CRIMINAL LAW

By H. T. O'NEAL, JR.*

On many occasions in past years the people in the illegal whiskey business have provided us with decisions sufficiently colorful to lend a little levity to this otherwise dreadfully serious field of jurisprudence. People who indulge in this particular activity invariably show more versatility and mental dexterity than any other class who operate beyond the confines of the law. No recent studies have been made to ascertain why this phenomenon should exist. Experience in criminal court, however, will attest to its truth. As an example, let us examine the case of *Bobo v. State*.[1] It appears from the opinion that the officers went to the home of the defendant armed not only with a search warrant but with considerable information about certain of his activities as well. They ripped the faces of the electric sockets from the walls and behind one of them found the open ends of three suspicious looking pipes. Air was pumped down one of the pipes and forty-two gallons of whiskey erupted from the ends of the other pipes. The police could not get down to the place where the container holding the whiskey was located because to have done so would have necessitated blowing up the house with dynamite or some similar substance inasmuch as the pipes in question were embedded in the concrete floor of the house. It must be remembered that in a prosecution for possession of illicit whiskey it is incumbent upon the state to prove that the whiskey was in a container which did not bear the required revenue stamps. The defendant Bobo predicated his defense upon precisely that premise, and he insisted that he was entitled to an acquittal on the ground that the state failed to prove that the tank embedded in concrete under his house did not have the required tax stamps affixed to it. The Court of Appeals did not choose to adopt his theory. It held that the state had shown, at least circumstantially, that the defendant possessed illegal liquor, and that the defendant's hypothesis that the storage tank might have contained tax stamps was not such a reasonable hypothesis as to demand a reversal of a case made out on circumstantial evidence. While this sad result does not prevent the defense from being ingenious, it should operate as an object-lesson for all

*Member of the firm of Adams, O'Neal, Steel and Thornton, Macon; LL.B. 1950, Walter F. George School of Law, Mercer University; Member Macon and Georgia Bar Associations.

1. 100 Ga. App. 643, 112 S.E.2d 205 (1959).

younger scholars of the law that one does not get a passing grade in criminal court for effort or ingenuity alone.

Several important decisions concerning indictments and proceedings before the grand jury have been handed down. One of these is the case of *Anjette Lyles v. State*.[2] The instrument of death in that case was arsenic trioxide poison, a homicidal agent which lends itself to being administered in repeated small doses which eventually build up to a fatal level. It is that peculiarity which renders it difficult or downright impossible to ascertain any particular date upon which a lethal assault was delivered. Accordingly, the date of the assault was handled by employing the following wording in the indictment:

> . . . In the year of our Lord One Thousand Nine Hundred Fifty Eight . . . at a time and times, and in a form and forms, and in a dose and doses to the grand jurors unknown, all with the intention and design to kill and murder the said victim who was then and there ignorant of the deadly character of said poison and poisons; and the said deadly poison and poisons did produce in the said victim a state of mortal sickness whereof she died on the 5th day of April in the year of our Lord One Thousand Nine Hundred Fifty Eight.

Numerous demurrers were interposed to the indictment on the ground that the date of the assault had not been specified. In reviewing a decision of the trial court overruling these demurrers, the Supreme Court held that in such cases it was sufficient to allege the date of the death of the victim because that was the date when murder was actually consummated. This decision will be of importance in future cases in which it is impossible to determine the date that a fatal assault was given. This sort of latitude, however, is never permitted in connection with descriptions of property where some offense against property is the gravamen of an indictment. This is true even where it is exceedingly difficult to describe some particular type of property. One recent decision[3] struck down a larceny indictment which described the stolen property as "Number 4 and Number 6 hard drawn bare copper wire of the value of $35.00." The reason for such strictness is that when an indictment fails to so describe property as to distinguish it from all other property of like kind (in this instance, other copper wire) a defendant would never be able to plead double jeopardy if he was subsequently prosecuted again for larceny of the same property. Laxity in alleging a date could never have such a disastrous consequence. This survey period produced another decision which held the state to strict account

2. 215 Ga. 229, 109 S.E.2d 785 (1959).
3. Simpson v. State, 100 Ga. App. 726, 112 S.E.2d 314 (1959).

