursuit until reason is anchored upon the best foundation to be discovered.

In the consideration of a case, I think the judges as a rule first read the briefs, beginning with that of the plaintiff in error. Next they read the record, after which they return to the briefs for the purpose of studying the authorities cited. And further reference, as may be necessary, will be made both to the record and the briefs. Those attorneys who wonder whether the judges read their briefs seemingly have no appreciation of the judicial attitude. The judge's task is a most onerous and responsible one, and he constantly feels the need of light. Where can he more naturally expect to find it than in the briefs of counsel?

Every record is not read by every judge. Otherwise, little time would be left for anything else. Each judge is trusted by the others to read the record and to state the facts of the case assigned to him. If my associates cannot depend upon me for the facts of the ordinary case in my charge, I am unworthy of a position on the court. If the judge whose lot it is to prepare and submit to his colleagues an opinion in a given case fails to include a sufficient resume of the facts, he will either state them orally or point out the material parts of the record for the perusal of the other judges. There is sometimes controversy between the attorneys as to the proper construction of a pleading, of evidence, or other parts of the record; in all cases of this character, where the matter in controversy is not copied verbatim in the opinion submitted, and in other instances where it is deemed necessary to a proper understanding of the case, all the judges read the material parts of the record before participating in a decision. The cooperation of counsel as to the manner and contents of their briefs could reduce the work of the court very materially on that score.
Each judge, in the preparation of an opinion, makes a carbon copy which he passes on with the record to his respective associates, each of whom, after consideration, makes a note on the margin of such copy, stating whether he concurs, dissents or wishes to consult, with perhaps comments or suggestions. This copy is retained in the private files of the judge writing the opinion. If an opinion has been returned to its author unconditionally okayed, the case is ready to be stricken from the docket as disposed of at any time the judges may come together for that purpose. This they are accustomed to do either in the court’s library or in the office of one of the judges. There is no form or ceremony in the rendition of a decision. When the judges are through with a case, it goes with the decision first to Messrs. Graham and Stevens, the reporters, who carefully study the decision for the purpose of correcting any errors the judge may have made—in spelling, grammar or rhetoric, after which they forward the decision and the record to the clerk. Whereupon, or presently, the clerk exposes the decision to public inspection on a table in his office. Up to this time the case has only been in process. Now it is decided.

Where a case has been the rounds of the judges and the opinion is not unanimously and unconditionally agreed to, it is brought to the consultation for discussion. The opinions are often times returned to the author badly disfigured if not entirely ruined. Each judge is constantly undergoing the severest discipline at the hands of his associates, for there is no delicate sentiment which saves one’s work from the hardest blow which any member of the court may see fit to give it. Many cases are brought to consultation repeatedly before they are passed. I have an unhappy recollection of one case (New Amsterdam Casualty Co. vs. Sumrell, 30 Ga. App. 682), a compensation case, in which I prepared the opinion, that was considered in at least six monthly conferences before it was finally agreed on. It was not decided until after the decision of some fifty other cases on my individual docket which it normally should have preceded. The opinion was changed and re-written several times in order to satisfy the views of the other judges.

In another case, New Zealand Fire Ins. Co. vs. Brewer, 29 Ga. App. 773, there was originally an opinion. The decision in that case was also written by myself and the opinion was amended and re-written eleven times, not merely for pastime, and not because I was not satisfied. The trouble was, I could not satisfy the other judges. The opinion at the final conference was rejected entirely, and the case was decided on the headnotes only. Great was the loss to posterity! This is but one of the many instances of the same nature in the experiences of each of the judges. In close cases the judges frequently write several opinions for the initial consideration of their associates. This practice serves to bring out the different theories suggested and also to preserve the line of thought which a judge may need but might otherwise forget before succeeding in having the case disposed of. So far as I have been informed, the cases that hold the record on the Court of Appeals for the length of time actually consumed in their solution are the cases
of Gilstrap vs. Leith, 24 Ga. App. 720, and Central of Ga. Ry. Co. vs. Hawley and Jones, 33 Ga. App. 375. Each of these cases occupied the time of the judge to whom it was assigned for from six to eight weeks before any satisfactory solution could be arrived at and yet in each of them the opinion was brief and was embraced within the syllabus, that in the first case, written by Judge Stephens, occupying only seven paragraphs and less than two pages, and that in the second case, written by Judge Jenkins, comprising but five paragraphs and less than five pages. It is not a rare occurrence to encounter cases which require from one to two weeks or even longer to decide, and it is impossible to estimate the amount of work done in a given case by the length and character of the decision rendered. It is said that the longest opinions are usually written by the newest judge, that is, until he has better sense. Also some opinions are long from the same cause as a certain famous letter, as explained in its concluding paragraph, in this or like language: “Please pardon the great length of this letter. I haven't time to write a shorter one.” It is impossible to conceive the amount of time and work that it may be necessary to devote to a given case without a comparison with the thought and study which diligent and painstaking counsel may have given to it in its long or short history. An attorney may have applied himself to studying and briefing of a case at intervals through months, and maybe years, covering the various stages from the time he was first consulted by his client until now when it has reached the court of review. The opposite attorney has doubtless done the same. If you will but add together all the work that has been thus put upon the case by counsel, and contemplate the aggregate, you will the better appreciate what the court must do before reaching and stating a conclusion.

I have been told by my colleagues of experiences and I also have had experiences which prove that the subconscious mind plays an important part in the decision of some cases. One of them recently said to me: “Several times after going to bed with a case upon my mind I have hit upon an expression which I thought was satisfactory and acceptable, and have gotten up and preserved it by writing it down upon a scrap of paper. Occasionally I have written such expressions in the dark. Perhaps that is why some of my opinions are not clear.”

I have heard it said that Judge Samuel Lumpkin, of the Supreme Court, often referred to his wife legal questions that were puzzling him. He is quoted as having said that he found the feminine mind frequently gave him an insight into the case and assisted him in its solution. We have now on the Court of Appeals one judge who seems to have a native inclination to do the same thing, only he is minus the wife. It is said, however, that he has the habit of seeking assistance and inspiration from many widows and old maids of his acquaintance, and he acknowledges that one of them gave him the cue that the use of articles of jewelry is mainly ornamental, as expressed in Bentley vs. Rice, 27 Ga. App. 816, a case which involved a breach of implied warranty in the sale of jewelry. What is law but common sense, anyway?

It not infrequently happens that after a decision has been unanimously agreed to, the author will hold it back and later seek to per-
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suade the other judges that his original opinion was wrong. This is usually a far easier task than was that of showing that he was right in the first place, although many of the reversals of the Court of Appeals by the Supreme Court are in cases in which we became doubtful of and withdrew from our first impression.

We have noticed that the Supreme Court often copies code sections without quoting them. We have had so much experience on the Court of Appeals with judges dissenting from principles taken verbatim from the code, that we have found it a great time saver always to use the quotation marks when embodying such provisions in a decision.

The Constitution provides that the Supreme Court shall have jurisdiction of all cases that involve construction of that instrument. The rule has been laid down, however, that the Court of Appeals has jurisdiction to decide questions of law that merely “involve application, in a general sense, of unquestioned and unambiguous provisions of the Constitution to a given state of facts.” Gulf Paving Co. vs. City of Atlanta, 149 Ga. 114. In Daniel v. City of Claxton, 35 Ga. App. 107, we had for decision the question of what is meant by the phrase “registered voters” as contained in the constitutional amendment of 1918, prescribing the proportion of “registered voters” whose assent is requisite to the issuance of bonds (Ga. L., 1918, P. 99). Our first conclusion was that the case should be transferred to the Supreme Court as one involving such a construction of the Constitution as to fall within the jurisdiction of that court. We discovered, however, that it had been first carried to the Supreme Court and by that court transferred to the Court of Appeals, and taking the judgment of transfer as an implied holding that the case involved only the application, in a general sense, of an unquestioned and unambiguous provision of the Constitution, we proceeded as faithfully as we could to discover the meaning of this provision, which was so plain and perspicuous as not to require interpretation. After much anxious study and investigation, and continued doubt and uncertainty, we announced that, within the unquestioned and unambiguous meaning of the Constitution, a registered voter is one who has been lawfully registered and who has the present right to vote. All of which was perfectly clear after it once became obvious.

A deduction, founded on actual sensations in that case, though hardly on law, is that in construing the Constitution, the Court of Appeals may have no jurisdiction of a cause at the outset, and yet may acquire it by studying the case sufficiently that the true meaning of the provision under consideration is made manifest.

