THE VALIDITY OF STATUTES PERTAINING TO GEORGIA COUNTY COMMISSIONERS: AN EXERCISE IN CONSTITUTIONAL INTERPRETATION

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I

That local or special acts passed by the General Assembly are invalid if they conflict with general statutes borders upon layman's law in Georgia.[1] Unmentioned by the first three Constitutions of the State, this principle has developed from the seeds sown in the Georgia Constitution of 1861: "Laws should have a general operation; and no general law shall be varied in a particular case by special legislation; except with the consent of all persons to be affected thereby."[2] Honed in the Constitutions of 1865[3] and 1868,[4] the rule appeared in the Constitution of 1877 as follows:

> 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 existing general law. No general law affecting private rights shall be varied in any particular case by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract is capable of such consent.[5]

This exact provision was carried forward to the Constitution of 1945 and there appears today.[6]

What might not be so generally or thoroughly understood is that over the years an exception to this principle has been nurtured which has considerable impact upon local government in Georgia. This exception is postulated to the effect that certain types of local or special acts pertaining to county commissioners are valid in the face of, and indeed prevail over, general statutes dealing with the

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1. For examples of discussion of the extent of the "conflict" required to effect this invalidity, see the Supreme Court's opinions in City of Atlanta v. Hudgins, 193 Ga. 618, 19 S.E.2d 508 (1942); and Irwin v. Torbert, 204 Ga. 111, 49 S.E.2d 70 (1948).
2. GA. CONST. art. I, para. 19 (1861).
3. GA. CONST. art. I, para. 15 (1865).
4. GA. CONST. art. I, §26 (1868).
5. GA. CONST. art. I, §4, para. 1 (1877)
6. GA. CONST. art I, §4, para. 1 (1945), GA. CODE ANN. §2-401 (Rev. 1948).

same subject matter.[7] The Georgia Supreme Court has interpreted this exception from the terms of the constitution itself, and the route which it has traveled in doing so is an interesting one. To trace this route from its inception down to the present is the objective of this study.

II

Before launching into an examination of the court's decisions in this important area of local government, it seems first appropriate to briefly sketch the historical development of the constitutional provisions upon which they turn. Of Georgia's eight Constitutions to the present, the first five offered no indications that the statutes pertaining to commissioners of the various counties of the State were to be considered differently from any other legislation enacted by the General Assembly. The Constitution of 1868, however, contained a provision which has survived in its exact wordage down through the Constitution of 1945: "The General Assembly shall have power to provide for the creation of county commissioners in such counties as may require them, and to define their duties."[8]

The other provision of note here, not appearing until the Constitution of 1877,[9] is embodied in the present constitution as follows:

> Whatever tribunal, or officers, may be created by the General Assembly for the transaction of county matters, shall be uniform throughout the State, and of the same name, jurisdiction, and remedies, except that the General Assembly may provide for Commissioners of Roads and Revenues in any county. . . .[10]

Taking these two provisions together,[11] the court has interpreted them as being on an equal level with, and constituting an exception to, the provision prohibiting local or special acts in cases "for which provision has been made by an existing general law."[12] And although this exception is now applied in rather summary and routine fashion,[13] one immediately senses its potentials and wonders to what

7. This exception was applied by the Supreme Court in deciding a case as recently as February of 1963. See Wilson v. Jones, 218 Ga. 706, 130 S.E.2d 227 (1963).
8. GA. CONST. art. V, §15 (1868); GA. CONST. art. VI, §19, para. 1 (1877); GA. CONST. art. VI, §27, para. 1 (1945), GA. CODE ANN. §2-5201 (Rev. 1948).
9. GA. CONST. art. X, §3, para. 1 (1877).
10. GA. CONST. art. XI, §1, para. 6 (1945), GA. CODE ANN. §2-7806 (Rev. 1948).
11. In this paper, these two provisions will be referred to collectively as the county-commisioner provisions of the constitution.
12. GA. CONST. art. I, §4, para. 1 (1945), GA. CODE ANN. §2-401 (Rev. 1948).
13. See, *e.g.*, Wilson v. Jones, 218 Ga. 706, 130 S.E.2d 227 (1963).

extent it can be carried. An examination of its judicial history may prove instructive.