in framing an indictment. In the case of *Pasley v. State*[4] the defendant Pasley was prosecuted for abandoning an illegitimate child whose surname as set out in the indictment was different from the surname of the defendant. The indictment merely charged him with abandoning "his minor child." The Supreme Court reversed a conviction under this indictment. It held that the term "child" ordinarity imports a legitimate child; and where, as here, a defendant was charged with abandoning a child with a name different from his, the indictment was fatally defective because it did not clear up the hiatus by affirmatively describing the child in question as an illegitimate child. One other important matter involving indictments has been decided by the Court of Appeals. A Georgia statute[5] provides, in substance, that a former felony conviction with punishment sentencing the defendant to confinement in the penitentiary may be pleaded in an indictment and proved upon the trial of the case for the purpose of fixing upon the defendant the maximum punishment if he is convicted of the offense for which he is upon trial. *Mobley v. State*[6] was a case in which the prosecution sought to employ this procedure. The defendant was on trial for forgery, a felony and the indictment against him pleaded that he had been previously convicted of hog stealing, which was also a felony. Hog stealing, however, is a reducible felony; and it appeared upon the trial of the case that the defendant had only been sentenced to a misdemeanor punishment in the hog stealing case rather than confinement and labor in the penitentiary. The Court of Appeals rightfully held that a reversible error had been committed by allowing the state to plead and prove the hog stealing case because the statute in question allowed the injection of the other crime only where the defendant had been *sentenced for a felony*. Since the defendant Mobley had been sentenced for nothing more than a misdemeanor he did not come within the orbit of the statute.

The foregoing authorities have dealt solely with the contents of the indictment itself. We will now undertake to deal with certain decisions relating to the procedure involved in *procuring* an indictment. In the case of Ledford v. State[7] one of the grounds of motion for a new trial was that the indictment returned against the defendant was void because it was returned by the grand jury without any competent evidence of the defendant's guilt. The Supreme Court disposed of this contention by holding that since it related to an attack on the legal sufficiency of an indictment it would have to be raised in a bill of

4. 215 Ga. 768, 113 S.E.2d 454 (1960).
5. GA. CODE §27-2511 (1933).
6. 101 Ga. App. 317, 113 S.E.2d 654 (1960).
7. 215 Ga. 799, 113 S.E.2d 628 (1960).

exceptions rather than as a ground of motion for new trial. Consequently, the case turned on a point of procedure and did not decide whether the sufficiency of evidence before a grand jury could actually be inquired into. On the same date the case of *Buchanan v. State*[8] was decided by the Supreme Court, and this case did properly present the same point. The court held that ample evidence was presented before the grand jury upon which it was justified in returning an indictment. The court, however, did not elect to leave the matter there. It expressly stated that it was not deciding whether evidence given before a grand jury could *ever* be inquired into. It then went on to cite the famous old case of *Powers v. State*[9] which contained this language: "It has never been the practice in this state to go into an investigation to test the sufficiency of the evidence before the grand jury." It might not be amiss to make the observation here that although the Supreme Court did in fact scrutinize the evidence which went before the grand jury in the case under discussion, it apparently would not be willing to order a reversal of a case which involved a situation where no evidence was presented to the grand jury. The observation about to be made on this matter is not intended as a criticism of the Supreme Court or of either of the two decisions just cited. Any objective mind must necessarily concede that great harm would be done to the administration of justice by allowing every defendant who comes into court to have an opportunity to have a preliminary trial of his case on the question of sufficiency of evidence to support the indictment. Even so, a very great evil exists when it is not legally possible to inquire into the evidence upon which an indictment is founded under *any circumstances.* Everybody knows that in this state it is an almost invariable practice for a grand jury to indict when the prosecuting attorney requests them to do so. Perhaps in other states the custom is not quite so ironclad, but in Georgia the practice is deep-rooted and of long standing. If this practice is to be fortified with a rule that the activities of the prosecuting officer before the grand jury cannot be inquired into under any circumstances, then the grand jury is no longer a safeguard of individual liberties and ought to be abolished as an instrument of justice. Once this was done the superior courts would then operate like the several city courts in that the prosecuting officer would be authorized to prefer whatever charges he may desire. As a practical matter that is what is going on when the evidence before a grand jury cannot be inquired into. This should be fruitful ground for a statute which would permit a defendant to make this inquiry

8. 215 Ga. 791, 113 S.E.2d 609 (1960).
9. 172 Ga. 1, 157 S.E. 195 (1930).

upon a written application under oath solemnly filed in court for the purpose of raising such an issue. Furthermore, this procedure should be permissible as soon as an indictment is returned into court so that a person would not have to await a trial in order to raise the issue by a plea in abatement as is now the practice.