Nearly all cases appear easy after they are once decided, provided the decision is correct or even plausible, and the weariness incurred in solving a difficult case usually vanishes when the solution is attained. We are then seized with the spirit of song and praise, and chant the comforting words, “The toils of the road seem nothing when we get to the end of the way.”

The case of Mitchell vs. Owen, 31 Ga. App. 649, is unique in that it seems to be the only case in Georgia in which the judgment stood REVERSED by operation of law. The Supreme Court on certiorari reversed the judgment of the Court of Appeals by a full
bench, but on rehearing the Justices were evenly divided as to whether the original decision should be adhered to. Consequently, the judgment remained reversed although three of the Justices thought it should be affirmed. **Mitchell vs. Owen, 159 Ga. 704.**

The most of us have been of the opinion that bartering in human beings was long since abolished; but Judge Bloodworth calls my attention to a record in which the following appears in the testimony of one of the witnesses:

"I gave his $1,600 for the skidder and traded with him on this Pofford place and taken a team of mules at $1000 and a negro, and after I got the negro he was not a a negro as I though he was, and I paid Mr. Tyson back the $1000, with the negro and a team of mules." **I refrain from commenting on this testimony.**

Another case in which the facts were unusual was that in which the plaintiff's testimony showed that his house burned DOWN while everything in it burned UP.

In a recent case, the opinion of the majority was written by Judge Stephens, and a dissenting opinion was filed by Judge Jenkins. The judgment was in favor of the plaintiffs in error. The attorney who represented them is authority for the statement that one of the plaintiffs in error dropped dead while reading the opinion. Whether it was the opinion of the majority or the dissent the attorney was unable to say; and since both of these judges are given to writing strong opinions, and since both opinions were especially strong in that case, it seems impossible to determine which of the judges, if either, should be held responsible for this unfortunate occurrence.

A little inquiry for the purpose of estimating the relative proportion of cases affirmed and reversed reveals the following: 1581 cases are reported in volumes 33, 34, and 35 of the reports, 1052 civil and 529 criminal. Of the 529 criminal cases, 441 were affirmed and 88 were reversed. Of the 1052 civil cases, 24 were dismissed; and 1028 were decided on their merits, with 661 affirmed and 367 reversed. It is seen that of the criminal cases only about 20% were reversed, of the civil about 33%; and that the dismissals amount to less than $\frac{1}{2}\%$.

It may be interesting, though doubtless not useful, to know where the cases come from: Of the 1052 civil cases referred to, Fulton county furnished about 20%; Bibb, Chatham, and Floyd, varying but slightly in the order named, each about 4%; Richmond, Laurens, and Dekalb each about 2%; Decatur, Colquit, Wilkes, Muscogee, Cobb, Glynn, and Berrien from $1\frac{1}{2}\%$ to a little less than 2% each. These fourteen counties furnished practically 50% of the litigation in the Court of Appeals, as reported in volumes 33, 34, and 35, while there were about 20 counties from which no civil case appears in these three volumes.

There are six counties from which we have had no civil case in five years, with six other counties from which only one civil case each has been sent up during this period. The fact that a given county supplies little or no litigation does not necessarily mean that it is a community of slight business activity or that it furnishes no work for the lawyer. We all know that the lawyer serves his client best by avoiding litigation and even controversy wherever it is pos-
sible to do so, without undue sacrifice of rights or principles.

Speaking of certiorari, a compilation shows that, beginning with the effective date of the constitutional amendment providing for the review of decisions of the Court of Appeals by certiorari, there are reported in volumes 19 to 35, inclusive, an aggregate of about 9,000 cases, and that petitions for certiorari were made in 654 of this number. The petitions were granted in 133 cases and denied in 521 cases. Of those cases in which the petitions were granted, 63 were reversed and 60 affirmed. The approximate results in per cents were as follows:

Certiorari applied for in 7% of the cases.
20% of the applications were granted.
80% were denied.
50% of the grants were followed by reversals.
The reversals, however, amounted to less than 1% of the total number of cases decided.

However, the refusal of the Supreme Court to review a decision of the Court of Appeals by certiorari is not to be taken as establishing that the decision is correct. From the rules on the subject, as laid down in Central of Ga. Ry. Co. vs. Yesbik, 146 Ga. 620, to the effect that the "writ will be issued only in cases involving questions of great public concern and in matters of gravity and importance", and from an analysis of numerous cases, it has been inferred by a lawyer of great ability and discernment that error by the Court of Appeals is not likely to be noticed on certiorari where it is palpable, in view of unequivocal ruling by the Supreme Court. Presumably, a decision containing such an error will not be followed and will do no harm as a precedent. The more glaring the error the less likely is it to unsettle the law, if it be true that the law is settled upon the subject. Whether this theory be sound is not for me, or even the Court of Appeals, to say. The suggestion of it merely leads to the thought that a decision of the Court of Appeals is not necessarily to be accepted as settled law merely because a petition for certiorari attacking it has been denied, and that its appeal for a permanent place in the jurisprudence of the state must depend upon its own intrinsic worth, measured alone by the high standards of truth and reason. These considerations should, and I believe do, make for a greater sense of responsibility in striving to enunciate only correct and sound principles, and to declare as law that which must prevail as law even though the heavens fall.

The work of an appellate judge tends naturally to a spirit of contrition and humility. Men working together unselfishly and without rivalry in search of truth, all in pursuit of the same truth, find little cause for self-exaltation. How greatly is this true where the thoughts and opinions of each are so rigidly analyzed, and if deemed to be wrong, are so rigidly condemned, as in the give and take business of deciding intricate law cases and endeavoring to write opinions therein in which all may concur. There is but little stimulation from without, even after a decision is once agreed to and delivered. The attorney for the losing party generally bemoans the fact that the judges were so dense, obstinate, or careless as never to see the point, while the attorney for the prevailing party knew all the time what the decision would be if the court were only capa-
ble of grasping his logic, and merely congratulates himself that for once it was. No other person is particularly interested for the time being. But what higher inspiration can one enjoy than that which is derived from the love of justice and truth or from the consciousness of having done an important task as well as one could? We do hear from our work occasionally, as in motions for rehearing. In these instances, there can be no mistake as to the esteem in which our decisions are held in some quarters. And it produces a delightful sensation, after the grant of such a motion, to have the counsel in whose favor the decision was originally rendered come forward and defend it as one of the ablest ever written! However, the destruction of one's own handiwork, if it is found to be faulty, is even more pleasurable, and no edifice is satisfying whose architecture is not the law.

Of the rendition of decisions, as of the making of books, there is no end. Although it is the belief of some great thinkers that if men were wise enough to discern and apply them, it would be found that a very few rules would suffice for all cases, the multiplication of laws has progressed to the point of becoming a menace to civilization, and the courts must share with the legislative bodies responsibility for the dreadful condition. If, in the absence of a Moses, a Justinian, or a Blackstone, there is no remedy for what has been done, the greatest care should be taken not to add to the confusion. Judges should exercise the most extreme caution in declaring a new rule or in opening an established rule to a new exception. In view of the many thousand principles which have already become settled law, it should be necessary to announce new doctrines only in very rare and exceptional cases. The lawyer who is constantly seeking to raise some new question merely to glorify himself serves the court and his country badly. So do appellate courts mistake when they strain either to affirm or reverse a given case out of a desire for individual justice. Such a disposition can only lead to artificial distinctions and exceptions, to the perplexity of the people and the ultimate confounding of the courts themselves.

Under our system, the judge of a reviewing court should seek that justice which is found in the logical application of the law to the facts of the particular case considered abstractly and hypothetically, and not that concrete justice which the judge may personally think ought to be done under the peculiar circumstances. Every case should be approached with a concern only for the discovery and application of the law that most naturally governs it, and without regard to what may be the resulting judgment. It is true, the modern tendency seems to be in favor of dispensing concrete justice in the particular case, and I do not say that in the course of time it may not prove to be the wiser policy. However, so long as we require the writing and publication of decisions, and proceed under a system of precedents, such tendency can only serve to increase the uncertainty of the law by making a rule for every case and thus enlarging the number of precedents. A disposition to deal freely with the cases under the law may result in a larger number of reversals, but it will tend to prevent the inordinate multiplication of laws, and make for a greater sum of justice in the end. Undoubtedly, it will at times become necessary for the judges to supply a rule of law
where none has existed before. There are gaps in the law which can be filled in no other way. But judicial legislation can be justified only by a legal vacuum plus an absolute necessity that it be filled, and the growth of the law by that process should be as slow and imperceptible as the processes of change and growth and should only follow in their wake. The courts should deal cautiously with the so-called “case of first impression,” and the attorneys should be generous in their attitude even if the decision in such a case should be sparing in its pronunciamtions. With no one to deliver us from the multitude of rules into which we have become inmeshed, it behooves all who are interested in life under law to lend aid against thickening the maze.