III

A

As early as 1873 the Georgia Supreme Court was speaking in broad terms of the General Assembly's powers in enacting local or special statutes pertaining to county commissioners. In the case of *Waller v. Perkins*[14] of that year, one of the questions raised was the validity of a local act creating a board of county commissioners for Monroe County and providing for its selection by the grand jury. Confessing that this method of selection tended to fly in the face of democratic government, the court nevertheless upheld the local act by noting that the Constitution of 1868 did not specify a method of selection, and that it contained the provision (already noted) authorizing the legislature to provide for the creation of commissioners in such counties as may require them and to define their duties. Here, of course, no conflicting general statute was present; but the court's early observation of the legislature's powers over county commissioners was striking: "There is no limit on this power."[15]

Also rendered under the Constitution of 1868 was the court's decision in *Churchill v. Walker,*[16] sustaining local acts which created the commissioners for McIntosh County and conferred upon them the power to administer the municipal government of a city within the county. Again, although the issue of a conflicting general statute was not raised, and though the court bottomed its decision in part upon the General Assembly's power over municipalities, as well as upon the presumption of a statute's validity, it declared that under the Constitution of 1868, "There is no limit on the power of the legislature to create commissioners and define their duties."[17] Even at this early point an observer might have suspected that he would see this broad language utilized in other situations.

With the Constitution of 1877, containing the two provisions relating to county commissioners previously discussed, came numerous court contests. One of the earliest of these, *Conley v. Poole,*[18] presented the question of the validity of a local act conferring upon the commissioners of roads and revenue of Fulton County the power to lay out new militia districts in the county. Against the act, the argu-

14. 52 Ga. 233 (1873).
15. *Id.* at 239.
16. 68 Ga. 681 (1881).
17. *Id.* at 686.
18. 67 Ga. 254 (1881).

ment was that the constitutional provision requiring uniformity in officers transacting county matters "except that the General Assembly may provide for Commissioners of Roads and Revenues in any county"[19] meant that local acts could be passed only for roads and revenue. Rejecting this argument and upholding the act, the court construed this provision together with the provision authorizing the legislature to provide for commissioners in counties requiring them and to define their duties,[20] and concluded that local acts need not be restricted to roads and revenue duties of county commissioners. The court did think, however, that when local acts were enacted appointing county commissioners, these acts should be uniform in operation in counties which required them. Thus, still, those contesting the local act could point to no conflicting general statute in existence, so this problem was not yet faced.

Still approaching, but not reaching, *the general-statute-vs.-local-act problem* was the court's decision in *Pulaski County v. Thompson & Co.*[21] Here the court was faced with the contention that a local act creating the board of commissioners of the county and conferring upon the board exclusive jurisdiction over specified matters, including the books and accounts of the county tax collector, violated the constitutional requirement of uniformity in officers transacting county matters, because this act was not uniform with acts in other counties having commissioners. This contention, then, seemed in harmony with the opinion expressed by the court itself in the *Conley* decision. The court here, as in *Conley,* construed the two county-commissioner provisions of the constitution together, but further decided that the General Assembly possessed the power to pass separate and distinct acts for any counties which may require them and that these acts were not required to be uniform with one another. Not to be hoist on its own petard, the court observed that the contrary "intimation" in its *Conley* opinion was mere obiter.[22]

B

Moving into the 1900's, the Supreme Court of Georgia was almost immediately confronted with the argument that a local act, amending an act creating the board of commissioners of a county and conferring

19. GA. CONST. art. X, §3, para. 1 (1877).
20. GA. CONST. art. VI, §19, para. I (1877).
21. 83 Ga. 270, 9 S.E. 1065 (1889).
22. *Id.* at 275, 9 S.E. at 1067. The court also buttressed its opinion on the fact that since the enactment of the Constitution of 1877 the General Assembly had enacted many local acts creating county commissioners in the various counties, non-uniform as to the number of commissioners, their compensation, and the manner of their election. See 83 Ga. at 275, 9 S.E. at 1067. This case was affirmed in Lamb v. Dart, 108 Ga. 60, 34 S.E. 160 (1899).

upon that board certain additional powers, was unconstitutional because it covered subjects previously provided for by general law. In the case of *Sayer v. Brown*[23] the court rejected this contention for the reason that the general statutes alleged to be in existence were nowhere specified, and thus the question was not properly presented to the court. Going further, however, the court conjectured that even if properly presented, the contention would not have met with success. Noting the General Assembly's constitutional power to provide for county commissioners and define their duties, the court asserted that "there is no general law upon the subject of the powers, duties, and jurisdiction of county commissioners,"[24] and quoted the *Pulaski County* opinion's language to the effect that the legislature could pass separate and distinct acts for any counties which require commissioners.

Thus when the court was faced for the first time with the problem here under analysis, it could base its decision entirely upon a defect in pleading. In volunteering its opinion on the validity of the local act, by asserting the absence of any general statutes in the entire subject-matter area and by quoting from a previous case in which no conflicting-general-statute issue had been raised, the court—at least for the time being—appeared to create more questions than it answered.

