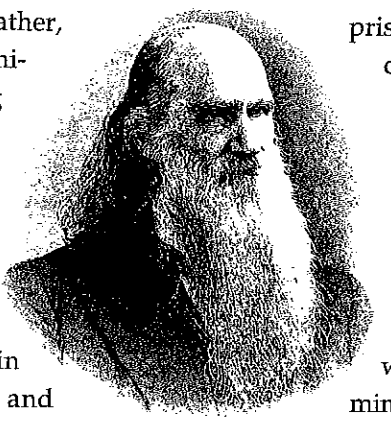
# Justice Bleckley's Last Case

By John K. Larkins Jr.

Logan E. Bleckley is the colossus bestriding Georgia law. His stature in his day was such that The Georgia Bar Association in 1909 published an entire book as a memorial,[1] containing tributes, selections from his writings (legal, philosophical and poetic) and an article, "Wit and Wisdom of Chief Justice L.E. Bleckley in the Georgia Reports" that, when originally published, was admired by lawyers in both this country and Canada.[2] As a measure of the public respect afforded Bleckley, in 1912 the people of Georgia named a county for him — an extraordinary honor for a jurist.[3]

Bleckley's sayings are still quoted by Georgia courts, as well as by courts of other states. He is one of the few judges who has achieved the status of generally being cited by name (e.g., *"As stated by Chief Justice Bleckley..."*; *"This question was aptly addressed by Chief Justice Bleckley..."*).[4] And it is the Bleckley aphorisms that usually are quoted, not the holdings of the cases from which they come.[5]

The esteem afforded Bleckley results almost entirely from his tenure on the Georgia Supreme Court. Remarkably, even in his day it was noted that his achievements as a judge were not marked by "landmark" opinions that decided some weighty constitutional issue or adopted some innovative cause of action.[6] Rather, his gift was to illuminate cases involving "common, everyday legal issues" with stunningly lucid explications of fundamental legal principles, often expressed in poetic metaphor, and always expressed with literary flair and wit. For example, once when dealing with a small case that the parties unnecessarily complicated, Bleckley wrote, in a now famous passage: "In the ornithology of litigation this case is a tomtit, furnished with a garb of feathers ample enough for a turkey."[7] Bleckley believed that a judicial opinion, ideally, should be "terse, crispy, graceful, animated and entertaining."[8]



But it is a mistake to view Bleckley as all quaint literary flourish. In fact, the Bleckley quotation I most admire is quite the opposite. Some years ago I represented a man accused of using opprobrious words to a policeman.[9] I advocated the position that constitutionally there can be no such thing as fighting words uttered to a law enforcement officer, because in the eyes of the law the officer is not permitted to be provoked. My research revealed *Burns v. State*,[10] an 1888 opinion by Justice Bleckley affirming the conviction of a policeman for assault and battery upon a prisoner. The opinion contained a marvelous explanation as to why "an officer of the peace cannot suffer himself to be overcome by opprobrious words or abusive language while he is acting as a minister of the law."[11]

Even more impressive, however, was the section that closed the Burns opinion:

> It was suggested in argument that a white man will not take insolence from a negro, and we suppose it was meant for us to note that virtue or infirmity (whichever it may be) in expounding and administering the law, or it would not have been mentioned. What we have to say on that subject is this: the duty of an officer to a colored prisoner is not different in any respect from his duty to a white prisoner. He must do right to a colored man as well as to a white man, and obey the law. Judges, including ourselves, must do right, — right to people of all colors; jurors ought to do it; and policemen shall do it, so far as it depends upon us to administer the rules of law to their conduct.[12]

Here is the literary genius of Bleckley differently employed. The force of the language and the resolve of the court are unmistakable. The words are plain and mostly monosyllabic. The guiding principles are compacted into the words "right" and "law," emphasized by repetition ("right, — right to people of all colors"). The phrase, "What we have to say on that subject is this," followed by the colon, also is designed purely for emphasis. The reference to judges and jurors, unnecessary to the narrow decision, elevates the principle by invoking all those associated with administering the law. And then there is the powerful mantra: "judges must do it, jurors ought to do it and policemen *shall* do it," followed by the emphatic "so far as it depends upon us to administer the rules of law to their conduct" (*i.e.*, "as long as we have anything to say about it").[13]