In conclusion, I wish to say that I have prepared this paper for the purpose mainly of filling up a period in the program which the Committee informed me would otherwise be vacant. With the exception of the comments I have made upon the need of preventing, as far as possible, increase in the number of laws, my “story” is utterly without a moral—purely a work of art (?) for art’s sake. Some of my statements will probably not meet with your full concurrence. However, I trust no one will be disturbed by anything I have said. It should be remembered that all I have said is mere obiter dicta,—wholly unnecessary, if not uncalled for, and therefore is not binding upon my associates, nor you, nor anyone,—not even upon myself.
Three Decades of the Law School’s Growth

W. G. CORNETT, ’11, Professor of Law.
Address Made over W. S. B.

Ten minutes are insufficient for me to complete my subject on the Law School’s Growth and Function. I have, therefore, omitted the portion having to do with the function of the School and shall omit reference to its growth prior to the year of 1898.

The University was reorganized in 1859 and that year the Board of Trustees determined to establish a law school “in which facilities for the best legal education would be afforded.” The Law School was opened in the autumn of that year and it was incorporated by an Act of the Legislature on December 19, 1859. The first graduating class in 1860 contained 26 men. Excluding the years when the exercises of the School were suspended during the War between the States, from 1859 to Commencement in 1898,—thirty two years,—491 students attended the School.

1898

In 1898, 39 students enrolled for the one year course required for a degree. There were two professors and three lecturers. No member of the faculty devoted his full time to teaching. Only 15 subjects were taught in the School. It was housed in two rooms of the Ivy Building and the law library contained 100 volumes of the Georgia Reports, and standard text books, “the Secretary of the Interior had recently supplied the Department with valuable publications issued by the Government,” and the Bancroft-Whitney Co. had recently presented a set of their “Practitioner’s Series.”

No previous course of study was required for admission to the School but no student under the age of 18 was admitted.

1908

Entering into the decade beginning in 1908 we find that there were 59 students registered (an increase in attendance of 51% over 1898), two professors, as before, one of whom in 1900 had been elevated to the Deanship. There were three lecturers also and the Dean devoted his full time to the Law School.

Two years were required to complete the course of 20 subjects. The School had been moved to the second floor of the Academic Building and had an office, two lecture rooms and a library room.

The library consisted of the Georgia Reports, standard text books, and the “handsome law libraries” of two loyal sons of the University, Brantley A. and Thomas N. Denmark, which had been recently donated by Mrs. Brantley A. Denmark.

In 1908 the entrance requirements were the same as in 1898,
except that "Applicants for admission must pass a satisfactory ex-
amination upon the elements of an English education."

In 1908 a lecturer on Procedure and Constitutional Law was
elected and in 1909, a professor having been elected Professor
Emeritus, a lecturer was promoted to a professorship. In 1913 an
instructor in Law was elected,—the faculty then consisting of the
Dean, a professor and an instructor and three lecturers. During
this period the Dean and one professor devoted full time to the
School.

In 1909 the requirement of fifteen academic units for entrance
went into operation.

1918

In 1918, the professor and instructor resigned and two new in-
structors were elected to the vacancies. As one of these instruct-
or was called to the colors before the 1918-1919 session opened he
resigned and the faculty actually consisted of the Dean and one in-
structor until the spring of 1919 when another instructor was elect-
ed. Until 1925 the Dean was the only member of the faculty de-
voting his full time to the school.

In 1918 the course was extended to three years; there were 22
law courses then offered. Seventy students were registered, which
was an increased attendance of 18% over the year of 1908.

Excepting a larger library room and an additional office the
School occupied the same quarters in the Academic Building as were
occupied in 1908.

In the decade from 1908 to 1918 the library was greatly increas-
ed and it was probably equal to any private law library in the State.
Books costing $1200.00 were purchased and there were donations of
other libraries by friends of the School.

The entrance requirements were the same as in 1909.

1928

This year finds the Law School housed in its own building (tho
inadequate for present needs); a registration of 223 students (an
increase of 215% over 1918 and 466% over 1898); three full time
and two part time professors; a library of over 12,000 books; a
three years' course in the study of 42 subjects, and an advance in
entrance requirements.

The course of study having been extended to three years in
1918 larger quarters were imperative. For ten years prior to 1918
a member of the faculty had endeavored to secure a new building for
the Law School. Through fortunate circumstances the present
building was bought in 1919 on the credit of the then Chancellor,
two members of the faculty and a local alumnus of the School.
Alumni, friends of the School and the War Memorial Association
paid for the building and title was vested finally in the Board of
Trustees. The Trustees furnished sufficient money to equip a heat-
ing plant and recondition the building for law school purposes. In
1919 this building was bought for $15,525.00. It is now conserva-
tively estimated that it can be sold for at least $30,000.00. This
building is a net addition to the University's material and tangible
assets of at least $25,000.00.
In June of 1921 the two instructors were promoted to professorships and another professor was also elected. In 1923 another instructor was elected and he was promoted to a professorship in 1925. A member of the faculty having died in 1925 his successor was elected as a professor and as President of the School. The President, the Dean and one of the professors now devote full time to the School,—thus making a faculty of three full time and two part time teachers.

Apropos of the faculty it should be mentioned that it is carrying one of the highest teaching loads in the country. Bulletin No. 21 of the Carnegie Foundation, which is just off the press, on the "Present Day Law Schools in the United States and Canada" shows that your law school faculty carries a teaching load of 11.8 year-hours, whereas the average teaching load is less than 8 year-hours in 34 schools; "in 18 schools the maximum load is not more than 8 year-hours and the average is therefore often considerably less; in 14 schools it is not more than 9 year-hours," which is the teaching load carried by the Law School's part time professors. The Bulletin shows, also, that the Law School requires the greatest number of hours of class-room work of any of the 92 full time schools listed. The Law School requires 57 year-hours of class-room work, whereas, the average for the other 91 schools is only 38½ year-hours of class room work. (Id pp. 544-5 and Table 7). In other words, a graduate of your Law School must attend 1710 classes in the three years as against an average of 1155 classes in the other 91 law schools listed. These figures are based on a minimum of 30 weeks to the scholastic year.

In 1918 the library contained about 3,000 volumes of law books. About that time the Trustees authorized the yearly expenditure of $250.00 for library purposes, and in 1925 increased this sum to $1000 per annum. In 1925 the Legislature appropriated $6,000.00 to the Law School Library. This money was judiciously and carefully expended so today our library is probably second only to the State Library in Atlanta.

Beginning with the autumn term of 1924 all candidates for the law degree were required to show that they had completed one year of college work before they were admitted to the school. This is the admission requirement now, except that "mature students, 21 years of age, qualified to pursue the law course are admitted upon authorization of the faculty, without one year's prerequisite of college work.

The entrance requirements will again be raised at the term beginning this autumn.

This narration of the facts making up the material and tangible growth of the School during the past three decades can not convey a true picture of the Law School's growth. The spirit back of the struggles of the members of the Board of Trustees and the members of the faculties can not be reduced to mere words. The aspirations and ideals of the School, illustrated in the positions occupied by its graduates in the executive, legislative and judicial departments of the State, the high standard of accomplishments by its alumni at the bar, and the leadership of its sons and daughters
LAW SCHOOL'S GROWTH

in the cause of good government, are indelibly written into the life of Georgia.

**EPITOME**

<table>
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<td>15</td>
<td>39</td>
</tr>
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<td>2*</td>
<td>20</td>
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<td>22</td>
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<td>1928</td>
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* 3 lecturers, additional.

(a) This percentage of increase is due to a multiplicity of causes.

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The Liability of a Mortgagee for the Payment of the Premium on a Fire Insurance Policy After Default of the Mortgagor under the Language Used in the New York Standard Mortgage Clause

The above question has recently caused much discussion and has been the subject matter of a great deal of litigation due to the rapid development and expansion of mortgage loan companies in America and the demand for adequate protection against fire loss.

