CONSTITUTIONAL LAW

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During the survey period the Georgia Supreme Court and the Georgia Court of Appeals passed on the constitutionality of a number of important pieces of state legislation. The Supreme Court upheld the validity of the County Unit Law as it presently applies to primary elections; the Atlanta Plan of Improvement; and the State School Building Authority Act. On the other hand, the court denied the validity of the price-fixing features of the Milk Control Law, and again denied that Atlanta could constitutionally reduce the pension allowances for its firemen. In other decisions the courts dealt with the right of state courts to enjoin unions from strike-related activities; the discriminatory practices of the Fulton County jury commissioners in regard to the placing of jurors' names on different colored slips of paper according to race; and a number of interesting due process and religious freedom questions. It is the purpose of this section to discuss these developments as they relate to the constitutional law of Georgia.

THE COUNTY UNIT CASE

Probably the most important case decided by any Georgia court during the survey period, and at the same time the decision which, in the opinion of the writers, was most demonstrably wrong, was the case of *Cox v. Peters*.[1]

In this case the court was asked to determine the constitutionality of the county unit system in a challenge based on a damage suit and raising the constitutional questions involving the Fourteenth and Fifteenth Amendments to the Federal Constitution, as well as a number of sections of the Georgia Constitution. The court did not answer the questions asked because it held that the particular primary to which the county unit system applies was not an "election" and was thus not protected by the constitutional guarantees. The decision is quite obviously contrary to that in *Chapman v. King*,[2] the opinion of which was written by Judge Samuel Sibley, and inferentially it is contradictory of numerous decisions of the United States Supreme Court. However, on appeal to that Court, despite the intervention of the Solicitor General of the United States as *amicus*

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1. 208 Ga. 498, 67 S.E.2d 579 (1951). See also the companion case, Methvin v. Peters, 208 Ga. 506, 67 S.E.2d 585 (1951). Cox v. Peters was dismissed by the United States Supreme Court on appeal for failure to present a substantial federal question. 342 U.S. 936, 72 S.Ct. 559, 96 L.Ed. 370 (1952).
2. 154 F.2d 460 (5th Cir. 1946).

curiae, the Supreme Court failed to note jurisdiction. It would seem to the authors that this action of the Supreme Court of the United States forecloses the success of any act to invalidate the county unit system before the Supreme Court of the United States as presently composed. This belief, however, assumes that the effect of the county unit system is not extended. If, however, the effect is extended to the general election by virtue of the passage of Amendment No. 1 on the general election ballot in November, 1952, the authors believe that this may produce a substantial change in the United States Supreme Court's view of the system. For, though there may be no *legal* difference in the Georgia Democratic Primary and General Elections since *Chapman v. King, supra,* the courts have obviously been influenced by the possibility of protection to the voter in a *free* general election. While Amendment No. 1 on the ballot this Fall, the so-called county unit amendment, does not require the general election to be conducted by the county unit apparatus, it unquestionably has the same practical effect. Any candidate for the affected Statehouse and federal offices will have to pass through the county unit processes before appearing on the general election ballot, if this amendment should be adopted. This unquestionably would be a new factor for the Supreme Court of the United States to consider.

Fulton County — Atlanta Plan of Improvement

An integral part of the Plan of Improvement, by which the corporate limits of Atlanta were substantially extended on January 1, 1952, was the 1951 Act providing for the transfer of police functions from Fulton County to the City of Atlanta.[3] The Act was made applicable "to all counties having therein the greater part of a city with a population of 300,000 or more . . ."[4] Briefly, it provided that since police problems in such counties were unique, any county within the population classification (manifestly only Fulton County) should contract with the city in that county for the furnishing of necessary police services. Pursuant to this Act the Fulton County Commissioners entered into such a contract with the city of Atlanta, providing, among other things, that the county should transfer to the city all equipment used by the county police department prior to its discontinuance. Three tax-payers resident within the unincorporated sections of Fulton County challenged the constitutionality of the Act under which authority the contract was entered into, asking that the Fulton County Commissioners be enjoined from entering into the contract. In *Barge v. Camp*[5] the Georgia Supreme Court upheld the constitutionality of the Act against all challenges, including the following principal claims of invalidity: (1) Petitioners alleged that the Act violated a provision of the State Constitution, which provides: "Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an