Several propositions of criminal procedure will now be dealt with. The case of *Cadle v. State*[10] dealt with a prosecution of one of that class of persons who were entitled to service of a proposed indictment and the right to appear before a grand jury prior to the return of an indictment against him.[11] The defendant was permitted to appear before the grand jury to contest the facts presented before that body but was not permitted to have his counsel available there to assist him. The Supreme Court held that this denial of benefit of counsel constituted reversible error because where rights or privileges are granted by constitution or by statute there is carried with them by necessary implication such additional rights as may be necessary to be *effective exercise* of such rights. The court went on to assert that such a defendant was entitled to have his counsel present at every step of the procedure, if he so desired, in order to insure the effective exercise of the rights granted him by statute. The case of *Walker v. State*[12] deals with a totally different problem of criminal procedure, but one which is of great and probably increasing importance. In that case a defendant charged with murder filed a proceeding in superior court seeking to force a disclosure of certain evidence which the state had against him. The trial court granted him access to some of the evidence but declined to allow him to inspect the balance of it. The Supreme Court held that the defendant had no right to inspect the evidence prior to trial. From a purely legal standpoint there can be no quarrel with the decision of the court. There is ample authority for the proposition that the discovery rules of civil cases do not attach to a defendant in a criminal prosecution. There are solid reasons, however, why this would be a deserving field for legislation just as would the matter of introduction of evidence before a grand jury as pointed out above. Intricate matters of science are now becoming involved in a great percentage of criminal cases. This was principally brought about by the creation of the State Crime Laboratory and the enactment of the Georgia Post-Mortem Examination Act.[13] None of the facilities created by these laws are available for the use of defendants. Defendants now on trial for

10. 101 Ga. App. 175, 113 S.E.2d 180 (1960).
11. Ga. Laws 1943, pp. 284-287, GA. CODE ANN. §40-1617 (1957); GA. CODE ANN. §89-9908 (1933).
12. 215 Ga. 128, 109 S.E.2d 748 (1959).
13. Ga. Laws 1953, pp. 602-612, GA. CODE ANN. §21-2 (Supp. 1958).

their lives are met with all manner of authoritative opinions of renowned scientists in such complicated and involved fields as medicine, toxicology, pharmacology, chemistry, physics, and many ramifications of these fields. Where a person on trial does not even know what evidence is in possession of the state he is in no position to make any counter showing whatever against the opinions of these experts. Certainly, such a one-sided affair does not militate toward the accomplishment of that object of a trial described so aptly by Lord Bacon many years ago: "The object of every legal investigation is the discovery of the truth." Some provision ought to be made whereby a defendant could have the right to have his own experts examine the evidence under conditions prescribed by the court. It is very difficult to see how the state could be prejudiced in any such proceeding. It would probably be unwise to allow this procedure to go any further than to include matters relating to science. The case of *Davis v. State*[14] deals with still another important matter of criminal procedure. The case involved a situation in which the defendant had pointed a pistol at an officer and attempted to shoot him. This resulted in two separate indictments against him for pointing the pistol and for assault with intent to murder. He saw fit to go to trial under both indictments at the same time. When the evidence of the state was in, the defendant moved the court to require the state to elect on which charge it would insist upon a conviction, the contention being that he could be convicted for only one offense since the transaction of pointing the pistol and attempting to fire it was one and the same transaction. The Court of Appeals held that the trial court should have compelled the state to make the election, it being the opinion of the court that such a motion was proper the instant that the evidence revealed that the state could not proceed simultaneously upon both charges. No such laudable result was reached in the case of *Taylor v. Curry*.[15] This was a habeas corpus proceeding in which the defendant was convicted for assault and battery in a state court arising out of the identical transaction for which she had been convicted of disorderly conduct in a police court. The Supreme Court upheld the second conviction by simply stating that it was not double jeopardy. It was rather difficult to see why it is not double jeopardy. If a defendant in a police court was sentenced to serve three months for shooting a person and subsequently was sentenced in a state court to serve time for the same act, it is submitted that that is double jeopardy insofar as that defendant is concerned. And, after all, the defendant is the one that the constitutional pro-

