Summer 2000

Law, Business, and Politics: Liability for Accidents in Georgia, 1846-1880

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BY JAMES L. HUNT

December 14, 1851, began as an ordinary day for Mrs. Winn and her four children. Riding in a family carriage driven by June, a slave, they were returning to their home near Forsyth. When the group came to a point where the road crossed the tracks of the Macon & Western Railroad, the locomotive and cars on the Atlanta to Macon run suddenly appeared, steaming forward at twenty miles an hour about two hundred yards from the crossing. The mules pulling the carriage stood only a few yards from the track and a fence blocked an easy turnaround. Although Mrs. Winn directed the driver to stop, given the closeness of the carriage to the tracks this was not necessarily the best plan. The driver decided there was enough time, at least fifteen seconds, for the carriage to proceed over the crossing. He urged the mules onto the track but they stopped directly in the path of the train. Desperate, June shouted all possible urgings on the animals, but they would not budge. The locomotive's engineer saw the stalled carriage, sounded the whistle, reversed steam, and put on brakes. It was too late. The engine plowed into June, killing him instantly. The train jerked the carriage into its path, dragging it more than two hundred yards. Mrs. Winn

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suffered a broken arm and bruises and the crash fractured her eight-year-old daughter Malinda's skull. The others were found on the cowcatcher, where the force of the collision forced one child's head through its bars. Altogether, three children died. Only the mules, whose harnesses were severed, escaped the gruesome carnage.[1]

The question of who would pay for the accident and others like it was an important political and economic issue in the dawn of Georgia's age of industry and machines. Steam power raised the likelihood of accidental injury and property destruction and posed a difficult issue in public policy. Ultimately, the burden of accident costs would be determined by the state's nineteenth-century supreme court and legislature. Although the legal rules and their application display in a revealing fashion the political and economic values of the state's leaders, Georgia's historians have tended to ignore them. No general history of the state considers the rules that addressed how or whether industry would be burdened or the extent to which victims would be compensated. Far from being esoteric pieces of legal lore, the nineteenth-century struggle over liability pitted slave owners, railroads, agricultural shippers, and laborers against one another in a telling contest. This article describes Georgia accident law in its initial years, from 1846 to 1880.[2]

Georgia's behavior is especially worthy of study because of the circumstances of industrial development in the South. Historians generally agree that between 1800 and 1860 the slave and free sections of the nation advanced down divergent paths, economically and intellectually. Regional factors are also important given assumptions among historians about the hesitance of a presumably paternalistic slave society to encourage entrepreneurship.[3] After the Civil

[1] *Macon & W. R.R. v. Winn*, 26 Ga. 250, 252-53 (1858).

[2] E. Merton Coulter, *Georgia: A Short History* (Chapel Hill, N.C., 1960); Amanda Johnson, *Georgia as Colony and State* (Atlanta, Ga., 1970); Kenneth Coleman, ed., *A History of Georgia* (Athens, Ga., 1991); and Numan Bartley, *The Creation of Modern Georgia* (Athens, Ga., 1983) do not mention accident law.

[3] Important commentaries on doctrinal development in the South, although not focused exclusively on accident law, are Paul Finkelman, "Exploring Southern Legal History," *North Carolina Law Review* 64 (November 1985): 77-116; and Lawrence M. Friedman, "The Law Between the States: Some Thoughts on Southern Legal History," and Tony A. Freyer, "Law and the Antebellum Southern Economy: An Interpretation," in James W. Ely, Jr. and David J. Bodenhamer, eds., *Ambivalent Legacy: A Legal History of the South* (Jackson, Miss., 1984). An excellent history of railroad lawyers in the period 1870-1920, with some attention to Georgia, is William G. Thomas, *Lawyering for the Railroad: Business, Law, and Power in the New South* (Baton Rouge, La., 1999).