It is a practice of mortgage loan companies before closing a loan to require the owner or mortgagor to present a valid certificate of insurance showing protection against loss of the premises by fire. The loan company then has the mortgagor direct the insurer to attach to the policy what is commonly known as the "NEW YORK STANDARD MORTGAGE CLAUSE" or "LOSS PAYABLE CLAUSE" which in effect protects the mortgage company in case of a loss, as, out of the adjustment of the loss, the interest of the mortgage company is first satisfied.

The form of the New York Standard Mortgage Clause is as follows:

"Loss or damage, if any, under this policy shall be payable to as mortgagee (or trustee), as interest may appear, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; PROVIDED, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall immediately pay the same."

A careful reading of this clause leads to the conclusion that new terms are written into the contract. To illustrate, it is provided that the interest of the mortgagee (loan company) is protected even though the property is willfully destroyed by the mortgagor (owner). Also the mortgagee is not affected by the change of ownership nor by using the premises for purposes more hazardous than permitted originally. There are other minor terms which are added to the contract but which need not be referred to at this time.

The question then presented is what consideration does the insurer receive for this additional risk. Apparently the answer is none, unless there is a loss; in spite of the language used in the last sentence of the mortgage clause which sentence is underscored above. It has been the opinion of insurance agencies that the mortgagee was liable upon default of the mortgagor and policies of insurance have been written assuming such liability when such policies would not have been written otherwise due to an unfavorable credit report or other cause.
The question has never been passed upon by an appellate court in Georgia and it is therefore necessary to look to the decisions of other states for authority.

The leading case which seems to have first passed upon this point favorable to the mortgagee is that of COYKENDALL vs. BLACKMER, 146 N. Y. S. 631.

It was held that

"The clause, 'provided that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee shall on demand pay the same' being a part of the mortgage clause of the New York Standard policy, and issued to a mortgagee upon the application and at the request of the mortgagor, in accordance with a covenant of the mortgage, is a condition and not a covenant, since the word provided means if or on condition and is used to express a condition."

The language of the Court is here quoted:

"The apparent meaning of the mortgage clause is that the insurance, as to the interest of the mortgagee, shall not be invalidated by any act or neglect of the mortgagor, if the mortgagee shall on demand pay any unpaid premium, and hence that if the mortgagee shall on demand neglect or refuse to pay the unpaid premium, he shall no longer be entitled to avail himself of the stipulation that no act or neglect upon the part of the mortgagor shall invalidate the policy, but the insurance of the interest of the mortgagee shall thereafter be governed by the policy itself, and this was doubtless the relation of the mortgagee and the insurance companies following the demand of the company for the payment of the premium in January, 1911, and the neglect of the mortgagee to pay the premiums.

"Had the intention been that the provision should be construed as a covenant rather than as a condition, a slight modification thereof or the addition of the words 'which the mortgagee hereby covenants to do' would naturally have been inserted and thereby all ambiguity removed."

A similar conclusion was reached in the case of HOME INSURANCE COMPANY VS. UNION TRUST COMPANY, 100 ATL. 1010 (R I). The Court held:

"A fire insurance policy's mortgage clause making the policy payable to mortgagee, as its interest may appear, provided, that, if the mortgagor fails to pay the premiums the mortgagee shall pay them, is not an absolute agreement on the mortgagee's part to pay the premiums, but merely makes such payment a condition to its recovery on the policy."

Thus it will be seen that the sole issue is whether or not the language in the clause creates a condition or a covenant. If a condition there is no liability. If a covenant the result is reversed. The two cases just cited clearly construe the language as a condition.

In the HOME INSURANCE COMPANY case above referred to, the Court in discussing its reasons for holding that the mortgagee was not liable for any premium pointed out that the standard form was carefully worded by skilled and experienced lawyers who were familiar with the meaning of the word "provided" and that they could have, if they intended a liability on the part of the mortgagee, insert the phrase, "and it is agreed." They call attention to the case of HASTINGS VS. WESTCHESTER FIRE INSURANCE COMPANY, 73 N. Y. 141, decided in 1878 before the New York Standard clause was adopted and which clause at that time contained the words "it is also provided and agreed."
Another reasoning used by the Court in reaching such a decision was that if the premium was not paid the policy could be cancelled on the prescribed notice. They further pointed out that the mortgagee had no means of knowing whether the premium had been paid or not and that it would impose an unreasonable burden on the mortgagee to require it to keep constant watch on the condition of the account between the insurance company and the mortgagor in order to protect itself from liability for unpaid premiums.

The court seems to lay the blame for the possibility of ambiguity upon the skilled insurance lawyers who no doubt drew the Act, as was approved by the New York legislature and adopted and in use in other states.

The case of ORMSBY vs. PHOENIX INSURANCE COMPANY, 58 N.W. 301 (S.D.) referred to in the case just outlined did not hold that the mortgagee was not liable for premiums under a policy containing the New York Standard Mortgage clause. That question was not the issue. It did hold, in deciding another point that the phrase used in the standard policy created a condition not a covenant.

A similar conclusion was reached in JOHNSON SAMSON & COMPANY, VS. FORT WORTH STATE BANK, 244 S.W. 657 (TEX).

The most recent case is that of WHITEHEAD VS. WILSON KNITTING MILLS, 139 S.E. 456 (N.C.) which relieved the mortgagee from such liability. The Court in this case adopted the reasoning in the COYKENDALL case and added a most significant reason which seems to have been overlooked in the former cases, that is, that to hold that the clause was a covenant rather than a condition would be to render the mortgagee liable for such premiums even after its interest in the mortgaged premises had been satisfied, either by foreclosure or payment of the mortgage. In such an event there would be placed upon mortgage companies a burden which as to its business was unnecessary.

The WHITEHEAD case contains a well written opinion and contains an unusually clear review of the decisions herein referred to.

For a fair consideration of this question attention should be called to two very early and important cases which held the mortgagee liable, namely ST. PAUL FIRE & MARINE INSURANCE CO., VS. UPTON, 50 N.W. 702 (N.D.) and BOSTON SAFE DEP. & TRUST COMPANY VS. THOMAS, 53 PAC 472 (KAN.). In these cases the clause was construed to be a covenant, but from a careful reference to the clause itself it will be found to be different from the present New York Standard clause. This distinction is pointed out in the UNION TRUST COMPANY case which refers to the old New York Standard clause as having inserted therein the phrase "It is also provided and agreed" which of course would lead to a different conclusion. The present New York Standard clause has no such phrase included therein.

The COYKENDALL, HOME INSURANCE COMPANY, PHOE-
NIX INSURANCE COMPANY, JOHNSON-SAMSON & COMPANY and WHITEHEAD cases all construed the New York Standard clause now in effect.

It appears from the cases discussed that the weight of authority relieves the mortgagee from liability and these cases will no doubt be considered sufficient for the determination of future cases. It will therefore follow that the only protection to be afforded the insurer would be to effect some change in legislation reforming the mortgage clause.

—WELBORN B. CODY, Atlanta, Ga.
As To Automobiles

By Geo. F. Gober

The nation is now racked with questions of politics, theology, education, farm relief and many other things that absorb public attention. Baseball has for some time had the ear of the public press and has aroused much interest in the sport. It is not meant here to make any reflection upon any of these things since newspapers, as a rule, print what their readers wish and will pay for. No one of these things involve necessarily life and death or hurts and injuries; no one leaves in its wake death and destruction nor does any one of them maim people and make widows and orphans; no one of them destroys property.

Looking matters in the face, the greatest question before the American people today is the prevention or the lessening of the casualties that are caused by the operation of motor vehicles. In the year 1927, 26,000 people were killed in the United States by automobiles and 700,000 injured with six hundred million damages. Mr. Herbert Hoover stated that in 1925 there were 25,000 killed and 600,000 injured. It is hard to comprehend this great toll and it would seem that it ought to arouse the public conscience to a prevention or at least the lessening of this great loss of life and property. In the World War the United States called to the colors four million men and of these it sent two millions across the waters to fight in Europe. The war lasted 18 months and during that time, in round numbers, 37,000 men were killed in battle and 15,000 men died of wounds. Of course this was a great sacrifice made by our soldiers. The Civil War lasted from 1861-65. The Federal Army lost 74,000 men killed in battle and approximately 43,000 died of wounds. There were called to the Federal colors 2,700,000 men. There is no reliable data to show what the Confederates lost. I give these figures as to the casualties that are happening now in the nation by the operation of motor vehicles as compared to the losses sustained during the wars. Anyone can make his own comparisons.