Two years later, the court disposed of a case in a manner reminiscent of its method in *Sayer*. In *Griffin v. Sanborn*,[25] the court, in a headnote opinion, held that a local act conferring upon a board of county commissioners all powers and duties concerning roads as were previously possessed by the county ordinary, did not grant to the commissioners jurisdiction over the removal of obstructions from private ways.[26] Not content to rest there, however, the court went on to observe that even if the local act were construed to transfer this jurisdiction, it would violate the constitution by attempting to repeal or modify an existing general statute on the subject. Not mentioned were the two county-commissioner provisions of the constitution nor the previously discussed cases construing them. The knife of ambiguity could cut both ways.

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23. 119 Ga. 539, 46 S.E. 649 (1904).
24. *Id.* at 545, 46 S.E. at 652. What the court said was further confused by its concluding statement that even if provisions of the local act providing for the cancellation of tax fi fa's and for removing the tax collector from office were unconstitutional because of the existence of general statutes, these provisions were separable from the remainder of the act. See 119 Ga. at 545, 46 S.E. at 652.
25. 127 Ga. 17, 56 S.E. 71 (1906).
26. The court reached this decision by construing the word "roads" not to include private ways.

Another headnote opinion, in *Atkinson v. Bailey*,[27] was likewise uninformatively restrictive upon a local act pertaining to county commissioners. Here the court held that a local act purporting to authorize the commissioners of Camden County to compensate the county sheriff in a certain manner was unconstitutional because general statutes of the State provided for the compensation of sheriffs in the performance of their official duties. Again, the court did not trouble itself to explain why the power to compensate sheriffs was not one of those reserved to the local-act province of the General Assembly by the two county-commissioner provisions of the constitution.[28]

Finally, in the case of *Board of Commissioners of Sumter County v. Mayor & Council of Americus*,[29] the court's restrictive attitude reached its crest. In question was the validity of a local act authorizing and requiring the commissioners of the county to work its chain gang upon the streets of the city for not more than three months in the year. The Supreme Court sustained the commissioners' argument that this local act was unconstitutional because of an existing general statute dealing with working convicts upon the county roads and providing for hiring felony convicts to municipalities. But here the court did not ignore the two county-commissioner provisions of the constitution, as it had in the *Griffin* and *Atkinson* cases; indeed, it agreed with *Pulaski County* and *Sayer* that these two provisions must be construed together and that the legislature could pass separate and distinct non-uniform acts creating commissioners in the various counties. However, said the court, "this provision in regard to the creation of county commissioners and defining their duties was not intended . . . to authorize the legislature to violate every other provision in the constitution under the name of defining the duties of county commissioners. . . . "[30] No more could the local act be given effect here than could the proposition be sustained that the legislature could authorize by local act, commissioners to collect taxes at a different time or in different amounts than those specified by a uniform system applying to all counties.

> There is a wide difference between holding that county commissioners created by distinct acts for different counties do not have to be uniform in regard to name, jurisdiction, and remedy, and holding that the legislature may confer upon

27. 135 Ga. 336, 69 S.E. 540 (1910).
28. To the same effect, see Chappell v. Kilgore, 196 Ga. 591, 27 S.E.2d 89 (1943); Christian v. Moreland, 203 Ga. 20, 45 S.E.2d 201 (1947).
29. 141 Ga. 542, 81 S.E. 435 (1914).
30. *Id.* at 545, 81 S.E. at 436.

> them authority to do anything whatever, regardless of other constitutional provisions.[31]

Summarizing its prior decision in *Atkinson,* the court concluded that the two county-comissioner provisions of the constitution must be construed in harmony with—not as wholly abrogating—the constitutional prohibition against local acts in cases for which provision has been made by existing general statutes. As thus construed, the prohibitory provision must prevail in the factual situation here presented.

Going further with its construction of these constitutional provisions, the court ventured that

> were there no general law on the subject, there might be diversity of powers conferred upon county commissioners by local acts; but where the subject of working the roads has been dealt with by a general law, it cannot be changed by such local acts.[32]

The omission of any reference to the court's previous voluntary statement in *Sayer* that there is *no* general law upon the powers, duties, and jurisdiction of county commissioners was deafening in its silence.