3. Ga. Laws 1951, p. 591.
4. *Ibid.*
5. 209 Ga. 38, 70 S.E.2d 360 (1952).

existing general law."[6] The court held that the law could have uniform operation throughout the state because of the open-end population classification, and that there could be no conflict with a general law because this was itself a general law and an amendment of the general law.[7] (2) In answer to the claim of conflict with the other provisions of the State Constitution, the court quoted the following from the Constitution as a complete answer:[8] "(a) . . . any . . . municipality or county of this State may contract for any period not exceeding fifty years, with each other . . . for the use by such subdivisions or the residents thereof of any facilities or services of the . . . municipality (or) county . . . provided such contract shall deal with such activities and transactions as such subdivisions are by law authorized to undertake." (3) To the argument that the contract should be voided as against public policy, the court responded with a reference to the same section of the Constitution as that previously discussed in (2) above, ruling that the court could not pass on the wisdom or abstract justness of that which was authorized by "(t)he people of this State, the sovereign power . . ."[9]

STATE SCHOOL BUILDING AUTHORITY

In *Sheffield v. State School Building Authority*[10] the Georgia Supreme Court sustained the constitutionality of the State School Building Authority Act of 1951.[11] That Act was designed "to provide additional buildings, facilities and improvements within the public school system of this state . . . without creating any debt of the State . . ."[12] To accomplish this purpose the Authority was created as an independent agency endowed with power to sue and be sued, to make contracts, incur indebtedness, to buy, lease and dispose of property, and other such acts. In short, the Authority has power to construct, maintain and repair school building projects which could then be leased to county boards of education, all without the state's incurring any indebtedness for these purposes. The four charges levied against the Authority were disposed of by the court as follows: (1) A principal attack was made upon the entire plan of the Act, the revenue bonds, and the lease contracts, claiming that the Act violated certain requirements of the State Constitution relating to debt limitations. But the court found sufficient answer in the provision of the Constitution[13] which "plainly and unmistakably empowers" the state, its institutions, municipalities, and counties, to contract with each other or with any public authority for the furnishing of facilities or services.[14] In view of that section and "the indisputable fact that the lease contract

6. GA. CONST. Art. I, § 4, ¶ 1, GA. CODE § 2-401 (1948 Rev.).
7. Justice Wyatt concurred specially because bound by former full-bench decisions in the matter of classification based on population, but expressed his disagreement with those decisions.
8. GA. CONST. Art. VII, §6, ¶ 1, GA. CODE § 2-5901 (1948 Rev.).
9. Barge v. Camp, 209 Ga. 38, 48. 70 S.E.2d 360, 367 (1952).
10. 208 Ga. 575, 68 S.E.2d 590 (1952).
11. Ga. Laws 1951, p. 241.
12. *Id.* at p. 243.
13. GA. CONST. Art. VII, § 6, ¶ 1, GA. CODE § 2-5901 (1948 Rev.).
14. Sheffield v. State School Building Authority, 208 Ga. 575, 580, 68 S.E.2d 590, 594 (1952).