Logan Edwin Bleckley was born in Rabun County in 1827; he died in Clarkesville in 1907. His formal education was meager. Happily, his father was the clerk of several local courts, and young Bleckley fell in love with the law, in which he was largely self-taught.[14] He was admitted to the Bar in 1846, while still 18 years of age, and began practicing as the only lawyer in Rabun County.[15]

An episode occurred in those early days that afterwards frequently was recounted as an example of Bleckley's character. Shortly after his admission to the bar, he witnesses the imprisonment of a woman for a small debt. "He was always a foe to injustice and in this case the victim was a woman, poor and utterly defenseless."[16] Bleckley raised the money to secure her release.[17] But the episode so moved him that, despite having no political experience or influence (he was not even yet of voting age), he initiated and secured passage by the General Assembly of a bill preventing the imprisonment of women for debt — making him a "pioneer" in the eventual abolishment of imprisonment of debt in Georgia.[18]

In 1848, Bleckley "suspended" his unsuccessful legal practice to take a more lucrative job as a bookkeeper in a railroad office in Atlanta, a position he held for three years, followed by one year as a secretary to the Governor (then in Milledgeville).[19] He ventured back into the practice of law and before the Civil War attained "moderate prosperity" in private practice in Atlanta and as solicitor-general of the Coweta circuit (which then included Fulton County).[20]

Bleckley enlisted in the Confederate Army in 1861, "very reluctant but very determined to fight."[21] Ill health resulted in his honorable discharge before he ever fired a shot in anger, apparently to his great relief.[22] He returned to the practice of law and during the hard post-war years was briefly the reporter for the Georgia Supreme Court (1864-1867).[23]

Bleckley became an associate justice of the Georgia Supreme Court in 1875 and resigned in 1880. The reason for his resignation was the perennial appellate court problem: overwork (at that time there were only three judges on the Supreme Court, no law clerks and no Court of Appeals).[24] In Bleckley's case, he seems to have been forced to labor through doubts, obscurities and complications that the brilliance of his mind revealed.

> The labor of learning rapidly on a large scale, and the constant strain to shun mistakes in deciding cases, shattered my nerves and impaired my health. In its effect on the deciding faculty, the apprehension of ignorance counts for as much as ignorance itself. My mind is slow to embrace a firm faith in its sup-

> posed knowledge. . . I seem not to have found the law out in a reliable way. I detect so many mistakes committed by others, and convict myself of error so often, that most of my conclusions on difficult questions are only provisional. I reconsider, revise, scrutinize, revise the scrutiny, and scrutinize the revision.[25]

In 1887, upon the death of the incumbent chief justice, Bleckley was persuaded to return to the Georgia Supreme Court as chief justice.[26] In 1894, he again resigned due to overwork — the work was simply too much for three judges (his resignation was said to have prompted an expansion of the Supreme Court to six members).[27] After resigning as chief justice, Bleckley moved to Clarkesville and announced his retirement from the active practice of law.[28]

In the *Memorial* volume is the statement that following his resignation as chief justice, Bleckley "ever afterwards was recognized by the people, by the Bar, by his successors on the bench, as Judge Emeritus, and even after his retirement, at the request of the Court, prepared the notable opinion in the Greene [sic] case, 97 Ga., 36."[29]

The case referenced is *Green v. Coast Line Railroad Co.*[30] The report of the case contains a preface by Chief Justice Simmons:

> At my request, concurred in by my associates, ex-Chief Justice Bleckley has assisted the court both in deciding this case and in preparing the opinion. After adoption by the full court, it now appears in his language. The same is true of the head-notes.[31]

Why was Bleckley asked to assist the court? No explanation is given, and an examination of the original case file at the State Archives reveals none. The case had been argued at the prior term, when Bleckley was still a member of the court, and due to the length of time for decision obviously had caused the court much difficulty. Having heard the argument, Bleckley likely would have conferred with his colleagues and reached a tentative decision before resigning. Did he want to complete an opinion on which he had labored without resolution before his departure from the bench? Did the court believe that because of the complexity of the case, he was "the best judge for the job?" The official record gives no answer.