At this juncture in the route one might well have had cause to reconsider his conclusions as to the destination of the court. Remembering the voluntary and unnecessary nature of the broad language in the case of *Sayer v. Brown,* and the restrictive holdings of *Griffin, Atkinson,* and now *Sumter County,* he might have concluded that, at least as to the *general statute-local act problem,* the two county-commissioner provisions of the constiution were not destined to receive the illustrious interpretation which had been indicated by the broad language in *Churchill v. Walker* and *Pulaski County v. Thompson & Co.,* where this problem was not present.[33]

Some eight years following the *Sumter County* case, in 1922, the court decided *Smith v. Duggan,*[34] which placed in issue the validity of a local statute creating a board of county commissioners and providing for the removal of its members in certain instances. The court upheld this local act in the face of a contention that the removal of county commissioners was covered by the general statutes of the State. Relying upon *Sayer* and *Pulaski County* for the proposition that the legislature can pass separate and distinct non-uniform acts creating

31. *Id.* at 546, 81 S.E. at 437.
32. *Id.* at 548, 81 S.E. at 437.
33. Board of Comm'rs. of Sumter County v. Mayor & Council of Americus was followed, and the request that it be overruled was refused, in City of Macon v. Road Comm'rs. of Bibb County, 150 Ga. 116, 102 S.E. 867 (1920).
34. 153 Ga. 463, 112 S.E. 458 (1922).

county commissioners—both being cases in which no conflicting general statute was involved—the court concluded that the provisions for the *removal* of the commisioners constituted a part of the general scheme of creating them and granting them powers. But instead of then proceeding to the holding that the local act's removal provision, coming under the two county-commissioner provisions of the constitution, prevailed over the conflicting general statute upon the subject, the court's opinion instead turned to establishing the point that the general statute in question did not actually cover this particular subject. Thus the decision cannot be designated a strong one on the point here under examination.

In another off-center decision, *Rhodes v. Jernigan*,[35] the court used the two county-commissioner provisions of the constitution as a foundation for its holding that a constitutional requirement[36] that "county officers" hold office for four years did not apply to county commissioners. This had the effect of leaving the term of office of the commissioners of Hancock County at two years, as provided by the local act creating those commissioners.[37]

The court's decision in *Decatur County v. Roberts*[38] might be considered as a chipping away at the pervasiveness of the two county-commissioner provisions of the constitution. In question was the authority of county commissioners to contract with an individual for investigating unreturned taxes in the county, the commissioners claiming such authority under a local act providing for their creation and granting them the power to "assess, levy, and collect" certain taxes. And though the court acknowledged the broad language of earlier cases relating to the General Assembly's power to define the duties of commissioners, and though it professed not to concern itself with the extent of this power, it nevertheless held that the authority to make this contract would not be implied from the local act when it was expressly granted to the county tax assessors under general statutes. In this manner were the commissioners' actions under the local act thwarted.[39]

Continuing in its limiting vein, the court, in *Shore v. Banks County*,[40] held unconstitutional a local act authorizing the county authorities

35. 155 Ga. 523, 117 S.E. 432 (1923).
36. GA. CONST. art. XI, §2, para. 1 (1877).
37. The court also set forth the entire opinion of the trial court in the case. This opinion contained the following statement: " . . . the provisions of general laws enacted by the legislature do not apply to such officers, [county commissioners] unless made so by the special laws creating them." 155 Ga. at 528, 117 S.E. at 434.
38. 159 Ga. 528, 126 S.E. 460 (1925).
39. See also the case of Bagwell v. Cash, 207 Ga. 222, 60 S.E.2d 628 (1950).
40. 162 Ga. 185, 132 S.E. 753 (1926). (Justice Hines dissented.)

of two counties to perform work upon a certain road in a municipality, for the reason that a general statute already existed by which a method of establishing roads was provided. Neither of the county-commissioner provisions of the constitution were mentioned by the court, nor was the case decided from that approach.

In the year 1930 a rash of cases hit the Supreme Court dealing with the qualifications of county commissioners. In *Malone v. Minchew,*[41] the court held that as the constitution[42] required that a qualified voter must have paid his taxes and as the general statutes required that any county officer must be a qualified voter, the General Assembly could not by local act creating the board of commissioners name as a member of that board a tax defaulter. The court did not discuss—indeed did not mention—the two county-commissioner provisions of the constitution and the broad powers construed in the General Assembly in creating commissioners; it simply stated that "we will not assume that in passing this local act the General Assembly intended to repeal the provisions of the general law defining the eligibility of public officers, although the act has a clause repealing conflicting laws."[43]

In the second of these qualification cases, *Wilson v. Harris,*[44] the court upheld the General Assembly's power to provide by local act that the successor to the county commissioner named in that act was to be selected by the county grand jury and that he must be 30 years old, a freeholder, and well versed in matters of finance. The court reached this decision by declaring that under the two county-commissioner provisions of the constitution the General Assembly can deal with the subject of qualifications of commissioners without restriction as long as it does not violate the express provisions of the State and Federal Constitutions, and that no general statute existed which provided for qualifications of county commissioners.