and the revenue bonds completely conform" to the constitutional requirements, the court found no violation of the debt limitation provisions of the Constitution.[15] (2) Petitioners assailed both the State School Building Authority Act and the Minimum Foundation Act as attempts to vest legislative powers in the State Board of Education in violation of the constitutional provisions vesting all legislative powers in the General Assembly. The contention was summarily dismissed with citation of statutory law conferring authority on the Board of Education to administer the common school fund[16] and to plan methods of financing the cost of constructing and equipping school buildings.[17] (3) It was also alleged that the provisions of the State School Building Authority Act exempting the Authority property from taxation constituted a donation or gratuity in violation of the State Constitution. However, the court pointed out that public charities may be so exempted, and that the properties of the Authority "are devoted exclusively to public charity as contemplated by the Constitution."[18] (4) Finally, the charge was made that the Authority was not legally organized in that the Speaker of the House was appointed a member of the Authority in contravention of the provisions of the Constitution forbidding the appointment of a member of the General Assembly to an office having any emolument, or to any civil office created during his term in the Assembly. In answer to this charge the court showed that there was no pay provided for the position on the Authority, and that the Authority did not constitute a governmental function, suggesting that the Authority, like the State Board of Regents, "was not the State, was not a part of the State, and was not an agency of the State."[19]

Milk Control Law

The General Assembly provided in 1937 for the creation of a Milk Control Board authorized to license producers and distributors of milk and to fix prices within designated milk sheds.[20] As amended several times, the Act has three times withstood constitutional challenge.[21] In 1951, however, in *Harris v. Duncan*,[22] the Georgia Supreme Court, pointing out that it was not bound by the previous decisions, since none of them were full-bench, voided the price-fixing provisions of the law as in violation of the due process clause of the Georgia Constitution.[23] In that case the Chairman of the Milk Control Board sought an injunction against an unlicensed milk distributor who was selling milk at less than the price of twenty-three cents per quart fixed for the milk shed where it was sold. The court conceded the propriety of the legislative finding that "the

15. *Ibid.*
16. Ga. Code Ann. § 32-408 (Supp. 1951).
17. Ga. Code Ann. § 32-420 (Supp. 1951).
18. Sheffield v. State School Building Authority, 208 Ga. 575, 583, 68 S.E.2d 590, 596 (1952).
19. *Id.* at 584, 68 S.E.2d at 597.
20. Ga. Laws 1937, p. 247; Ga. Code Ann. § 42-523, *et seq.* (Supp. 1951).
21. Bohannon v. Duncan, 185 Ga. 840, 196 S.E. 897 (1938); Gibbs v. Milk Control Board of Georgia, 185 Ga. 844, 196 S.E. 791 (1938); and Holcombe v. Georgia Milk Producers Confederation, 188 Ga. 358, 3 S.E.2d 705 (1939).
22. 208 Ga. 561, 67 S.E.2d 692 (1951).
23. Ga. Const. Art. I, § 1, ¶ 3, Ga. Code § 2-103 (1948 Rev.).

milk industry was large, milk was a product of virtually universal use throughout the State, that it was perishable, important as a human food, and affected the health of people, and . . . that it was important to keep an adequate and constant supply at a price fair to both producer and consumer . . . ."[24] Nevertheless, it held that such facts did not qualify the milk industry as being a business "affected with a public interest."[25] To become so affected, in the view of the court, the "business or its property must be so applied to the public as to authorize the conclusion that it has been devoted to a public use and thereby its use, in effect, granted to the public."[26]

The decision in *Harris v. Duncan, supra,* illustrates the divergent interpretations placed upon the due process concept as a limitation upon legislative regulation of economic matters between the United States Supreme Court and the Georgia Supreme Court. Although at one time the United States Supreme Court also denied the right of the states to regulate matters of state economy by price-fixing, this has not been true since the decision in *Nebbia v. New York.*[27] In that case a New York regulation of milk production and selling, similar to the later-enacted Georgia law, was upheld against claims that it violated the due process clause of the Fourteenth Amendment of the United States Constitution. In *Harris v. Duncan, supra,* the Georgia Supreme Court adopted explicitly the dissenting views of Justices McReynolds, Van Devanter, Sutherland, and Butler in the *Nebbia* case, as the applicable construction of the due process clause of the State Constitution. Chief Justice Duckworth, concurring specially, reviewed the federal and state decisions bearing upon the question and stated the following views on the relationship of court and legislature:

