REPORT AND OPINIONS OF THE ATTORNEY GENERAL OF GEORGIA FOR THE YEAR 1914

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Report and Opinions of the Attorney General of Georgia for the Year 1914 by Warren Grice

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WARREN GRICE

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FOR THE YEAR 1914

WARREN GRICE

Attorney General.

1915

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ATLANTA, GA.

STATE OF GEORGIA
ATTORNEY GENERAL'S OFFICE
ATLANTA.

Hon. John M. Slaton, Governor.

DEAR SIR: I have the honor to present herewith the report of the Attorney-General covering the period from April 15, 1914, to June 26, 1915.

Under one heading will be seen the civil cases instituted since April 15, 1914, in which the State is interested with a brief statement concerning each.

Under another heading is a list of capital cases argued in the Supreme Court of Georgia since that time.

I have been called on almost daily to advise the Statehouse officers on matters of law pertaining to their several departments. These opinions were more frequently oral than otherwise, they not being reduced to writing on account of the pressure of other official matters. Of the written opinions furnished, many involved questions that were momentary and not likely to occur again. These are not included in the report. I have, however, following the uniform custom of my predecessors, appended hereto a number of written opinions rendered the Chief Executive and other officials in response to their requests therefor.

I desire to express my thanks for the many kindnesses received from you and from our co-laborers in the Capitol.

In undertaking the duties of this office I have been

fortunate in having to aid me Mr. Hamilton Douglas, Jr., until August 1st, last, and since that time Mr. A. L. Henson, for whose faithfulness and efficiency I am glad to make this acknowledgement.

Respectfully submitted,

WARREN GRICE,

Attorney-General.

William A. Wright, Insurance Commissioner, vs. The State Mutual Life Insurance Company, of Rome, Georgia.

I was directed by the Insurance Commissioner to file a petition against this company as a basis for an order by the judge of the Superior Court directing that its affairs be placed in the hands of the Insurance Commissioner. At the time these directions were given me, however, Hon. A. W. Fite, judge of the Cherokee Circuit, on account of the disqualification of the judge of the Rome Circuit, had already appointed, at the instance of private parties, a temporary receiver. I, nevertheless, applied to Judge Wright (the company and I waiving his disqualification) for the relief contemplated by the Insurance Act of 1912. Judge Wright refused to pass the order contemplated by that Act, giving as his reasons therefor that Judge Fite had already appointed a temporary receiver for the company in a case then pending wherein Walton et. al. were plaintiffs. This decision was taken to the Supreme Court where it was affirmed by a divided bench. A few days after I filed the petition with Judge Wright I also filed a similar petition with Judge Fite, since he had taken jurisdiction of the assets of the company under the Walton case. Judge Fite declined to turn the assets over to the Insurance Commissioner, but he made on the same day the receivership against the

company permanent. Exceptions were filed to his ruling in not turning over the assets of the company to the Insurance Commissioner to be administered under the Act of 1912; but the Supreme Court again, by a divided court, affirmed the court below. At the same time counsel for the company excepted to Judge Fite's appointment of a permanent receiver. Among the reasons assigned by the company why the case should be reversed was that Judge Fite was disqualified. This decision was reversed, the court dividing the second time. In the meantime the General Assembly had passed the Act of 1914, amending the Act of 1912. I had contended that the remedy provided for in Section 29 of the Act of 1912 was exclusive, that is to say, the position was that the Act, having said that the Superior Court should order its affairs turned over to the Insurance Commissioner whenever it was insolvent, and whenever it would be hazardous for it to continue in business; that this took from the court its power to appoint a receiver for such company. It was on this point that the Supreme Court divided, the majority holding that it was not intended to divest creditors from their right to ask for the appointment of a receiver.

Shortly after Judge Fite had appointed this receiver creditors filed a similar petition in the courts of Alabama, Arkansas and Texas, in which States receivers had been appointed and were in charge of the assets of the company, as were other States.