14. 100 Ga. App. 308, 111 S.E.2d 116 (1959).
15. 215 Ga. 734, 113 S.E.2d 398 (1960).

vision against double jeopardy was created to protect. He is simply being made a goat of when two courts insist upon their right to put him away. This is similar to the situation in which a person is prosecuted in both the federal and state courts for possession of the same item of illegal liquor. A rose is still a rose[16] regardless of the name by which one may be called. In another decision[17] this year the Supreme Court has again affirmed its decision in the *Blount* Case[18] which held that a trial is rendered nugatory when a court bailiff in charge of a trial jury goes to sleep after his jury has retired for the night during the trial of a case. The root of this decision is the oft-applied rule that in matters of irregularities in the handling of juries there is a presumption of harm to the defendant.

The last purely procedural matter to be dealt with here concerns the revocation of probation sentences. Three singularly important decisions[19] have been handed down by the Court of Appeals on this subject. Each of the cases involved an attempt to revoke a probation or suspended sentence. In each case the trial court followed the correct basic procedure by giving the defendant notice and an opportunity to be heard. Each case involved a situation in which some heinous act was proved against the defendant, but the act was not the one charged in the rule requiring him to show cause why his probation should not be revoked. The decisions of these cases firmly establish the rule that in order to revoke a probation or suspended sentence the prosecution must allege the specific condition which has been broken and must prove the breach of that condition instead of using the shotgun tactics of hauling a person into court and simply proving that he has been bad in general. A clarification of the law upon this very point has been sorely needed, and these decisions leave no further doubt about the matter.

The next general classification of cases to be dealt with will be those relating to the rules of evidence. In 1952, the Supreme Court of this state erected itself a monument by the decision of *Bacon v. State*.[20] That case straightened out fifty years of confusion and conflicting decisions by holding that evidence which in any manner tended to show that the accused has committed another crime wholly distinct, independent, and separate from that for which he is on trial, even though it be a crime of the same sort, is irrelevant and inadmissible,

16. Eslinger v. Herndon, 158 Ga. 823, 124 S.E. 169 (1924).
17. Allen v. State, 215 Ga. 455, 111 S.E.2d 70 (1959).
18. Blount v. State, 214 Ga. 433, 105 S.E.2d 304 (1958).
19. George v. State, 99 Ga. App. 892, 109 S.E.2d 883 (1959); Gay v. State, 101 Ga. App. 225, 113 S.E.2d 223 (1960); Dingler v. State, 101 Ga. App. 312, 113 S.E.2d 496 (1960).
20. 209 Ga. 261, 71 S.E.2d 615 (1952).

unless there can be shown some logical connection between the two from which it can be said that proof of the one tends to establish the other. The *Anjette Lyles* Case,[21] which was discussed above in connection with the subject of indictments, is a good example of one of the exceptions to the doctrine of the *Bacon* Case. In the *Lyles* Case, the defendant was prosecuted for the murder of her daughter, but evidence was offered that she had also murdered three other people. The evidence showed ten similarities which each of the homicides had in common, one of these being the fact that the defendant had acquired substantial sums of money from each of the deaths. The root of the decision of the Supreme Court affirming the admission of these other crimes into evidence was that a common motive ran through the four homicides thus making the three admissible to prove the one; and the court likewise was of the opinion that the similarity of the facts of each case was sufficient to show modus operandi. These two propositions were sufficient to come within the exception to the rule announced in the *Bacon Case.* The decision in *Hooks v. State,*[22] however, illustrates the difficulty that the prosecution can get into when it is careless about the admission of character evidence. In that case a police officer voluntarily offered the fact that the defendant had been in the penitentiary at some previous time in answer to some question on cross-examination which did not absolutely require such an answer. The Court of Appeals reversed a conviction in the case on the strength of the rule in *Felton v. State*[23] to the effect that peace officers who are witnesses for the state and who have had special training in the field of criminal procedure have every opportunity to know the basic rules of criminal evidence; hence, when they inject such a voluntary remark which is prejudicial to the defendant, their conduct will not be condoned by the court. The case of *Jefferson v. State*[24] is a case of first import in Georgia. After the jury had retired to deliberate upon a verdict in the case, they requested of the trial judge that he order the defendant's statement re-read to the jury. The trial judge refused this request and instructed the jury that they would have to rely upon their own recollections as to the contents of the statement. The Court of Appeals, in a well-reasoned opinion, upheld this ruling of the trial judge. The court pointed out a number of dangers involved in complying with this type of request by a jury, one of these dangers being the fact that such a practice amounts to an undue emphasis upon some particular portion of the evidence. The decision is important because