> While it is no legitimate function of the judiciary to advocate or establish any given systems of government, yet it is not inappropriate in this day and age—when the American system of human liberty and free enterprise that has demonstrated its pre-eminent virtue in the growth of the most powerful nation on earth in a relatively short period of time is being assailed from within and from without by the advocates of principles that would render the individual a slave and the government a master—to point to that glorious record as justification for our constitutional system.[28]

The last word on the Milk Control Board has not yet been said. The 1952 session of the General Assembly amended the Act providing for the Milk Control Board[29] in various particulars which it was hoped would overcome the constitutional objections stated by the court in *Harris v. Duncan.* Most important was the addition of section 19-A, describing the regulation as an emergency stabilization program, which could be called into operation by the Governor's declaration of such an emergency thereby justifying "complete economic stabilization of the milk industry by regulation . . . ."[30] The effect of this provision was to restore the emer-

24. Harris v. Duncan, 208 Ga. 561, 564, 67 S.E.2d 692, 694 (1951).
25. *Ibid.*
26. *Ibid.*
27. 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934).
28. Harris v. Duncan, 208 Ga. 561, 570, 67 S.E.2d 692, 697 (1951).
29. Ga. Laws 1952, p. 55.
30. *Id.* at 69.

gency clause under which the Act had previously been specifically upheld,[31] but which had been deleted in 1949[32] in the hope that the court would respond similarly in the future. Now that the Governor has invoked the emergency features of the bill, the constitutionality of the legislation is again ripe for testing.

LABOR INJUNCTIONS

In connection with a labor dispute in Polk County, Georgia, between Cedartown Textiles, Inc., and the Textile Worker's Union of America, C. I. O., Local No. 830,[33] a temporary restraining order was granted against the union, restraining it from the use of violence and mass picketing as well as imposing other more specific restraints. Thereafter the employer filed a petition for a contempt citation against the union, which was granted by the trial judge. The important question on which the Georgia Supreme Court was called to pass in this case was whether the Taft-Hartley Act[34] deprives the state courts of jurisdiction over a controversy such as this. The union, as representative of the individual defendants in this and related cases arising out of the same controversy, argued that the Taft-Hartley Act had pre-empted the field of regulation of labor relations in interstate commerce to the exclusion of the exercise of any jurisdiction by the state or its courts. The defendants relied primarily on the power given the National Labor Relations Board under Section 10 (a) of that Act "to prevent any person from engaging in any unfair labor practice,"[35] as defined in Section 8 (b) of the Act.[36] To date this question has not been passed on by the United States Supreme Court; and there has been considerable divergence among the decisions of the various state courts which have considered the issue.[37] Apparently a majority thus far have decided in favor of the exclusive jurisdiction of the National Labor Relations Board.[38] However, the Georgia Supreme Court, in the *Williams* case has now cast its vote in favor of allowing state courts to continue intervention "to protect life and property against unlawful acts," since the relief granted in this case, in the view of the court, "in no way prevents collective bargaining, or the right to picket peacefully."[39] Although no United States Supreme Court review was sought in this case, it seems certain that the problem here dealt with must eventually be passed on by that court.

31. Bohannon v. Duncan, 185 Ga. 840, 196 S.E. 897 (1938).
32. Ga. Laws 1948-1949, p. 78.
33. Williams v. Cedartown Textiles, Inc., 208 Ga. 659, 68 S.E.2d 705 (1952). Companion cases, controlled by the decision in this case, appear in 208 Ga. 666-668, 68 S.E.2d 709-12 (1952).
34. Labor Management Relations Act, 61 STAT. 136 (1947), as amended, 29 U.S.C. § 141 *et seq.* (Supp. 1951).
35. 61 STAT. 146 (1947), as amended, 29 U.S.C. § 160 (Supp. 1951).
36. 61 STAT. 140 (1947), as amended, 29 U.S.C. § 158 (Supp. 1951).
37. For a discussion of the problem, see Hall, *Taft-Hartley Act v. State Regulation*, 1 J. PUBLIC L. 97, 101-103 (1952).
38. *Ibid.* In the Cedartown Textiles case, the court indicated it had found no state supreme court decisions holding that the NLRB had exclusive jurisdiction in these matters. Hall, *op. cit. supra* n. 37, however, cites two such cases: Gerry v. Superior Court, 32 Cal.2d 119, 194 P.2d 689 (1948); Norris Grain Co. v. Nordaas, 232 Minn. 91, 46 N.W.2d 94 (1951).
39. 208 Ga. 659, 664, 68 S.E.2d 705, 708 (1952).