I take from the Atlanta Journal, May 14th, 1928, the following headings and memoranda; all of which happened on the 14th of May:

"Two automobiles raced a Pennsylvania train and eight are dead and one dying. At Chadburn, N. C., 6 persons are dead, 4 seriously injured and more than 10 others escaped with minor injuries at a railroad crossing accident. These people were riding in a truck.

At Bryson City, N. C., 2 were killed as an auto dived into a creek. At Ft. Valley, Ga., 2 were killed as an automobile overturned rounding a curve. At Savannah, Ga., 6 persons were injured when their car was forced off the highway by another machine. At Aberdeen, Md., 2 soldiers were killed when their automobile crashed into a train. At McCroy, Ark., 20 persons were injured—5 seriously—when a truck collided with an automobile. On May 28th between Cornelia and Gainesville, Ga., in a collision with another automobile a young girl was killed and 2 others seriously injured. In At-
lanta on May 27, one person was killed and another was blinded from injuries received when their can ran into a bridge, this being the third serious accident that has occurred at the same place within a month. One was knocked down and rendered unconscious on the Rosedale road and his skull fractured on May 27th. Another person was injured by an automobile when it ran into the bicycle he was riding—and he is being treated at the Henry Grady Hospital for minor injuries. There was a head-on collision Sunday afternoon near Druid Hills Golf Club injuring 4 and they were treated at the Henry Grady Hospital. In 1927, 154 were killed in Georgia by automobiles and 1100 were killed in New York City and 707 in Chicago. It would be easy to extend this detail, but it is not necessary. Everyone knows from the newspapers what happens every day. The time has come when public opinion must be directed to this matter. The laws must be enforced. Every driver of an automobile ought to understand that the only safety is to comply with the law. If the law was complied with we would get rid of nine-tenths of the trouble. Some when they set themselves at the wheel of a car are obsessed with the idea of the power of the machine that is in their control and the first proposition to occur to them is to find out how fast it will travel and the faster the better it suits them. Automobilists and pedestrians have the same rights upon the highway. Every citizen has an equal right to travel in any way he may see proper and every other person, whether he drives an automobile or drives any other conveyance, has a right to insist that everyone upon the road shall exercise due care not only to protect himself but to protect everyone else that is traveling. These casualties can not be charged to the automobiles—the automobile at rest is not a dangerous machine; it must have great power to accomplish what it does, but it is dangerous only from the company it keeps; that is, the chauffeur. The automobile has come to stay. It is not worth while to cry out against it. It is not the automobile, but those that control it that cause the injury and damage. If every automobilist would act upon the Golden Rule, “Do unto others as you would have others do unto you,” the trouble would be at an end. It is a fact, however, that the great part of the trouble comes from reckless and illegal driving and practices of the “road hog.” This creature should be driven off the road. He is not entitled to any sympathy when he comes before the courts. A friend told me of an instance that happened up in Pennsylvania. A banker was brought before the court for speeding. The Judge was a good friend of his. The banker plead guilty and with a smile on his face stood up ready to pay his fine as he had done previously. The Judge said to him: “John, this is the third time you have been up for speeding; you seem to have no regard for the law; I am going to break you. I am not going to allow you to pay a fine.” He gave John a term upon the rock pile and John was thoroughly broken from speeding. If this kind of medicine were administered in Georgia to some people who seem to think they are above the law they would respect it afterwards.
Is the Surety Discharged By Extension of Time Granted to the Principal?

It was formerly a well settled rule in this state that an agreement between the creditor and the principal to extend the time of payment for a definite period and for a valuable consideration, released the surety.¹ Since the adoption of the Negotiable Instruments Law, however, there has been some doubt expressed as to whether this rule would still hold good.² Under this same act in other states it has been held that the surety was a party primarily liable³ under

¹ Code of Georgia, Sec. 3543
Knight vs. Hawkins, 93 Ga., 709
Luden vs. Enterprise Lumber Co. 146 Ga. 284
Lewis vs. Citizens & Southern Bank, 31 Ga. App. 597
² Arnold on Suretyship Page 143
³ Robinson Ruffin Co. vs. Spain (N. C.) 91 S. E. 361
In Re. Nashville Laundry Co. et al, 240 Fed. 795
First State Bank of Hilger vs. Long (Mont.) 174 Pac. 597
NOTES

Section 192 and that none of the defenses in Section 120 were therefore available to him.4

When the N. I. L. was adopted August 18, 1924, it contained only a general repealing clause applying to those Code Sections repugnant to or inconsistent with the act and not specifying sections by name. Repeals by implication are not favored in Georgia.5 An implied appeal arises only from an enactment, the terms and necessary operation of which cannot be harmonized with the terms and necessary effect of an earlier act.6 A statute, general in its terms and without negative words will not be construed to repeal, by implication, the particular provisions of a former statute which are special in their application to a particular case or class of cases, unless the repugnancy be so glaring and irreconcilable as to clearly indicate the legislative intent to repeal.7

In view of the reluctance of the Courts to repeal Code Sections by implication and of the length of time during which the rule in question has been established, we believe that the surety's right to a release from his liability still exists. Two recent cases, though not directly in point, show a leaning in the direction we have indicated. In the first case the Court of Appeals said:

"While under the Civil Code (1910) Sections 3543 and 3544 a surety will be discharged by a novation changing the nature or terms of his contract, without his consent, and therefore the acceptance by the payee bank, without the agreement or consent of the surety, of a new note, in renewal or payment of the original note signed by the surety will discharge him from liability..."8

Granting a definite extension of time on a valuable consideration is as much a novation as giving a new note, therefore the surety is discharged even under the N. I. L. The second case involved a note for which two parcels of land were given as security. The creditor released one of the parcels in consideration of a payment of part of the debt. This increased the surety's risk and he was discharged in spite of the N. I. L.9 From all this it should be clear that the Georgia Courts will not so interpret the Negotiable Instruments Law as to remove from the surety the protection which he has long enjoyed under our system of law.

4 Vanderford vs. Farmers Bank, 105 Md. 164, 60 Atl. 17
Cellars vs. Meachan 49 Ore. 196, 89 Pac. 426
Night & Day Bank vs. Rosenbaum, 191 Mo. App. 559 177 S. W. 693
Okla. State Bank of Sayer vs. Seaton (Okla) 170 Pac. 477
5 Murray vs. State 112 Ga. 7
Moore vs. State 150 Ga. 679
Walker vs. City of Rome, 16 Ga. App. 817
6 Griggs vs. City of Macon 154 Ga. 519
7 Davis vs. Dougherty Co. 116 Ga. 491
8 Payne vs. Fourth National Bank of Macon (Ga. App.) 142 S. E. 310
9 Lottis vs. Clay, 164 Ga. 846
Competency of Husband and Wife to Testify Against Each Other In Criminal Cases.

Under the rule in this state the wife can testify against the husband only when he is charged with the commission of a criminal offense upon her person or an attempt to commit such an offense and in cases of abandonment of his child.\(^1\)

Formerly the husband could never under any circumstances, testify against the wife.\(^2\)

The new Act substitutes the word "either" for the word "the wife" in paragraph 4 Section 1037 so that it now reads "Except that either, shall be competent, but not compellable, to testify against the other upon the trial for any criminal offense committed, or attempted to have been committed upon the person of either by the other."\(^3\)

No case has been reported dealing with the Section in its changed form, but before this change a wife was allowed to testify where the husband was tried for wife beating;\(^4\) and for pointing a pistol at her.\(^5\)

Since this change in the law, no doubt the husband would be a competent witness in a similar case. We are glad to see that the State of Georgia now affords to the long suffering husband the protection he has long needed.

We believe this will prove to be a great stride towards the still distant goal of equal rights for men.

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1 Code of Georgia, Sec. 1037, Paragraph 4
2 Ector vs. State, 10 Ga. App. 777, 778
3 Acts 1927, Page 145
4 Stevens vs. State, 76 Ga. 96.
5 Walls vs. State, 24 Ga. App. 697
6 102 S. E. 43
Recent Decisions

Possession under Bond For Title, trespassers making improvements, injunction, jurisdiction.