War, the demise of slavery, increased railroad construction, and greater commercialization of agriculture reshaped wealth in Georgia and made possible different perspectives on injuries to person and property. Also, the law of accidents in Georgia occurred simultaneously with the rise of steam-driven transportation. By the beginning of the Civil War the state's population was linked by the greatest number of railroad miles in any Deep South state. Roughly half of the funds for the construction of the antebellum roads came from public sources. Both before and after the Civil War, economic growth meant developing a commercial agricultural economy through the construction of railroads. As a result, the crucial problem of accident law was the extent to which new devices, especially railroads, would be required to pay for the injuries they caused.[4]

Accident law's earliest era lasted from 1846 to 1865. The three-man Georgia Supreme Court, which began to hear cases in 1846, decided the first lawsuits involving negligence concepts and accidental injury. There were cases that raised questions of liability for damage to goods and persons, including slaves, on common carriers such as steamboats and railroads. These cases typically addressed liability for injury to slaves while leased, or involved damage to livestock or persons at railroad crossings, or injuries to railroad workers. The most frequent defendants were railroads. From the beginning, the Georgia legislature also dramatically influenced liability rules. The legislature's interest in regulating accidents was so great that by 1863 a large portion of the law relating to liability for accidental harm had been codified. The state's *Code*, a magnificently detailed document adopted by the legislature at the end of the antebellum era, contained dozens of provisions regulating liability, with special sections for injuries caused by railroad companies, other common carriers, and hirers of slaves.[5]

Many of Georgia's early supreme court cases involved accidental injuries to goods, often agricultural goods, in transit. The initial cases against common carriers raised questions about whether the

[4]A brief discussion of the economic and political issues is Bartley, *Creation of Modern Georgia*, 10-29.

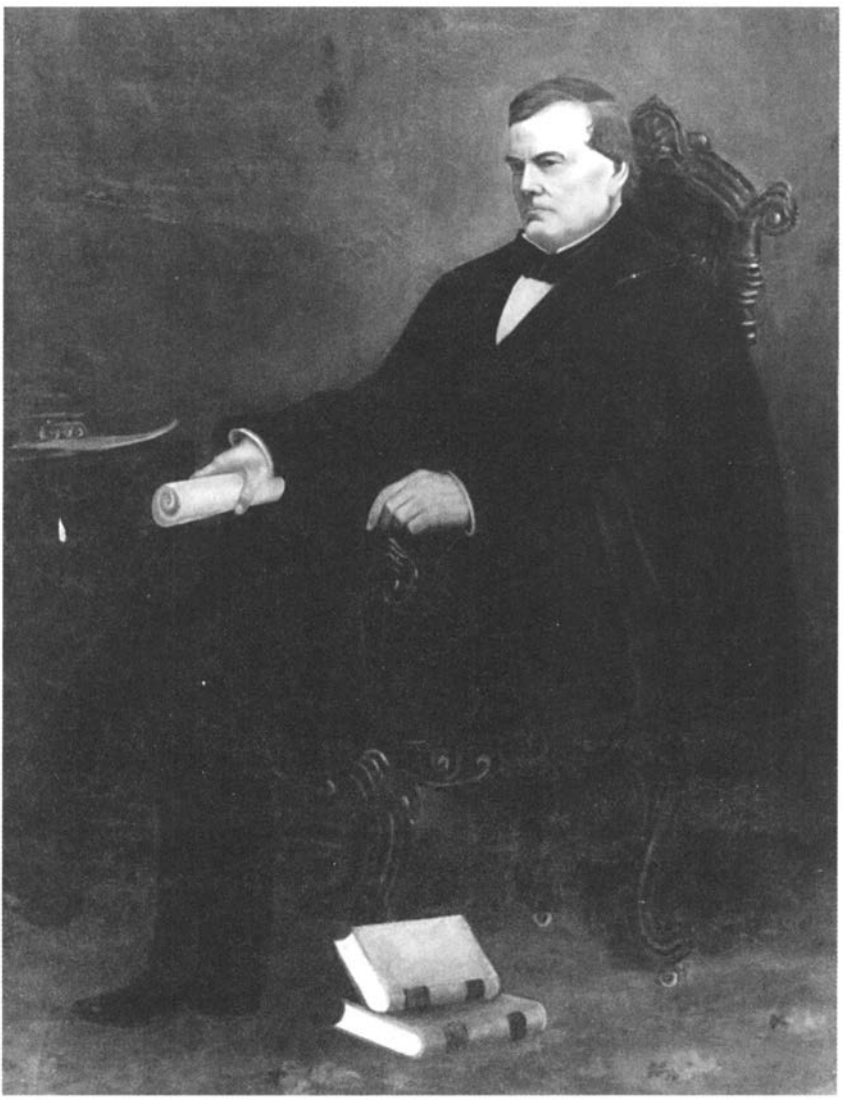
[5]*Georgia Code* (1861), 135-38, 401-13, 540-59. See also William B. McCash, "Thomas Cobb and the Codification of Georgia Law," *Georgia Historical Quarterly* 62 (Spring 1978): 9-23; Jefferson James Davis, "The Georgia Code of 1863: America's First Comprehensive Code," *Journal of Southern Legal History* 4 (1995-1996): 1-43.