DUE PROCESS

The inertia of the judicial system is graphically illustrated in *Avery v. State*.[40] Since the decision in *Crumb v. State*[41] it has been clearly the law in Georgia that no Negro could be tried by a jury from which members of his race had been discriminatorily excluded. Yet the pattern of discrimination has been difficult to eliminate. The *Avery* case involved challenges by a Negro convicted of rape to the array of grand and traverse jurors. For present purposes the only important ground of challenge was to the method employed in Fulton County for the selection of traverse jurors. The complained-of practice was that in making up the jury box the jury commissioners placed the names of white jurors on white slips of paper and the names of colored jurors on yellow ones. All members of the Supreme Court of Georgia joined in condemning the practice. Nevertheless the conviction was affirmed. Justice Candler, for the majority, stated:

> And while the statute does not say so, its manifest intention is that the tickets shall be of uniform size and color, so as to make discrimination impossible in the drawing of jurors; and where not so done, this is prima facie evidence of discrimination, and, if nothing else appeared, would require a reversal. In this case, however, it is not charged or contended that any discrimination was practiced in drawing the challenged jurors; and the judge who drew them, as a witness for the accused, testified there was in fact none. Therefore the practice . . . did no harm in this instance.[42]

Justice Head, concurring specially, stated that "(t)his practice could serve only one purpose, to wit, discrimination in the drawing of the names of colored jurors from the box. Prima facie such practice is wrong . . ."[43] Presiding Justice Atkinson and Justice Wyatt dissented, believing the case should be reversed in view of the "conclusive evidence of discrimination . . ."[44]

A more ready, and more subtle opportunity for discrimination is hard to conceive; and the device seems particularly vicious in view of its utter uselessness except to the extent that it might on some occasion be used as a vehicle for the forbidden discrimination. If the requirement for reversal on such a showing is, as the court suggests, one of proved discrimination, the practice seems destined for long continued usage. In this area of the law, more than any other, it would ordinarily be beyond the defendant's power to gain access to information sufficient to prove discrimination. The writers understand that review by the United States Supreme Court is being sought. It is to be hoped that the case will be heard and will be reversed.

The constitutional right of confrontation was affirmed by the Georgia courts in three cases arising under diverse factual situations, but each involving questions of custody or adoption of children. The case of *Sheppard v. Sheppard*[45] was a habeas corpus proceeding between rival con-

40. 208 Ga. 116, 70 S.E.2d 716 (1952).
41. 205 Ga. 547, 54 S.E.2d 639 (1949).
42. 209 Ga. 116, 124, 70 S.E.2d 716, 722 (1952).
43. *Id.* at 131, 70 S.E.2d at 726.
44. *Ibid.*
45. 208 Ga. 422, 67 S.E.2d 131 (1951).

testants for the custody of minor children, in which the record showed that the ordinary who heard the case based his judgment in part upon information received from persons not subject to examination by the parties or their counsel. This was held to be sufficient grounds for reversal. Similarly, in *Moody v. Gilbert,*[46] the record showed that the superior court judge, in fixing the custody of a minor child, based his decision in part upon an investigation report and recommendation of the juvenile court. Citing the *Sheppard* case, the court reversed, stating: "Fundamental to our system of jurisprudence is the right of a party litigant to be confronted with those who testify against him; and respect for judgments and decrees will not survive its abrogation." Finally, in *Cox v. Bohannon,*[47] a somewhat similar situation was presented, this time in compliance with a statutory requirement; but the Court of Appeals refused to rule on the question of confrontation because of the failure to raise the issue in the trial court. The statute in question[48] requires the court to consider the report and recommendation made by the Welfare Department in connection with each adoption proceeding. The court stated that it was "in entire sympathy" with the challenge made to the constitutionality of that section and seems to have invited attack upon the requirement on another occasion.[49]