The third case, *Sweat v. Barnhill,*[45] presented a factual situation apparently almost in line with that in the *Malone* case. Again, the court held that a tax defaulter could not be validly named by the General Assembly as a member of a board of county commissioners in the local act creating that board.[46]

41. 170 Ga. 687, 153 S.E. 773 (1930).
42. GA. CONST. art. II, §1, para. 3 (1877).
43. 170 Ga. at 690, 153 S.E. at 775.
44. 170 Ga. 800, 154 S.E. 388 (1930).
45. 171 Ga. 294, 155 S.E. 18 (1930).
46. Later, in Marshall v. Walker, 183 Ga. 44, 187 S.E. 81 (1936), a case not relating to county commissioners, the court said that *Sweat,* if contrary to *Wilson,* must yield to that earlier unanimous decision.

C

An observer of the court's route of constitutional interpretation thus far, now well into the 1930's, might well hold to his earlier reformulated conviction that the two county-commissioner provisions here under discussion were, after all, not to be fashioned into a ram by the court for battering down general statutes pertaining to these commissioners. Aside from broad, and sometimes confusing, language in some of the opinions, the specific holdings of the cases now considered by the court seem consistent with such a determination. The observer might have been ill-prepared for the next stop in this judicial journey.

This stop was made by the court in deciding the 1934 case of *Bradford v. Hammond*,[47] a case revolving around whether certain provisions of the local act creating the "Board of Roads and Revenues" of Chattooga County were unconstitutional. These provisions purported to prohibit nepotism and "the trading of said members of said board between themselves and those related to them";[48] the argument against their validity being that these matters were already handled by a specified general statute of the State. Facing the issue squarely this time, the Supreme Court upheld the local act's provisions. The creation of county commissioners and the definition of their duties, said the court, rests upon the provision of the constitution granting this power to the General Assembly, a provision of "equal dignity" with the provision prohibiting local acts for matters handled by general statutes.[49] For its authority, the court relied upon language from two of its previous decisions: *Smith v. Duggan,* and *Rhodes v. Jernigan.* But in *Smith,* it will be recalled, the court's decision had gone off specifically on the point that the general statute there in question did not actually cover the subject on which the local act had been passed. Likewise in *Rhodes,* the point was one of construing county commissioners not to come within the term "county officers" as used in the constitutional provision there in issue. Hence the court's authority for what it actually held here in *Bradford* was somewhat meager.

More objectionable in *Bradford* was the court's complete failure to even mention its earlier decisions in such cases as *Sumter County* and *Atkinson,* and its lack of explanation why nepotism was not one of the matters held by those cases to require uniform treatment. Too, the court's admonishment in those cases that the local-act prohibi-

47. 179 Ga. 40, 175 S.E. 18 (1934).
48. *Id.* at 41, 175 S.E. at 18.
49. The court was quick to point out that a similar situation did not exist regarding local acts passed "in behalf of a municipal corporation." See 179 Ga. at 46, 175 S.E. at 21.

tion of the constitution was not to be abrogated by the county-commissioner provisions appeared honored only in its breach in *Bradford.* Not expressly overruling those earlier decisions, however, following *Bradford* the court found itself in the enviable position of being able to go either way upon the matter here under examination, and cite authority in doing so.

In the case of *McRae v. Sears,*[50] the court chose to go the way of *Bradford,* citing that decision and the constitutional provision authorizing the General Assembly to create commissioners and define their duties as authority for its conclusion that the legislature could, by local act, designate the ordinary to sue upon a commissioner's bond in his own name, in the face of a provision of the constitution requiring that "all suits by, or against, a county, shall be in the name thereof."[51] The result of this decision seemed extensive in two respects: first, in bringing the power of the ordinary to sue under the blanket of duties of county commissioners; and secondly, in permitting the local act to prevail over a seemingly conflicting provision of the Constitution itself.[52]

Three cases here of note were decided in the 1940's prior to the adoption of the Constitution of 1945. In *Robitzsch v. State,*[53] the Supreme Court was requested to review and overrule its *Bradford* decision, and condemn a local act creating a board of commisioners and providing for removal of its members for making county purchases from themselves, as a matter already sufficiently provided for by general statutes. In a headnote opinion, the court summarily refused this request and sustained the local act, declaring that under previous court constructions general statutes "so far as they refer to county commissioners are subject to qualification by special acts, and the special acts need not be uniform."[54]