Mrs. Cora Frances Chase brought her petition against George M. Endsley and Mrs. Inez Endsley, residents of Fulton County, and alleged in substance, that petitioner, on June 30, 1925, purchased 51 acres of land from Mrs. Maggie L. Heery, received a bond for title, and therefore went into possession and "has been in possession continuously from that date until the present date"; that subsequently the defendants entered upon the property "as trespassers, and began the erection of a house on said property, and are still undertaking to carry on the work of erecting the house"; that petitioner made her protest against the alleged trespass, but defendants continued to erect the house; that the defendants claimed that they had bought the property from Mrs. Heery, and held a deed to it; and this claim is untrue, as they had no valid deed to the property. Insolvency of the defendant is alleged, as well as irreparable damage. The prayers were that the defendants be enjoined from further trespassing upon the property, from entering upon it, and from continuing the erection of the house. A temporary restraining order was granted. To this petition the defendants filed their plea to the jurisdiction, contending that the land in question is situated in the county of DeKalb and that the superior court of DeKalb county has jurisdiction over suit respecting title to land in that county, and not the superior court of Fulton county.

Defendants filed also general and special demurrers, one ground of which was that the petition does not show in what manner the plaintiff went into possession. Defendants filed also their answer positively verifying, from which it appears that they purchased the property in question and received bond for title on June 29, 1925, from Mrs. Heery; and they received a warranty deed from Mrs. Heery on August 11, 1925, and began the erection of improvements in good faith on or about April 7, 1926; that at no time did plaintiff have possession. Defendants filed also their answer positively verifying, from which it appears that they purchased the property in question and received bond for title on June 29, 1925, from Mrs. Heery; and they received a warranty deed from Mrs. Heery on August 11, 1925, and began the erection of improvements in good faith on or about April 7, 1926; that at no time did plaintiff make any complaints that defendants were trespassing, or that the property was hers, until defendants were in possession and erected a garage, etc.

On interlocutory hearing, it appeared that the plaintiff's bond for title was filed for record on July 12, 1925, and that the defendants' bond for title was filed for record on July 3, 1925. The restraining order was dissolved. The plaintiff filed an amendment alleging that since the filing of her petition she had found that the defendants hold a deed from Mrs. Maggie L. Heery, a resident of Gilmer county, conveying the land in question which deed is a cloud on her title and is unoperative as against her, because at the time it was executed and delivered the defendants knew that plaintiff had purchased the property and was in possession. She prayed that Mrs. Heery be made a party defendant, and that the deed from her to defendants be cancelled. Mrs. Heery appeared and filed, beside general and special demurrers, an answer alleging that her bond for title and deed were made in good faith, and were valid and effective, and that she did execute a bond for title to petitioner, but that the inclusion of the lots of land in controversy was by mistake. Defendants also demurred upon the grounds that the facts set forth in the plaintiff's amendment were not sufficient to authorize cancellation of the deed. The plaintiff again amended by alleging the giving of notes for the purchase money of the property, and the bringing suit by the holder of the notes in the city court of Decatur, and she prayed that this suit be enjoined until her equitable suit be determined in the superior court of Fulton county. She offered to do equity. The court sustained the general demurrer; refused an injunction and dismissed the action.

W. W. Gaines, Augustine Same, and C. H. Feagan, all of Atlanta, for plaintiff in error.

BECK, P. J. (after stating the facts as above). (1, 2) This case was dismissed upon demurrers filed by Mr. and Mrs. Endsley and by Mrs. Heery. If the suit as originally brought is a case "respecting title to lands", it should have been brought and tried in the county of DeKalb, where the land lies, but we think that it is essentially an action to enjoin a continuing trespass. Of course, the title to the land is incidentally involved, as has been ruled in sev-
eral cases decided by this court, but the fact that the title is thus incidentally involved does not render it a case "respecting titles to lands." In Huxford v. Southern Pine Co., 124 Ga., 181, 198, 52, S. E. 483, 442, it was said:

"If the purpose of the suit were to recover possession of the lands, of course the superior court of Coffee county (where the land was not located) would have no jurisdiction. Such was not the object to be attained by the judgment prayed. It was simply to restrain the defendant from doing acts prejudicial to the rights of the plaintiffs, one of whom claimed to be the owner of the land. The title to the property was incidentally and collaterally involved, but it was not such a suit respecting title to lands as under the Constitution is required to be brought in the county where the land lies. It was incumbent upon the plaintiff to show that they had such an interest in the property as the court of equity would protect, and they showed this interest by showing a complete chain of title."

And in Powell v. Cheesire, 70 Ga., 357, 48, Am. Rep. 572, it was held:

"A bill in equity to enjoin a trespass upon realty by felling timber is not such a suit respecting the title to land as must be brought in the county where the land lies. The proper venue of such a case is the county of the residence of the defendant against whom substantial relief is prayed."

We think, therefore, that inasmuch as the petition shows a continuing trespass, and that the petitioner had such an interest in the property (under the allegations which are to be taken as true upon demurrer) as a court of equity would protect, and a right to a conveyance of the property in accordance with the terms of the bond for title, the court should have retained the case for hearing upon the issues made by the petition and the answers. We think, also, that the courts properly made Mrs. Heery, vendor of the land, a party to the proceeding. When the question as to whether the two lots of land in question were included in the land sold to Mrs. Chase, or were included by mistake as contended by Mrs. Heery, is determined, then the question as to how much of the purchase money Mrs. Chase must pay can be determined, and it can be determined in this suit. As the matters stood at the time Mrs. Heery filed her suit in the city court of Decatur to recover judgment upon the purchase money note, Mrs. Chase, according to her allegations, would be placed in a position where she could inadequately urge a defense to these notes, for the question as to whether or not the two lots in controversy had been sold to her by Mrs. Heery will be undetermined. All these questions can be determined in the one equitable suit. And the court having erred in dismissing the case upon general demurrer, the further proceedings were nugatory. Of course, this court is not passing upon the merits of the special demurrer. The lower court disposed of the entire case upon the general demurrers. Upon a re-hearing the special demurrers can be there disposed of.

Judgment reversed.

All justices concur.

Constitutional Law.—Legislature has power to extend territorial jurisdiction of Municipal Courts beyond limits of municipality.

Collier vs. Duffell et al, Supreme Court of Georgia, 141 S. E. 194.

A defendant who lived in Fulton county outside of the corporate limits of Atlanta, was sued in the municipal court of Atlanta. The suit was not defended and a judgment was entered against him. Garnishment proceedings were instituted to enforce the judgment and the defendant brought a petition in equity to enjoin the proceedings. He contended that the act of the General Assembly extending the territorial jurisdiction of the municipal court beyond the city limits (Ga. Laws 1925, page 378) was unconstitutional because the amendment to the Constitution providing for the creation of this court in lieu of justices courts in the city of Atlanta (Ga. Laws 1912, page 39), and authorized additional jurisdiction for the new court "as to amount or subject-matter."

Mr. Justice Gilbert, speaking for a unanimous court, held the act constitutional. After quoting the section of the Constitution (Civil Code sec. 6450) which confers upon the General Assembly the power to make all laws (not in conflict with constitutional provisions) necessary and proper for the welfare of the State, and after referring to the provisions of the Constitution authorizing the legislature to confer upon municipal courts "additional jurisdiction either as to amount or subject-matter," he said the latter cannot by implication or inference deny the General Assembly the power also of conferring additional
And in Starnes vs. Mutual Loan & C. Co., 102 Ga. 597, he pointed out, it was held that there was no provision of the Constitution which prohibited the General Assembly from enlarging the territorial jurisdiction of justices of the peace.

The justice courts in the city of Atlanta were abolished by act of the legislature and the municipal court established in lieu thereof. Thence, "there being nothing in the constitutional amendment of 1912 confining the territorial jurisdiction to the corporate limits of the city, the act of 1925 is not unconstitutional for any reason assigned by petitioner."

**Statute of Frauds, Instruments under Seal, Agent's authority, estoppel.**


Suit by Mrs. F. A. Morris against the Baxley Hardware Co. and others. Judgment for the plaintiff, and defendants bring error. Reversed.

Mrs. F. A. Morris filed a petition for cancellation and injunction, alleging that the Baxley Hardware Co. occupied premises owned by her, which she described; that such occupancy was under a lease which, so far as she was concerned, was verbal only and was for five years only, but that she had learned shortly before bringing suit that said company held a lease for seven years purporting to have been executed by her; that she had never executed any written instrument leasing said property, and had never authorized any person to do so in her behalf; "however, that she had considered her agreement to rent said building to said Baxley Hardware Company for a period of five years as a binding obligation upon her, and that in pursuance of said agreement she had permitted said Baxley Hardware Company to continue to occupy said building, although she had never executed to it any lease or contract of rental of any kind whatsoever."