Such was the state of affairs when the creditors in the original petition before Judge Fite presented their petition to Judge Thomas, of the Southern Circuit, asking for extraordinary relief against the company. In a few days thereafter, I likewise presented to Judge Thomas a petition in behalf of the Insurance Commissioner against the company, embracing in my petition allega-

tions additional to those in the ones already presented to Judge Wright and to Judge Fite. Judge Thomas announced that his view was that, notwithstanding the Walton suit had begun before the passage of the Act of 1914, he had no power after the approval of the Act to appoint a receiver on the petition of creditors. Counsel for the creditors had announced their purpose to go to the Supreme Court again on this issue. In the meantime, as above stated, the company's assets in the 3 States were in the hands of receivers, and, confessedly, the Georgia insurance law had no extra-territorial force—the company, its stockholders and policyholders were suffering from the extended litigation. At this juncture each side made concessions, and an agreement was reached by which the Insurance Commissioner was put in charge of the company's affairs under the Act of 1912, as amended by the Act of 1914, counsel for Walton et al. consenting that, in so far as they controlled the litigation against the company, in the other States mentioned, would agree that the Insurance Commissioner be substituted for the receiver in the courts of the three States. A consent decree of this character was entered before Judge Thomas and the Insurance Department of the State is now in charge. At the request of the Insurance Commissioner I, together with one of the counsel of the plaintiff, appeared in the courts of Arkansas, Texas and Alabama and had the assets of the company in those States turned over to the Insurance Commissioner.

William A. Wright, Comptroller-General, vs. The Union Tank Line Company.

When the Comptroller-General undertook to enforce Sections 989 and 990 of the Code, which declare how he

shall arrive at the value of property for taxation in this State of equipment companies (The Union Tank Line Company being an equipment company) it took the position that in the instant case to apply the method stated in these Code sections would be contrary to certain provisions of our organic law and, after tendering the amount of tax which it admitted to be due, which amount was accepted without prejudice, it filed in Fulton County its petition for injunction. The judge enjoined the Comptroller-General from attempting to collect any greater amount of taxes. A bill of exceptions was filed and the matter was argued in the Supreme Court some time ago. If the judgment of the lower court should be affirmed it will necessitate additional legislation on this subject. The Supreme Court has not yet decided this case.

J. P. Vestel vs. L. G. Edwards, et al.
Shippen Bros. Lumber Co. vs. L. G. Edwards, et al.
J. P. Vestel Lumber Co. vs. L. G. Edwards, et al.

These three cases are similar, being filed in Fannin County against the local tax assessors, in which the action of the tax assessors of Fannin County was attacked, first, upon the ground that the tax equalization law is violative of the State and Federal Constitutions; and, secondly, because the tax assessors were proceeding to administer the law in a wrongful and oppressive manner. I appeared in these cases for the defendant at the request of the State Tax Commissioner. On agreement of counsel, the case first above named was tried, and the decisions in the other two cases were to await the final judgment in the first one. Demurrers were interposed to the petition and, on consideration, the trial judge dis-

posed of the case adverse to plaintiff. He filed a bill of exceptions and the Supreme Court reversed the court below on the ground that the allegations made in the petition as to the manner in which the local assessors were fraudulently and oppressively administering the law were sufficient to withstand a general demurrer, and that the defendants should make answer to those allegations. The Supreme Court, in passing on the whole petition, however, considered and disposed of the criticisms of the Act on account of its alleged unconstitutionality, and I am very much gratified to report that the attack from that standpoint was decided to be without merit.

William A. Wright, Insurance Commissioner, vs. The Empire Life Insurance Company.

I was directed by the Insurance Commissioner to apply to the courts for an order directing him to take charge of the insurance company under the Act of 1912, as amended by the Act of 1914. The company had applied to the Secretary of State for an amendment to its charter moving its home office from Fulton County, Georgia, to Richmond County, Georgia. The amendment purporting to do this had been granted by the Secretary of State, and no question having been raised as to the effect of the charter amendment, and the company having reported that its principal office had been changed, I drafted a petition and presented it to the Hon. H. C. Hammond, judge of the Superior Courts of the Augusta Circuit, praying that the assets of the company be turned over to the Insurance Commissioner. This petition alleged that the principal office of the company was in Richmond County. The company acknowledged service