21. Lyles v. State, 215 Ga. 229, 109 S.E.2d 785 (1959).
22. 101 Ga. App. 351, 114 S.E.2d 48 (1960).
23. 93 Ga. App. 48, 90 S.E.2d 607 (1955).
24. 101 Ga. App. 308, 113 S.E.2d 500 (1960).

it decides what to do with a matter that very frequently occurs during the trial of cases, and particularly is it likely to occur in cases which are long, complicated, and involved. Another important proposition of criminal evidence is dealt with in the case of *Woody v. State*.[25] That case deals with admissions by silence. Simply stated, the true rule of admissions by silence is that where a statement of an incriminatory nature is made within the presence and hearing of a defendant, his failure to deny such statement will be taken as an admission by him that the statement is true. Such a statement of the rule clearly shows that there are several prerequisites which must exist before it can operate, namely: (1) That the statement relate to some incriminating act of the defendant. (2) That the statement be made by someone in the presence of the defendant. (3) That the defendant is in position to hear and understand the statement. (4) That the defendant fails or refuses to deny the truth of such statement. In the case now under discussion the Court of Appeals held that the defendant who was being charged with an admission by silence was not in position to understand the incriminatory statement directed toward him; consequently, he was not in such a position as would demand a denial of the statement. Therefore, he was not chargeable with an admission by silence. This matter has been gone into in some detail because it has become a fairly common practice in the trial of cases to admit in evidence any statement by any person so long as it is made in the presence of the defendant. As pointed out clearly in the *Woody* Case, such a practice is wrong and amounts to reversible error unless the statement sought to be proved can qualify in all respects as an admission by silence.

Several propositions of substantive criminal law which have come to the fore during this survey period will now be discussed. One decision[26] has reaffirmed the proposition that it is error for a trial judge to charge a jury that the law has no yardstick by which insanity as a defense to crime can be measured. There is no novelty in that decision, because it has often been held that the law does have a yardstick by which it measures insanity, to-wit, the mental capacity of a person to understand the distinction between right and wrong. Of very great importance, and a case of first import, is the decision of *Brown v. State*[27] laying down the rule in cases involving special pleas of instanity. It must be recalled that under our statutory law[28] a defendant has the right to specially plead at the time of his arraignment that he is insane at the time of trial and is therefore incapable of mak-

25. 99 Ga. App. 857, 109 S.E.2d 896 (1959).
26. Ledford v. State, 215 Ga. 799, 113 S.E.2d 628 (1960).
27. 215 Ga. 784, 113 S.E.2d 618 (1960).
28. GA. CODE §27-1502 (1933); GA. CODE §27-1504 (1933).

ing his defense. This plea does not deal with the issue of guilt or innocence but solely whether or not the defendant has sufficient mental capacity to be placed upon his trial. Peculiarly, it had never been previously decided in Georgia what degree of insanity would render one incapable of being placed upon his trial. Would the right-wrong test apply, or would some other, and perhaps lesser, degree of insanity be sufficient to prevent a trial? The answer to this question was provided in the *Brown* Case. It held that the right-wrong test had no applicability to the trial of special pleas of insanity, but that the true rule in the trial of such issues was simply whether or not the defendant was capable at the time of trial of understanding the nature and object of proceedings against him and whether he rightly comprehended his own condition in reference to such proceeding and was therefore capable of rendering his attorney such assistance as a proper defense to the indictment demands. This is a splendid decision, it is a right decision, and it will be of great assistance in future litigation. Upon an entirely different subject, but also of considerable importance, is the case of *Finch v. State*.[29] The case involves a construction of our law against drunkenness.[30] Our statutory prohibition against drunkenness is really interesting because it is not drunkenness itself which is the gravamen of the offense; rather, it is the *manifestation* alone which can render one guity of this crime in Georgia. The case involved a situaation which very frequently occurs when police officers find some person quietly drunk in a house, motor vehicle, or, perhaps, upon a park bench: The defendant is not manifesting his drunkenness in one of the ways prohibited by the statute until the police officer molests him and then, abruptly aroused from his revelry, he commences to evidence all manner of riotous and tumultuous misconduct which could be classed as criminal under the statute. Very often he does this as he is being unceremoniously hauled away by the police. In the case under discussion, the Court of Appeals held that where the acts of the defendant prior to his arrest did not amount to a crime his conduct after the arrest would not be chargeable against him in order to make out and perfect a violation of the statute. Another phase of substantive law is dealt with in the case of *Wilson v. State*.[31] This case dealt with an erroneous charge as to the office of proof of good character in a criminal case. The trial judge charged the jury that before evidence of good character could create a reasonable doubt there would first have to be a reasonable doubt created by other evidence. One can hardly