In *Grant v. State*[50] the Court of Appeals adhered to its former ruling that "(c)ourts should liberally construe the constitutional provision against compelling the accused to be a witness against himself, and refuse to permit any first or doubtful steps which may invade his rights in this respect."[51] Thus, in that case, the court reversed a conviction for operating a lottery because of the wrongful admission into evidence of lottery tickets which an officer compelled the defendant to produce against his will. The court also drew an interesting distinction between the admissibility of evidence seized in violation of the privilege against self-incrimination and evidence seized by an unlawful search and seizure. The former may not be used to convict, whereas in the courts of Georgia illegally seized evidence may be used against the defendant. In this connection the court said:

> We are not unmindful that, even though one is not under arrest, the officer may by force, by an unlawful search and an unlawful seizure, procure from a suspect evidence of the guilt of a crime, and the State may introduce evidence and the jury may convict upon it, but such an illegal act in obtaining such evidence is quite a different thing from the officer compelling the defendant to produce it.

The former, under the many decisions of our courts, does not constitute a violation of the constitutional rights of the defendant; but the method of forcing the defendant to produce this evidence violates his constitutional rights, in that it compels him to produce evidence to incriminate

46. 208 Ga. 784, 69 S.E.2d 874 (1952).
47. 86 Ga. App. 236, 71 S.E.2d 440 (1952).
48. Particularly GA. CODE ANN. § 74-413 (Supp. 1951).
49. 86 Ga. App. 236, 237, 71 S.E.2d 440, 442 (1952).
50. 85 Ga. App. 610, 69 S.E.2d 889 (1952).
51. *Id.* at 613, 69 S.E.2d at 892, quoting from Underwood v. State, 13 Ga. App. 206, 78 S.E. 1103 (1913).

himself.[52] Two cases decided during the year reaffirm the now-familiar proposition that evidence obtained by unlawful search and seizure may nevertheless be introduced in a state trial.[53]

Bradford v. Mills[54] involved a habeas corpus proceeding in which the defendant raised two challenges to the validity of his conviction: (1) That he had been compelled to testify against himself in violation of his privilege against self-incrimination; and (2) That he had entered a plea of guilty to the indictment without the advice of counsel. The court denied both claims. The claim that his privilege against self-incrimination had been violated was refused on grounds of waiver for failure to raise the issue by written plea in abatement to the indictment prior to the trial. His allegation of lack of counsel was deemed insufficient on habeas corpus for failure to allege that he was unable to employ counsel, or that the court declined to appoint counsel to represent him at his request.

It has long been the rule in Georgia, as in most states, that comment on a defendant's failure to make a statement is prohibited.[55] However, in *Parks v. State*[56] where the prosecutor made such a comment, the court held that the impropriety was corrected by the court's immediate instructions to the jury to disregard the statement. But of course it is difficult, if not impossible, to undo the damage caused by that which has already been stated. If this exception should be engrafted onto the rule in future cases, it may well be that the exception will swallow what is an otherwise salutary rule.

Finally, in this section dealing with due process, there is the case of *Cross v. Huff*[57] which involved the attempted revocation of a probation. In this case the defendant was originally given a money fine plus a sentence in the Public Works Camp, "with the privilege to pay said fine and costs and be discharged at any time after entering upon said Public Works."[58] After payment of the fine defendant was relieved of the sentence, but later he was re-arrested, the "probation" was revoked, and he was turned over to the commissioner of roads and revenues to serve in the public works camp. On petition for habeas corpus he was released by the Supreme Court on the ground that there had been no conditions imposed on his probation, therefore he could not be found to have violated same.