*Green* presented a rather complicated and obscure issue involving the priority between creditors of a failed railroad company. Mrs. Green's husband and son were killed in 1890 by a Coast Line Railroad train as they walked along a sidewalk adjacent to the railway track.[32] In less than three months, Mrs. Green had won a judgment against the railroad company in the amount of $1750 for the tort.[33] Some months after the judgment, the holders of two pre-existing mortgages on the railroad property applied to the Superior Court for appointment of a receiver and foreclosure of the mortgages.[34] The receiver was appointed, operated the company for nearly two years and eventually sold the company's assets for far less than the mortgages.[35] The widow intervened in the receivership proceeding, seeking payment.[36] The lower court held that the mortgages had priority and the widow could recover nothing.[37] Since the railroad company was insolvent, the widow would never collect.

The first issue before the Supreme Court was, conceding priority of the mortgages as to the corpus, whether there was like priority as to income earned during the receivership.[38] It was this issue that was addressed in the body of the Bleckley opinion for the court.[39]

*Green* is not one of Bleckley's "terse" opinions; rather, the official report is 29 pages long, densely and argumentatively written. After reciting the facts, Bleckley first disposed of the issue of whether priority of creditors was established by the recording of the mortgages, holding that notice of a mortgage was irrelevant to an involuntary victim of the mortgagor's negligence.[40] Next, Bleckley noted that while out of possession, the mortgagee has no claim or lien on the income of the debtor, and when the property was placed into the hands of a receiver — as the mortgagee in *Green* voluntarily did, instead of taking possession — it came into the possession of the court.[41] And, "[u]ndoubtedly a court of equity may treat income made by itself through a receiver as legally its own, held in trust for the beneficiary best entitled to it."[42]

So the issue was framed: as between the two claimants to the income earned during the receivership, how would a court of equity view their relative priority? The mortgagee's appeal "to the heart of equity" was met with sarcasm worthy of a jury argument by a modern personal injury lawyer. If equity would aid the holder of the mortgage get paid, surely it might help collect "a judgment recovered by a wife and mother for homicidal negligence."[43] This was especially so since the chief beneficiary of the foreclosure was the president of the "derelict institution:"

> Would it be harsh to say to him in answer to his appeal: "Sir, if you had desired your bonds and coupons to have a

sweeping and unlimited preference over a judgment for damages occasioned by negligent homicide, you ought to have seen to it that the injury causing the damages was not inflicted. You were in control, whereas the wife and mother had no control, and nothing to do with the management. It would be far better to impute the negligence of the corporation to you, its president, than it would be to turn her away empty that your coffers may be made a little more full."[44]

Bleckley then proceeded to a lengthy analysis of the railroad's special obligations as a public franchisee to answer for damages to the public occasioned by the exercise of the franchise, noting that "[t]he safety of the people is the supreme law."[45] The mortgagee could not be permitted to allow the franchise to *operate* in the receivership and yet have it insulated from its responsibilities to the public for its negligence. According to Bleckley, with such a "quasi-public" corporation, there is a burden of public duty corresponding to the benefit afforded to those associated with the business. In Bleckley's view, the railroad business, despite its importance to the public at large, should not be elevated over the individual members of the public:

> There seems to be a theory that if mortgaged railroads can be kept "going concerns," it matters not what else may stop. That the public is decidedly the most important "going concern" in existence appears to be overlooked. As a part of the public, the husband and the son of Mrs. Green were "going concerns," and the going of the railroad was the cause of their ceasing to be such. ...Public policy certainly favors keeping the franchise active, but it favors more the security of all who as a part of the public are liable to suffer by their activity. No policy is subserved by going wrong. Non-feasance is better than misfeasance; idleness is better than homicidal mischief resulting from a vicious or negligent activity.[46]

The widow was thus entitled to enforce her judgment against the income in the hands of the receiver.

In its day, *Green* met with a mixed reception by other courts and the by the bar. Indeed, only three years later, the United States District Court for the Northern District of Georgia, while noting "the high character of the court, and the eminence as lawyer and judge of the distinguished ex-chief justice who wrote the opinion, should give it great weight," declined to follow the decision.[47] The Fifth Circuit affirmed, although acknowledging the "glowing argument of the distinguished jurist who wrote the [*Green*] opinion."[48]