Having reaffirmed its decision in the *Bradford* case, the court was now ready to reach its strongest holding thus far. *Moore v. Whaley*[55] presented the following factual situation: County taxpayers were proceeding under the authority of general statutes to remove from office commissioners of the county for purchasing goods from themselves. The defendant commissioners replied that under the local act providing for their creation, such purchasing conduct was prohibited

50. 183 Ga. 133, 187 S.E. 664 (1936). (Two Justices dissented but not upon the point here under discussion).
51. GA. CONST. art. XI, §1, para. 1 (1877).
52. Actually, the court's language was not that it prevailed over the Constitution, but that the act did not violate the Constitution. See 183 Ga. at 138, 187 S.E. at 667.
53. 189 Ga. 637, 7 S.E.2d 387 (1940).
54. *Id.* at 638, 7 S.E.2d at 393.
55. 189 Ga. 647, 7 S.E.2d 394 (1940).

but no provision for removal from office was included. Professing to recognize the requisite clear legislative intent for holding a repeal by implication, nevertheless the court's conclusion was that "the special act works a pro tanto repeal of the general law as to the commissioners of Clayton County, and accordingly they cannot be removed under the provisions of the general law."[56] Here, clearly, the court assumed the most extreme position of any along the route thus far traced.

A minor point in the case, but one possibly having considerable significance, was the court's rejection of the argument that entirely aside from other questions, the general statutes did not apply to the county in any event because the local act creating the commissioners did not expressly adopt them. This, said the court, was "without merit." This argument could have been posited upon such language as that previously noted from the *Sayer* opinion to the effect that there is no general law pertaining to county commissioners[57]—with its rejection, the court here left that type of statement in its confusing form.

As a warning that even after the breaking of the shackles in *Bradford,* and its extension in the later cases, the mere inclusion of the county commissioner in a provision of a local act does not always work the necessary magic to save the act, the 1942 case of *Hood v. Burson*[58] should be noted. Here the General Assembly had passed a local act establishing a county hospital and health board, including as one of the ex officio members of the board the county commissioner, and setting out certain tax levy duties of the commissioner. This act was held unconstitutional as in an area already provided for by an optional general statute, the "Ellis Health Law,"[59] the court explaining that to do otherwise "would be to allow a local statute to limit a prior general one—that is—to repeal it pro tanto, which, under the present constitution, cannot be done."[60] Not emphasized were the provisions of the act dealing with the county commissioner, and the county-commissioner provisions of the constitution were not mentioned. Thus, the principle here traced has its limitations.

D

Since the adoption of the Constitution of 1945, containing the two county-commissioner provisions in substantially the same form as

56. *Id.* at 650, 7 S.E.2d at 396.
57. Even stronger, it will be recalled that in the Rhodes case the court quoted the trial court's statement to this effect.
58. 194 Ga. 30, 20 S.E.2d 755 (1942).
59. GA. CODE ANN. ch. 88-2 (Rev. 1963).
60. 194 Ga. at 35, 20 S.E.2d at 758, quoting from Mathis v. Jones, 84 Ga. 804, 810, 11 S.E. 1018, 1020 (1890).

they previously appeared, the court's movement has been consistent with that indicated by the *Bradford* decision. Still, it is instructive to note the specific subject-matter areas in which the principle has been applied, as well as some of the court's language in making this application. For, as this panorama of decisions has demonstrated, from such a notation the prediction must be made, however hazardous, of future developments.

In 1946, the case of *Bowen v. Lewis*[61] presented to the court the claim that a provision of the local act creating the commissioners of White County, which conferred upon them jurisdiction over the removal of obstructions from private ways, was unconstitutional as this jurisdiction was vested by general statute in the ordinary. Rejecting this claim and sustaining the local act's provision, the court utilized much of the broad language from the opinions here studied. Under the two county-commissioner provisions of the constitution, said the court, "there is no limitation or restriction upon the General Assembly in the creation of such commissioners by special act."[62] But, complained the contestant, what of the court's previously noticed assertion in the early case of *Griffin v. Sanborn* that to thus transfer jurisdiction upon this subject would violate the prohibitory provision of the constitution? That language in the *Griffin* case, said the court, was only *obiter* and not to be followed. Thus, for the second time along the route here being traced, the court was forced to restrict its own language from earlier opinions.

In *Robert v. Steed*,[63] the court upheld a local act conferring upon the commissioners of Fulton County the right to fill vacancies in county offices. Although no conflicting general statute was specified, the court cited pre-*Bradford* as well as post-*Bradford* cases, and declared that the constitution's prohibition of local acts had been "uniformly"[64] construed not to be violated by acts passed pursuant to the two county-commissioner provisions.