Gilbert, J. "Any contract for the sale of land, or any interest in or concerning them," to be binding upon the promisor, must be in writing signed by the party to be charged therewith, or some person by him lawfully authorized. Civil Code 1910, sec. 3222. (4). The contract sought to be cancelled in this proceeding, purporting to be a lease of real estate for a period of seven years, falls under the section cited.

The foregoing section does not apply "where there has been performance on the one side, accepted by the other in accordance with the contract," and, "where there has been such part performance of the contract as would render it a fraud of the party refusing to comply, if the court did not compel a performance." Civil Code 1910 sec. 3223 (2, 3).


The contract sought to be cancelled in this case concluded as follows; This contract entered into in duplicate this the 21st day of Sept. 1921, Mrs. F. A. Morris (L. S.) Baxley Hardware Co., by D. M. Minchew (L. S.). Signed, sealed and delivered in presence of J. C. Rogers.

Nowhere in the body of the instrument are to be found any words indicating that it was the intention of the signers thereof that the instrument should be under seal. It is well settled that the intention to execute a sealed instrument must be indicated in the body of the instrument as well as after the signatures. Echols v. Phillips, 112 Ga. 790, 37 S. E. 977. The phrase "Signed, sealed and delivered in the presence of," preceding the names of the witnesses, does not indicate any intention of the parties. It is merely a statement of the witnesses.

No instrument shall be considered under seal unless so recited in the body of the instrument. Civil Code 1910 sec. 4359. This section has been applied to contracts for the purchase of land, which would include contracts for the pur-
The court erred in rejecting such evidence. Under the pleadings and the evidence, including that referred to in the preceding headnote, and testimony by plaintiff that she had made her husband her general agent, the jury would have been authorized to find that, although the contract was required to be in writing and the written contract was not binding because plaintiff's name was signed by her agent without written authority, yet, on account of the improvements made by the defendant as contemplated in the rental agreement and its possession of about four years and payment of the rent accepted by the plaintiff, the plaintiff was estopped from denying the validity of the contract.

Fraud in Procurement of deed, proper parties.


RUSSELL, C. J.: Robert White brought an action against Edna Mae Fambro praying for the cancellation of a deed which had been executed and delivered to her, and which it was alleged, had been obtained by fraud. In this action he joined W. T. Lamar as a codefendant. Upon demurrer the trial court struck the name of Lamar as a codefendant, and exception is taken to this judgment. We are of the opinion that the judgment of the trial court was right and in accordance with law. No title had been conveyed to Lamar, and therefore as to him there was no deed. The petition contained a prayer that pending the final disposition of the suit the defendants be restrained and enjoined from signing any papers conveying, incumbering, or attempting to convey on incumber the property described in the petition, and from attempting to change in any manner the status; but Lamar having no title, the injunction as to him was unnecessary and would be futile, because the pendency of the suit against Edna Mae Fambro, to whom the petition had executed the deed, would afford a sufficient warning to any would-be purchasers against accepting a deed from Lamar, since he could only derive title through the minor Edna Mae Fambro, whose only muniment of title is attacked in the petition on the ground that it was obtained by fraud. Upon the filing of the demurrer based upon the ground that there was a misjoinder of parties defendant in that the suit was brought only for the cancellation of the deed to which the defendant was not a party, and upon the ground that no relief was prayed against the defendant, who had no interest in the property sued for, the plaintiff amended his petition by alleging a conspiracy between the two defendants, and that the misrepresentations stated in the original petition were made as a result of this conspiracy and with the intent to defraud the petitioner of his property; that both of the defendants were present when the misrepresentations were made, and each of the defendants acquiesced in all of the misrepresentations that were made; and that by reason of these representations (mis) the plaintiff had been put to the expense of employing an attorney, $50.00 of which had been paid, which expense was due to the defendant acting in bad faith. After the filing of the amendment the defendant renewed his original demurrer and demurred also to the amendment. The demurrers were sustained. The amendment offered could not cure the defect in the original petition. In the original petition the misrepresentation alleges to have been the fraud by which the petitioner was induced to execute the deed to Edna Mae Fambro was as follows: Robert White had married the mother of Edna Mae Fambro.
By this marriage he had become the father of a son. His wife had left his home because she thought he ought to make a deed conveying a half-interest in his home to her and his son, and that she would return to him if such a deed were executed and delivered to her. The petitioner agreed to execute and deliver such conveyance, and instructed Edna Mae Fambro and W. T. Lamar to have such a deed drawn and he would sign it. They reported to him that they had complied with his request, and pretended to read him a paper drawn just as he desired it, conveying an undivided half-interest in his home to his wife and son; and thereupon he signed the paper which the defendants had pretended to read him, he being unable to read or write. The paper was properly attested. Later he discovered that the paper he had signed, instead of being a deed conveying an undivided half-interest in his house and lot, was a deed conveying the entire property to Edna Mae Fambro, his stepdaughter.

The foregoing allegations may afford sufficient basis for the cancellation of the deed to Edna Mae Fambro; but, as already stated, W. T. Lamar could not be a party to a proceeding for cancellation, because no deed had been executed to him, and an allegation that there was a conspiracy to procure the execution of the deed, even if there were an allegation of sufficient facts to show conspiracy, would not serve to make Lamar a proper party in the proceeding for cancellation of the deed in question, or afford a basis in this action for the award of attorney's fees against him. While attorney's fees are allowed under the provisions of the Civil Code 1910, 4392, they cannot be recovered of any except a proper party in the cause.

Judgment affirmed.

All the Justices concur.

Master and Servant. Workmen's Compensation Act.

Where a construction company, having a contract to build a public road or highway obtained from another the use of his truck and the services of one whom he employed to drive it, and put them at work hauling materials for the construction of the highway, and where the driver, while so engaged, was subject to the direction and control of the construction company and was liable to be discharged by the company from the particular work for disobedience to orders or for misconduct, he was, while in the course of such employment, an employee of the construction company, within the meaning of the Workmen's Compensation Act (Laws 1920, p. 167). United States Fidelity and Guaranty Co. et al v. Stapleton et al. Jan. 17, 1928. Court of Appeals of Ga.

The decedent was killed in the course of employment and because thereof, by the overturning of a motor truck which he was driving. The contentions of the plaintiff in error are that the decedent was not an employee of the construction company, but was the servant of another as independent contractor, and also that the award was illegal because this company was not paying to the decedent wages and was not liable for the payment of same to him.

The questions for decision therefore are: (1) Was the decedent an employee of the construction company within the meaning of the Compensation Act? (2) Is the payment, or liability for the payment, of wages to the alleged employee, by the person sought to be held, an absolute prerequisite to an award of compensation against him?

The court said that under legal principles, it is well settled that the fact that an employee is the general servant of one employer does not prevent him from becoming the particular servant of another under special circumstances, and it is true, as a general proposition, that when one person lends or hires his servant to another for a particular employment, the servant, as to anything done in such employment, must be dealt with as the servant of the person to whom he is lent or hired, although he remains the general servant of the other person.

Insurance—Recovery on Policy.

In this suit upon a policy of insurance, the evidence conclusively established the defense of material misrepresentation, including the issuance of the policy. The verdict in favor of the plaintiff was therefore unauthorized, being contrary to the evidence and to the law, and the court erred in not granting a new trial. Jefferson Standard Life Insurance Co. vs. Henderson. Court of Appeals.
Mrs. James C. Henderson brought suit against Jefferson Standard Life Insurance Company on an insurance policy issued to Paul F. Henderson, in which she was named as beneficiary. The defendant pleaded that the policy was void, both because of fraud and because of material misrepresentations in the application. On the trial the jury returned a verdict in favor of the plaintiff. The defendant moved for a new trial, which was refused and the movant excepted.

The application of the policy contained questions which were to be answered by the applicant, as to certain named diseases, and to past sickness. The application stipulated that every statement and representation made was material and true, and that the same was made to obtain insurance, and that the application was a part of the contract.

The insured died within two weeks from the date of the application, and within one week from the issuance and delivery of the policy. It appears, without dispute, from the evidence that the insured had consulted several physicians for physical complaints during the five years preceding his application, all of which was contrary to the statements made in the application.

The court held in the case that it was not necessary that the defendant show actual moral fraud on the part of the insured. Any material misrepresentation whereby the nature, extent, or character of the risk was changed avoided the policy whether made in good faith or fraudulently.
BOOK REVIEW

Gober's Georgia Evidence
By Judge George F. Gober, A. M., L. L. D.