carrier was subject to the existing common law rule imposing absolute liability, which did not require proof of fault, and whether an exception to this rule could be made by contract between the shipper and the carrier. An important early decision was *Fish v. Chapman & Ross*, in which goods shipped by wagon were damaged in crossing a stream between Washington County and Macon. The court held that carriers were responsible under the English absolute liability rule, that is, the carrier was liable "for every injury sustained by [transported goods] occasioned by any means whatever, except only the Act of God and the King's enemies." The court then addressed whether a carrier could, by a contract with the shipper, diminish its common law liability. It decided that liability could not be altered because the public would be without adequate protection if carriers could vary their liability by contract.[6]

The court revisited the question of whether the carrier liability standard could be reduced by contract ten years later in *Cooper & Boykin v. Berry*. The case involved 134 bales of cotton burned on a steamboat during a trip on the Chattahoochee River from Columbus to Apalachicola, Florida. The problem confronting the court in 1857 was that most American jurisdictions had abandoned restrictions on contracts that reduced the standard of liability. As a result, when the court reviewed contemporary precedent in *Berry*, it sneered at its own once-championed notion that "public policy" might prevent the liability-reducing effect of carrier notices: "[C]an public policy make a law? And if it could, is it given to the Courts to declare what is, or is not public policy?" According to *Berry*, Georgia carriers, through notice or contract, could now be liable for damages under a negligence standard, which required only the exercise of "ordinary diligence" by the carrier.[7]

The court's increased protection for carriers immediately became the subject of political contention. By the early 1860s a rift developed between the supreme court and the legislature, with the legislature preferring higher standards on carriers. Thus, the 1863 *Code* provided that, absent an express contract, carriers were bound to use "extraordinary diligence" and that there was a presumption of liability against the carrier. The *Code* also altered the

[6]2 Ga. 349, 353, 358-62 (1847).
[7]21 Ga. 526, 541 (1857).



Hiram Warner, a member of the Georgia Supreme Court from 1845 to 1865 and from 1867 to 1880, participated in practically all of the court's early accident law decisions. *Photograph courtesy of the Georgia Department of Archives and History.*

Berry decision by providing that a carrier could not limit its liability by public notice, but could only do so by express contract.[8]

[8]*E. Tenn. & Ga. R.R. v. Whittle*, 27 Ga. 537 (1859); *Georgia Code* (1861), ss. 2039, 2042.