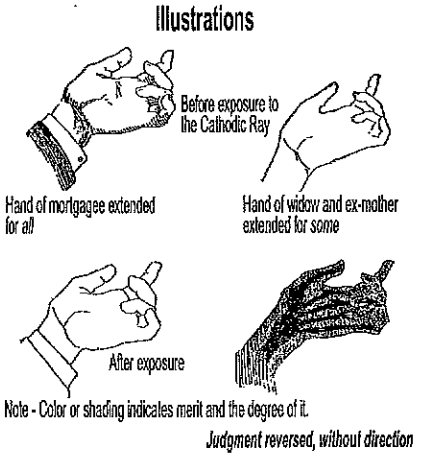
Bleckley admitted that his opinion was contrary to existing authority. In so doing, he penned a memorable, defiant statement that has since been quoted by other courts: "Every direct authority known to us is against us; nevertheless, we are right and these authorities are all wrong, as time and further judicial study of the subject will manifest."[49]

While it is perhaps sentimental, and is certainly speculation, one is tempted to see in this last judicial opinion of Justice Bleckley an analogue with the episode that occurred shortly after his admission to the bar, nearly 50 years earlier, involving the "poor and utterly defenseless" woman imprisoned for debt. In each case, Bleckley's humane view of the justice (and injustice) inhering in the two women's respective plights impelled his view of what the *law* should be. Perhaps the same passion that inflamed the young Bleckley accounts for this last judicial opinion from the "heart of equity."[50]

Bleckley's judicial opinions are noted for their wit, and *Green* is no exception. After describing the reasoning of the opinions that were contrary to the result reached in *Green*, Bleckley wrote that those courts could perhaps benefit by the recently discovered x-ray:

> Courts which thus reason and decide may possibly be reached by the late discovery of Professor Roentgen, and for their benefit and the benefit of the profession generally, we shall close this opinion with appropriate illustrations, based on the new process.[51]

He then closed the opinion with these "illustrations" that he somehow created, making *Green* perhaps the only appellate decision where the court depicted its reasoning pictorially. The imaginary x-ray of the parties' respective hands outstretched for money



revealed that the mortgagee's was hollow, in contrast to the widow's, which was supported by the flesh and bone of the merit of her claim. It was classic Bleckley.