Freedom of Religion

In two cases decided during the survey period the state courts dealt with questions of religious freedom and the separation of Church and State. *Anderson v. State*[59] concerned the statutory provisions in Georgia requiring parents to send their children between the ages of seven and

52. *Id.* at 613-614, 69 S.E.2d at 892.
53. Notis v. State, 84 Ga. App. 199, 201, 65 S.E.2d 622 (1951); Clemons v. State, 84 Ga. App. 551, 66 S.E.2d 156 (1951).
54. 208 Ga. 198, 66 S.E.2d 58 (1951).
55. Minor v. State, 120 Ga. 490, 48 S.E. 198 (1904).
56. 208 Ga. 508, 67 S.E.2d 716 (1951).
57. 208 Ga. 392, 67 S.E.2d 124 (1951).
58. *Id.* at 395, 67 S.E.2d at 126.
59. 84 Ga. App. 259, 65 S.E.2d 848 (1951).

sixteen to school, and the regulations of a local board of education, as authorized by statute, requiring children to be vaccinated as a prerequisite to admission. The net effect of the requirements is to make guilty of a misdemeanor any parent who fails to have vaccinated and send to school any child within the prescribed age limits. In the *Anderson* case the parents of school age children refused vaccination for the children because of religious scruples and so withdrew them from school. The trial court's refusal to grant a new trial after conviction was affirmed by the Court of Appeals. Since the Supreme Court of the United States upheld a similar statute against a similar challenge in *Jacobson v. Massachusetts*,[60] the principle has been generally accepted that a person's right to exercise religious freedom "ceases where it overlaps and transgresses the rights of others."[61] And in an instance such as this the rights of others to be protected by vaccination of all has long been held the paramount right.

In *Sapp v. Callaway*[62] the court distinguished between situations in which a temporal court could interfere in matters affecting a church body, and those in which the separation of Church and State forbade any judicial participation. Thus, in a dispute between rival factions of a church congregation, the Georgia Supreme Court agreed with petitioners that the court might enjoin a minority group from the use of church property under appropriate factual circumstances; but the court made clear its unwillingness as a court of equity to interfere with the internal affairs of the church in connection with questions of faith and doctrine, discipline, rule, custom, or church government.

MISCELLANEOUS

Although the proposed reduction of pensions for Atlanta firemen has previously been ruled unconstitutional as a breach of a right of contract,[63] the matter came up once more during the survey period on a somewhat different factual and legal basis. However, the result was the same in *City of Atlanta v. Anglin*[64] as in the earlier cases. And in *Pierce v. Rhodes*[65] mandamus was granted, directing that the city pay up previous deficiencies in pension payments to those already retired and continue payments in accordance with the provisions of the original plan.

One constitutional amendment, one local bill, and two municipal ordinances were voided by the courts during the survey year for various failures to comply with constitutional requirements as to manner of enactment or for conflict with general law. The case of *Towns v. Suttles*[66] involved a proceeding to enjoin the collection of a tax because there had been no ratification by a vote of electors as required by the Georgia

60. 197 U.S. 22, 25 S.Ct. 358, 49 L.Ed. 643 (1905).
61. 84 Ga. App. 259, 263, 65 S.E.2d 848, 851 (1951), quoting from Jones v. City of Moultrie, 196 Ga. 526, 531, 27 S.E.2d 39 (1943).
62. 208 Ga. 805, 69 S.E.2d 734 (1952).
63. Bender v. Anglin, 207 Ga. 108, 60 S.E.2d 756 (1950); West v. Trotzier, 185 Ga. 794, 196 S.E. 902 (1938); Trotzier v. McElroy, 182 Ga. 719, 186 S.E. 817 (1936).
64. 209 Ga. 170, 71 S.E.2d 419 (1952).
65. 208 Ga. 554, 67 S.E.2d 771 (1951).
66. 208 Ga. 838, 69 S.E.2d 742 (1952).