Hutchins v. Candler[65] found the court upholding an act, contended to be a local act in violation of the prohibitory provision of the constitution,[66] which, *inter alia,* conferred upon the commission-

61. 201 Ga. 487, 40 S.E.2d 80 (1946).
62. *Id.* at 489, 40 S.E.2d at 83. The court also quoted *as holding* in the Rhodes case the portion of the trial court's opinion which was set out there to the effect that general laws do not apply to county commissioners unless made so by the special laws creating them. See 201 Ga. at 490, 40 S.E.2d at 83.
63. 207 Ga. 41, 60 S.E.2d 134 (1950).
64. *Id.* at 45, 60 S.E.2d at 137.
65. 209 Ga. 415, 73 S.E.2d 191 (1952).
66. The court's treatment of this act as local is questionable; the act purported to apply to all counties falling within a certain population range. Indeed, if the act could not be held a general one, then giving it effect as a local act would be of doubtful validity, as it presumably would not have met

ers of DeKalb County the power "to establish, through a cadastral survey, a field-book system for real property identification and evaluation."[67] Summarizing the holding of the *Bowen* case to the effect that "there is no general law in this State regulating the creating of county commissioners and fixing their jurisdiction, powers, and duties; but that all such acts are special laws,"[68] the court thought its decision here pre-determined. It is interesting to note that this act upheld in *Hutchins* as relating to the powers and duties of county commissioners, also contained other provisions, such as that the information obtained would be made available to the county tax assessors, and that the clerk of the superior court would charge a certain fee for its administration.

In *Humthlett v. Reeves*,[69] a 1954 case, the court confirmed the validity of a local act empowering the commissioners of Cobb County to zone property in the county outside municipal limits, against the argument that the act was foreclosed by existing general statutes on zoning. The court's opinion announced this decision in a summary and routine fashion, with the mere citation of some of the cases which have been analyzed in this study. It would appear to indicate no doubt in the court's mind that the issue was now settled.

Five years later, *Mathew v. Ellis*[70] carried to the court a contention that the local act creating the commissioners of Jeff Davis County and requiring these commissioners to have an annual audit made of the books of the county school superintendent, was invalidated by the existence of State statutes requiring the State Auditing Department to audit these books. The court rejected this contention on the basis that no "conflict" existed between the two requirements.[71] However, the court volunteered its opinion that *Bradford* had established that the county-commissioner provisions of the constitution were an "exception" to the provision prohibiting local acts in cases for which provision has been made by general statutes.[72] Thus, it would seem that the court had now completely discredited its statement in the *Sumter County* case that the provisions must be construed in harmony.

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the requisite advertisement procedures during its enactment. See GA. CONST. art. III, §7, para. 15 (1945), GA. CODE ANN. §2-1915 (Supp. 1961); Smith v. McMichael, 203 Ga. 74, 45 S.E.2d 431 (1947).

The court here, however, assumed its status as a local act and held it "not unconstitutional for any reason assigned by the petitioners." 209 Ga. at 417, 73 S.E.2d at 193.

67. 209 Ga. at 417, 73 S.E.2d at 193.
68. *Ibid.*
69. 211 Ga. 210, 85 S.E.2d 25 (1954).
70. 214 Ga. 665, 107 S.E.2d 181 (1959).
71. *Id.* at 666, 107 S.E.2d at 182.
72. *Ibid.*

On February 11, 1963, the Supreme Court of Georgia reached what is up to now its final destination along the route here traced. At that time, the court decided the case of *Wilson v. Jones*,[73] presenting the following factual situation: A county taxpayer was attempting to enjoin a transaction by which the county commissioner of Chattooga County was to trade certain old county trucks for new ones and pay the difference, on the ground that the commissioner had not complied with a local act's requirement of certain advertisement procedures. The commissioner responded that the trucks were to be presumed unserviceable and that he thus possessed the right under general statutes to dispose of such property without advertisement. Quoting the two county-commissioner provisions of the constitution, and citing many of the cases which have here been examined, the court held that "the . . . [local act] creates the office of Commissioner of Roads and Revenue of Chattooga County, his powers and duties. His powers as to the sale of county property, serviceable or unserviceable, is by virtue of §11 of this act and not under Code §91-804."[74] Thus, the superior court's holding for the county commissioner was reversed.