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## Endnotes

1. *A Memorial of Logan Edwin Bleckley (1827-1907)* (Ga. Bar Ass'n, 1909) (hereinafter *Memorial*). This volume, first published in 1909, was reprinted by Mercer University Press in 1982, and is currently in print. The *Memorial* contains the official memorial proceedings in the Georgia Supreme Court, also found at 128 Ga. 849 (1907).
2. Albert H. Russell, "Wit & Wisdom of Chief Justice L.E. Bleckley in the Georgia Reports," in *Memorial, supra* note 1, at 249; *see also* "Sketch of Chief Justice Bleckley" (1908) in *Memorial*, at 13.
3. In 1939, the General Assembly named a mountain in Rabun County in honor of Justice Bleckley, "noted for high character and profound knowledge of the law and his great love of nature and truth," and also in honor of his son and namesake, "to whom the traits of the sire descended," who was the long-time clerk of the Supreme Court and Court of Appeals. 1939 Ga. Laws 244.
4. *E.g.*, Strassburger v. Johnson, 12 Pa. D&C. 366, 369 (Pa. Comm. Pl. 1928) ("We quote and adopt the language of that great jurist of Georgia, Chief Justice Bleckley, who has impressed himself upon the jurisprudence of this country...."); Atlantic Coast Line RR v. King, 135 So.2d 201, 203 (Fla. 1961) ("The best answer...may be gleaned from an address...by Chief Justice Bleckley, whom Georgia lawyers of his vintage generally agree to be the greatest judge who ever adorned the Georgia Supreme Court.").
5. Bleckley's appearance fit his status as a legal sage. He was described as having the appearance of a "prophet of old" – he was well over six feet tall, with long hair and beard, and deep-set dark eyes. "Sketch of Chief Justice Bleckley," *supra* note 2, at 15. On one occasion, in New York, a lawyer leaving a conference with Bleckley remarked, "You ought to see him! There's an old man in there who looks like Santa Claus, but talks like Blackstone." Benning M. Grice, "The Tallest of Them All," 4 Ga. St. B.J. 39, 53 (August 1967).
6. "Sketch of Chief Justice Bleckley," *supra* note 2, at 14.
7. Lukens v. Ford, 87 Ga. 541, 542, 13 S.E. 949 (1891).
8. L.E. Bleckley, "A Letter To Posterity (1892)," in *Memorial, supra* note 1, at 64.
9. Dinnan v. State, 253 Ga. 334, 320 S.E. 2d 180 (1984). The Supreme Court did not reach the issue, since the case was reversed on other grounds.
10. 80 Ga. 544, 7 S.E. 88 (1888).
11. *Id.* at 548, 7 S.E. at 90.
12. *Id.* at 548-549, 7 S.E. at 90.
13. Bleckley's style, as well as his view of the law, seems reminiscent of Edmund Burke. Thus, when decrying the lynching plague then plaguing the country (including Georgia), Bleckley spoke in language that Burke could have written about the French Revolution: "Children already born may live to see mobs mobbed; large mobs may execute smaller ones; mobs of one race may rise up against mobs of another race; mobs of bad men may become more numerous and more terrible than mobs of good men." L.E. Bleckley, "Emotional Justice" (1892), in *Memorial, supra* note 1, at 104.
14. "Letter To Posterity," *supra* note 7, at 66.
15. *Id.*
16. Thomas Walter Reed, History of the University of Georgia (unpublished manuscript ca. 1946), Ch. XVII (University of Georgia Library Archives). This work contains a most fulsome discussion of Bleckley, who enrolled in the University of Georgia after leaving the bench. He graduated in 4 days.
17. *Id.*
18. *Id.*; "Sketch of Chief Justice Bleckley," supra note 2, at 8.
19. "Letter To Posterity," *supra* note 7, at 68.
20. *Id.*
21. *Id.* at 69.
22. *Id.* at 68.
23. *Id.* at 69. Justice Bleckley's son, Logan Bleckley, became deputy clerk of the Georgia Supreme Court in 1888, and Clerk of the Georgia Court of Appeals in 1907. Justice Bleckley's granddaughter, Katherine, also served both courts, most notably as Clerk of the Supreme Court from 1934-1962.
24. *Id.* at 64. Upon his first retirement, he caused a "judicial poem," entitled "In The Matter of Rest" to be published in the Georgia Reports. 64 Ga. 452 (1880).
25. "Letter To Posterity," *supra* note 7, at 65.
26. *Id.*
27. Report of Committee, "Memorial of Hon. Logan E. Bleckley" (1909), in *Memorial, supra* note 1, at 27.
28. John W. Akin, "The Poet Bleckley," (1895), in *Memorial, supra* note 1, at 151.
29. "Sketch of Chief Justice Bleckley" (1908), in *Memorial, supra* note 1, at 10.
30. 97 Ga. 15, 24 S.E. 814 (1895).
31. *Id.* at 16, 24 S.E. at 814.
32. *Id.* at 18, 24 S.E. at 815.
33. *Id.*
34. *Id.*
35. *Id.* at 19, 24 S.E. at 815.
36. *Id.*
37. *Id.*
38. *Id.* at 20, 24 S.E. at 816
39. If the widow's judgment enjoyed priority, the second issue was whether the expenses of the receivership — which exceeded the amount of the judgment — took priority over the judgment. This issue was addressed only in the headnotes of the opinion.
40. *Id.* at 20-22, 24 S.E. at 816.
41. *Id.* at 22-23, 24 S.E. at 816-817.
42. *Id.* at 22-23, 24 S.E. at 817.
43. *Id.* at 26, 248 S.E. at 818.
44. *Id.* at 26-27, 24 S.E. at 818.
45. *Id.* at 34, 24 S.E. at 821.
46. *Id.* at 37, 24 S.E. at 822.
47. Cent. Trust Co. v. Chattanooga, R. & C.R.R., 89 F. 388, 392 (N.D. Ga. 1898)
48. Cent. Trust Co. v. Chattanooga, R. & C.R. Co., 94 F. 275 (5th Cir. 1899). *But see* McCullough v. Union Traction Co., 186 N.E. 300, 307 (Ind. 1933); Bartlett v. Cirero Light, Heat & Power Co., 52 N.E. 339, 341 (Ill. 1898).
49. *Green*, 97 Ga. at 36-37, 24 S.E. at 822.
50. By the close of his life, Bleckley had come to something of a classic natural law understanding of jurisprudence — *i.e.*, that law is not a matter of will, but is rather "found" by applying reason to the particular facts. L.E. Bleckley, "Revised Thoughts On Law" (1905), in *Memorial*, supra note 1, at 298-300.
51. *Green*, 97 Ga. at 42, 24 S.E. at 823.