Author of Georgia Form Book and Procedure, for eight years Solicitor General of the Blue Ridge Circuit and for nineteen years Judge of the Superior Court for said circuit. President of the Law Department of the University of Georgia since 1925, and Teacher of the Law of Evidence, Constitutional Law, Damages, Practice in the Courts, etc.

Judge Gober, in his book on the law of evidence, as applied and enforced in Georgia has given to the bench and bar a most comprehensive treatise on this important subject. The volume contains eleven hundred and fifty-eight pages, is well indexed, and should serve a long needed place in the active libraries of the profession.

The text follows the code and contains the decisions of the higher courts interpreting and construing the statutes and the common law. The book contains seventy chapters. The author begins with the definitions of evidence, then goes into the different kinds of evidence, the admissibility of evidence, the production of evidence, competency of witnesses, examination of witnesses, argument of counsel, charge of the court, and, in short, into the whole realm of evidence, with all of its shades and shadows.

There are two chapters especially, which are of exceeding importance and which are treated most admirably, Examination of Witnesses, and Argument of Counsel. Judge Gober, in these two chapters, has made use of his many years experience on the bench and at the bar and his contribution is a masterpiece. He says of examination of witnesses:

"The presentation of the evidence to the court is an important undertaking. It is a serious matter to the client and the lawyer. The lawyer does this work in the open; the public upon whom he depends in his profession, measures his poise and ability and how he conducts his case. A debacle will be notorious and he would have to redeem himself. The examiner should present himself fair and try only to get the truth. If he is obsessed with the idea that he is smart, he should repress any impulse to show it; he should lay aside his curt and smart sayings as he will find such things of little use and of no current value. He should be imperturbable and not carry his heart on his sleeve nor his emotions on his face. If knocked down by an adverse ruling he should get up smiling and never be disconcerted from his work by anything that happens."

The examiner, the learned judge says, should exhibit and pursue a spirit of fairness not only towards the witness, but also towards counsel; he should know and understand thoroughly the law of his case and the rules of evidence; he should study not only his own side of the case, but also the other side; he should respect the court and conform to its rulings; he should investigate the matter in controversy, if it be one of science or professional knowledge, and should become conversant with the subject so as to be able to cope with experts on cross-examination.

The lawyer will find this book a valuable asset, especially in actual practice, as it can be carried into the court house and will serve the purpose of a digest and a set of Georgia and Georgia Appeals reports and a Code. This book is published by Stein and Company, Atlanta, Ga., and is on sale at The Harrison Co., Atlanta, Ga.
Mr. Green has given us a very exhaustive treatment of "Carriers" in his book. He has divided it into six parts, which makes it more convenient for students and practitioners of the law. The six parts are as follows: I. Introductory Topics, II. The Carriers Undertaking, III. The Obligation of the Shipper, IV. The Exceptional Liability of a Common Carrier, V. The Bills of Lading and Warehouse Receipts Act, VI. The Interstate Commerce and Public Utility Acts. More attention is given to the fifth and sixth parts than is ordinarily devoted to these subjects in text books on Carriers.

Clearness and accuracy have been given both in the analysis and in the more detailed discussion. Unusual care is bestowed upon notes, and the cases cited are well distributed among the several states. They are not too exhaustive, but are ample and representative. Mr. Green put special emphasis upon decisions of those courts whose opinions seem to carry the greatest weight.

Since carriage is a peculiar undertaking and has its obligations founded on customs, and especially customs relative to maritime affairs, attention has been given to maritime contracts of carriage. This is true also of almost all of the law of freight, of deviation, and of duty to protect passengers and goods from attack, and to rescue them from peril. The vicissitudes of sea voyages, and the early conception of a voyage as a joint adventure of shipowner, merchants, and mariners, lend these rules their significance.

The only objection to be found to Mr. Green's book is that the citations of the cases are not given in the table of cases.
Georgia Pleading and Practice
The Presentation of the Cause in the Trial Court
By William A. Ingram, LL. B.

The author, Mr. William A. Ingram, a graduate of Mercer University and a member of the Georgia Bar, is on the editorial staff of the Michie Company and rendered great service in the preparation of the Georgia Code of 1926. In this work, Georgia Pleading and Practice, he has furnished in a plain and simple, but exhaustive and adequate manner, all the steps to be taken in a civil action or proceeding.

The volume presents a scholarly text treatment amply substantiated by footnotes containing copious references to the cases, and to standard authorities. The Code references are to the Code of 1926. The purpose of the author is to present "the law and the reason thereof," with sufficient illustrations to indelibly impress the reader with each particular point. From an historical standpoint, the book will prove invaluable, the law is traced to its source, and its development shown, with comparisons between the former and present law. Thus many obstruse and difficult problems are made plain and intelligible.

The Georgia Law of Pleading and Practice are presented, beginning with the initial steps in the prosecution of the cause of action in the trial court, after the particular nature of the action and the proper forum have been determined, and developing the procedure chronologically, step by step, to and including the rendition of the judgment.

The volume is divided into four parts: I. The Initial Considerations, treating with the Parties, Actions, Jurisdiction, Appearances, etc.; II. Pleading, taking up the Introduction, Declaration and Petition, Cross-actions, Answers, Demurrers, Amendments, Dismissal, Nonsuit, etc.; III. Special Defenses, concerning Statutes of Frauds, Set-Off and Recoupment, Usury, Limitations, Former Adjudication, and other Special Defenses; IV. The Trial and Its Incidents, explaining The Introduction, Continuances, The Jury, including the Issues to the Jury, The argument and conduct of Counsel, including the open and close, The Instructions, Verdicts, and the Judgment and Decrees.

The book though highly desirable as a text, is particularly recommended for its practical value to the practicing lawyer. Pleading and practice books are in demand in all the states, and, with the possible exception of the statutes and Code, are the most popular local law books. It has long been recognized that the Georgia practitioner has been handicapped because of the lack of such a book on pleading and practice. Mr. Ingram's book is a good work on pleading and practice—an exhaustive and complete treatment of the subject in text and notes.

The Publisher is The Michie Company, Charlottesville, Virginia. The price is Ten Dollars.
Editorials and Announcements

The Law Department of the University has had a most prosperous year. In 1924-25, it had ninety-one enrolled students. During the present session with a prerequisite of one year of college work it has an enrollment of two hundred and twenty-three. It has eighty more students this year than last. In the Summer School of 1926 there were twelve students; in 1927 it had forty-four; there are applications of about fifty students for admission to the Summer School of 1928. We have enrolled during the present session students from Massachusetts, New York, Illinois, Kentucky, Virginia, North Carolina, South Carolina, Florida, Alabama, Tennessee, Indiana, and one from Texas. Several students have had two years of Law at other schools and are here to take their third year. We have two students who have already been admitted to the Bar in Georgia and are here taking the Senior course. The Library has been increased within the last two years so that the school has a good library of about twelve thousand volumes. It is hoped to add to this if means are furnished so that the school may be fully equipped with a library second to none in the South. At present the Library has the National Reporter System, the Digest System, the Federal Reporter, Federal Cases, the U. S. Supreme Court Reports, the New Federal Code, the English Reprint, the Reports of twenty-six states up to the Reporter System, Georgia Reports, the American Law Reports and many others together with books on particular subjects. Courses are given on International Law, Roman Law, Taxation, Public Utilities, Parliamentary Law and Psychology applied to Evidence. Two hours each week are devoted to the Moot Court in which the students take great interest. Three hours each week independent of the Moot Court are devoted to Practice in the State Courts. There is also a course in Practice in the U. S. Courts taught by Prof. Upson who is a skilled practitioner with much practical experience in the subject. Practice in the State Courts and Evidence are taught by Judge Gober who had an experience of nineteen years as Judge of the Superior Court. He also presides in the Moot Court where almost every kind of a case is tried. The great object is to turn out lawyers ready to enter the courts and practice law. The curriculum is broader and requires more semester hours than any other school in the South. Dr. Morris, Profs. McWhorter and Cornett, each teach a number of major subjects and are all devoted to their work.

From the increased enrollment and the support and confidence given the School by the Bar and people of the State the Faculty have just reason to be proud and they feel that the school will soon be the leading law school of the South both in numbers enrolled and the character of the teaching.
Gober's Georgia Law of Automobiles


The above volume is about ready for the press and will be off the press some time in July. It contains the Georgia law and statutes and also the decisions of the higher courts. It will also embrace the traffic laws of the principal cities of the state. Since most automobilists visit the city either on business or pleasure they will have in this book the traffic ordinances. It is a lawyer's book but one that can be read and understood by the layman.