IV

In summary, the analysis here offered, admittedly lacking in dramatic provocation, has been attempted in the hope that it might prove helpful to those not having been forced to investigate for themselves this particular point in Georgia's local government law. In addition, baring this development permits insight into an absorbing exercise in constitutional interpretation by the Supreme Court of Georgia. Understanding this exercise assumes practical overtones in the light of the court's typical routine treatment of this subject-matter area of late.

The situation is the classic one: three scattered provisions of the Constitution (at least since the Constitution of 1877), one prohibiting special or local acts in cases provided for by general statutes, one empowering the General Assembly to create county commissioners where required and to define their duties—apparently, as provided by the one remaining, in a non-uniform manner. Certainly none of these provisions makes express allowance for the others, nor does there arrangement in the constitution patently demonstrate such an implied intent. To ask what they mean today then is only to request an inquiry into the court's holdings on their meaning yesterday.

The route of constitutional interpretation here traced evidences

73. 218 Ga. 706, 130 S.E.2d 227 (1963).
74. *Id.* at 710, 130 S.E.2d at 230.

that the pre-1900 decisions of the Supreme Court dealing with the two county-commisioner provisions, although today regularly cited as authority in the *local-vs.-general cases,* actually neither involved nor considered general statutes. But the broad (and, when made, unmeaningful) statements of the court in these cases have lived on. Even when the existing-general-statute contention was first presented to the court, in the case of *Sayer v. Brown,*[75] it could be turned aside as defectively pleaded.

To counterbalance the broad language of these court opinions, were the specific holdings of cases epitomized by *Board of Commissioners of Sumter County v. Mayor & Council of Americus.*[76] The thrust of this decision was a limiting one; it acknowledged the confusing existence of the three provisions on an equal Constitutional level, but clung to the thesis that the local-act provision was not abrogated by the other two. It credited the earlier decisions' permissions for non-uniform local acts creating commissioners, but drew the line where matters had been previously provided for by general statutes. This decision thus counseled construction of the three constitutional provisions which permitted harmonious existence one with the others.

Although, as here traced, a considerable number of decisions in this general subject-matter area were rendered in the years after *Sumter County,* as late as 1934 the eventual destination of the court in this exercise was far from clearly predictable. Indeed, if anything, the restrictive view of the legislature's power to pass local acts pertaining to county commissioners seemed in sway. In 1934, however, the court broke through its restraining shell and reached a decision in *Bradford v. Hammond*[77] which candidly stamped validity upon a local act in the face of an existing general statute on the subject in question. Relying upon broad language from decisions apparently not actually dealing with the specific issue in point, and ignoring altogether the existence of the more restrictive holdings represented by *Sumter County,* the *Bradford* opinion proved to be a turning point in the route.

Decisions since the *Bradford* case, both before and after the adoption of the Constitution of 1945, have generally followed its lead—expanding its principle to expressly permit local acts to repeal general statutes by implication, and to permit these acts to contain provisions over and beyond pure county-commissioner matters. Likewise discredited was *Sumter County's* counsel that the three constitutional provisions were to be construed in harmony.

75. 119 Ga. 539, 46 S.E. 649 (1904).
76. 141 Ga. 542, 81 S.E. 435 (1914).
77. 179 Ga. 40, 175 S.E. 18 (1934).

But to note that *Bradford* has generally been followed—as recently as *Wilson v. Jones*[78] in 1963—is not to say that all the questions engendered here have been answered. Indeed, never expressly tackled, except as noted in *Sumter County,* is the question how far the blanket of creating county commissioners and defining their duties can be extended. That it is not all-immunizing can possibly be gleaned from such cases as *Hood v. Burson,*[79] holding expansive local acts invalid because of the existence of general statutes, even though they include provisions relating to powers and duties of county commissioners.

Another theory not laid to rest is that no general statutes apply to commissioners in particular counties unless the local acts creating those commissioners expressly adopt these statutes. This theory, as explained, was first expressly stated by a trial court whose opinion was quoted in its entirety in *Rhodes v. Jernigan,*[80] but which has been quoted in later decisions as the holding in *Rhodes.* Although a contention to this effect was rejected by the Supreme Court in *Moore v. Whaley*[81] as being "without merit," the court's continued quotation of the *Rhodes* language, as well as its statements to the effect that there are no general statutes pertaining to jurisdiction, powers, and duties of commissioners, leaves one at a loss.

But these and other questions, like the one here analyzed, must eventually be answered, at least under the terms of the present constitution, by judicial interpretation.

78. 218 Ga. 706, 130 S.E.2d 227 (1963).
79. 194 Ga. 30, 20 S.E.2d 755 (1942).
80. 155 Ga. 523, 117 S.E. 432 (1923).
81. 189 Ga. 647, 7 S.E.2d 394 (1940).