29. 101 Ga. App. 73, 112 S.E.2d 824 (1960).
30. GA. CODE §58-608 (1933).
31. 215 Ga. 672, 113 S.E.2d 95 (1960).

be expected to resist the temptation of pointing out that such an expression runs squarely afoul of two of the most famous cases in the world on the subject of good character. They are the immortal cases of *Shropshire v. State*[32] *and Seymour v. State*[33] decided by our own Supreme Court in ancient times. In the former case the court bemoaned: "In this day af large fortunes on the one hand, and poverty on the other, all that many of us have is the good character we have striven to establish from our youth up . . . " ; and in the latter it waxed eloquent: "Of what avail is a good character, which a man may have been a lifetime in acquiring, if it is to benefit him nothing in his hour of peril?" Before leaving the subject of substantive law, it should be pointed out that every important decision during this survey period has not been treated in detail. The cases[34] to which reference is made involve prosecutions under our securities law or under the "honesty in government laws." These decisions are important but will not be discussed here because they relate solely to highly technical constructions of statutes of limited application.

The remainder of this article will be devoted to matters relating to appeal and error in criminal cases. The granting of bail pending an appeal after conviction in a felony case is a matter for the sound discretion of the trial judge, and it is not a matter of right.[35] The rule is exactly the opposite in a misdemeanor case, for the trial judge must grant bail pending an appeal not only of a conviction but even from an appeal of a matter resulting from a plea of guilty.[36] The case of *Childers v. State*[37] deals with the method of assigning errors. It recognizes that the old rule that a ground of motion for new trial had to be complete and understandable within itself has now been changed by statute[38] but it held that there still exists an absolute necessity for making a definite and understandable assignment of error. The decision is right. There is nothing wrong with our ancient forms. It is submitted that we are entirely too liberal in changing them anyway. In keeping with this same line of thought, it is well to become thoroughly familiar with the rule spelled out by the Supreme Court in *Bowen v. State*.[39] In that case a defendant sought to make certain con-

32. 81 Ga. 589, 8 S.E. 450 (1888).
33. 102 Ga. 803, 30 S.E. 263 (1897).
34. Curtis v. State, 99 Ga. App. 732, 109 S.E.2d 868 (1959); Rollins v. State, 215 Ga. 437, 111 S.E.2d 63 (1959); Jessup v. State, 215 Ga. 771, 113 S.E.2d 390 (1960).
35. Finley v. Thompson, 100 Ga. App. 508, 112 S.E.2d 166 (1959).
36. Bennett v. Davis, 100 Ga. App. 432, 111 S.E.2d 733 (1959).
37. 100 Ga. App. 255, 110 S.E.2d 697 (1959).
38. Ga. Laws 1957, p. 224, GA. CODE ANN. §6-901 (Supp. 1958).
39. 215 Ga. 471, 111 S.E.2d 44 (1959).

stitutional attacks upon the statutes he was charged with violating. He designated these statutes only as certain sections of the Georgia Code Annotated. The Supreme Court held that the subject matter attacked was not actually designated because the Georgia Code Annotated is not an official book of any kind but is a mere compilation of statutes by a publishing company located in the City of Atlanta. It held that a statute must be designated by its citation in the official Georgia Code of 1933 or by reference to its citation as an act of the General Assembly of Georgia. The decisions just cited would appear to cut against the rights of the defendant who always has the burden of making the attack and of assigning errors. However, the state also is occasionally held to strict account in these appellate matters. *Garland v. State*,[40] an appeal from a contempt conviction, held that the appeal record must always show the basis upon which a trial judge acted in convicting a defendant. Where the record fails to disclose the actual facts upon which the ruling was made, the court will reverse a conviction.

40. 99 Ga. App. 826, 110 S.E.2d 143 (1959).