Constitution.[67] The provisions for amending the State Constitution require that proposed amendments which affect only one or more subdivisions of the state should become a part of the Constitution only after receiving a majority vote of the electors voting in the state as a whole, as well as a majority within the particular subdivision affected. In this case the only voters affected by the proposed tax were those of the Fulton County School District. Although the proposed tax received majority approval over the state as a whole, and within Fulton County as a whole, the voters of the School District considered separately did not cast a majority of favorable ballots. Accordingly, holding that the School District is a political subdivision of the state, the court held that the amendment had not passed.

In *Bracewell v. Warnock*[68] a local bill for the incorporation of East Dublin was held unconstitutional and void for its failure to comply with the constitutional provision requiring notice of intention to introduce the bill to be published "once a week for a period of three weeks during a period of sixty days immediately preceeding its introduction into the General Assembly."[69]

The Constitution of Georgia provides that laws of a general nature shall have uniform operation throughout the state, and that no special law shall be enacted in any case for which provision has been made by an existing law.[70] Municipal ordinances in two instances were held void under this provision during the year. The courts, in proceedings arising in DeKalb and Fulton Counties arrived at the same result in voiding an Atlanta ordinance designed to penalize drunk driving. In *Giles v. Gibson*[71] the Georgia Supreme Court reversed a conviction under the ordinance, holding that it was nothing more than a special law which was unconstitutional, null and void as an effort to punish acts committed within the city which are crimes against the state. This decision was followed by the Court of Appeals in *Brinson v. City of Atlanta.*[72] A local health law relating to rat-proofing in the case of *Moore v. City of Tifton*[73] met a similar fate.

The case of *Carter v. Bishop*[74] presents the now not novel question of the jurisdiction of the Supreme Court of Georgia as opposed to the jurisdiction of the Court of Appeals in questions relating to the Constitution of the State or the United States. The rule in the *Carter* case is the usual statement of the principle that the Court of Appeals and not the Supreme Court of Georgia has jurisdiction where clauses of the Constitution invoked are plain and unambiguous and require only application. This rather simple statement of the rule indicates that the matter is less complicated than it really is. The public and the Bar perhaps only recently became

67. GA. CONST. Art. XIII, § 1, ¶ 1, GA. CODE § 2-8101 (1948 Rev.).
68. 208 Ga. 388, 67 S.E.2d 114 (1951).
69. GA. CONST. Art. III, § 7, ¶ 15, GA. CODE § 2-1915 (1948 Rev.).
70. GA. CONST. Art. I, § 4, ¶ 1, GA. CODE § 2-401 (1948 Rev.).
71. 208 Ga. 850, 69 S.E.2d 774 (1952).
72. 86 Ga. App. 34, 70 S.E.2d 773 (1952).
73. 84 Ga. App. 280, 66 S.E.2d 164 (1951).
74. 209 Ga. 146, 71 S.E.2d 216 (1952).

aware of the complexities of the rule by arguments in the county unit cases in the Supreme Court last year. In that court the question was propounded from the bench whether the issues of the case conferred jurisdiction upon the Supreme Court or the Court of Appeals. The court finally adjudged that the constitutional questions conferring Supreme Court jurisdiction were correctly raised. It would seem to the authors that the jurisdiction of the Supreme Court of Georgia applies, under the provisions of the Constitution of Georgia[75] to all cases in which the language of the Constitution is being *initially* construed. Jurisdiction by that constitutional provision is also conferred upon the Supreme Court of Georgia in all cases "in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question . . ."[76] The authors believe that no particular words are required to satisfy this provision. In other words, it is not necessary for the petitioners to say that the Act is "void and illegal." If the constitutional validity of a statute is "drawn in question" by the pleadings, the petition confers jurisdiction upon the Supreme Court of Georgia by the terms of the Georgia Constitution.

75. GA. CONST. Art. VI, § 2, ¶ 4, GA. CODE § 2-3704 (1948 Rev.).
76. *Ibid.*