A second variety of Georgia's pre-Civil War accident cases addressed personal injuries to passengers on common carriers. During the 1840s and 1850s passenger cases typically involved injuries to the property interests of slaveholders, namely, slaves. Unlike cotton, slaves were never protected by the absolute liability rule. In *Macon & Western R.R. v. Holt,* an 1850 decision, a slave who boarded the company's train with a general pass broke his leg when he jumped from a moving car. The slave, Jacob, possessed a bogus pass to travel from Macon to his owner's farm, about eight miles from the city. The legal question was what standard of liability should apply to the railroad, given that the company accepted the slave as a passenger when in fact the slave lacked permission to travel. The court held that the taking of the slave was an unauthorized act by the railroad that deprived the owner of his property, which automatically made the company liable for the injuries. Holding that the "black color of the African race is presumptive evidence" of slave status, it followed that the transportation was in derogation of the property rights of the owner. On the other hand, according to the court, if the slave's trip had been authorized by the master, the carrier would only have been liable for damages caused by negligence.[9] Thus, in antebellum Georgia "[t]he doctrine of common carriers, as to goods, does not apply to the carriage of slaves, and the carrier is not liable for the loss of, or injury to, slaves, unless the injury has been caused by the negligence or unskillfulness of himself or his agents."[10]

Prior to 1865, only a few cases involved injuries to white travelers. The first appeal arose from the death of Uriah Paulk, who was run over by a train during a collision. The accident took place when two locomotives, unaware that timing problems placed both on the track at the same time, met head-on in Taylor County. A jury awarded the deceased's wife the enormous sum of $12,000, despite evidence that Mr. Paulk had a few alcoholic drinks the day of the accident and that the drinks may have caused him to jump from the train. The supreme court's initial task was to apply Georgia's wrongful death statute, which was adopted in 1850. The statute permitted the representative of a deceased victim to sue a

[9]8 Ga. 157, 163-68 (1850).
[10]*Mitchell v. Western & A. R.R.*, 30 Ga. 22, 26 (1860).

defendant. Formerly, any possible action abated at the time of the victim's death. In its initial opportunity to construe the statute the court rejected the railroad's constitutional complaints that the law interfered with a vested right, and that the statute resulted in an unequal treatment of railroads. In fact, instead of responding favorably to the railroad's defenses of property, the court suggested that the legislature might impose the death penalty on railroad employees for reckless killings. The other important question was the effect of the decedent's decision to jump from the car. The court quickly disposed of any possibility of contributory negligence by the deceased, which normally would absolve the defendant of liability. It stated that if the company placed the passenger in a dangerous position the company could be liable. The jury verdict was affirmed.[11]

The other white passenger personal injury cases of the pre-Civil War era were *Yonge v. Kinney* and *Shields v. Yonge.* In *Kinney,* the court awarded a new trial to the railroad on the ground that the damages were excessive. The victim, who was killed in a collision on the Western & Atlantic Railroad in Cass County while standing on the fragile platform of a car, knew that the platform was dangerous and had been told by the conductor not to stand on it. *Shields,* a case tried in Whitfield County, involved a two-pronged claim that signaled the importance of a victim's status. One claim was for injuries that caused the victim's death as a passenger, while another claim sought recovery for the victim's death as an employee. The decedent, a young man, was both a passenger and an employee at the time of the accident. The employee claim was defeated, but there was higher protection for passengers, and the plaintiff, the young man's father, was permitted to proceed under the wrongful death statute. By 1863, the legislature confirmed the status distinction recognized by the court by providing that a carrier was bound to use "extraordinary diligence" to protect passengers.[12]

Issues of negligence also arose outside of passenger and cargo contexts. A significant type of case involved the hiring of slaves. In one appeal, a hired slave, working on a steamboat from Savannah

[11] *South-Western R.R. v. Paulk,* 24 Ga. 356, 357-60, 365-66 (1858).
[12] 28 Ga. 111, 116 (1859); 15 Ga. 349 (1854); *Georgia Code* (1861), s. 2040.

to St. Mary's, became trapped in the ship's waterwheel and drowned. The slave, Ned, was employed as a carpenter but was killed trying to help get the ship off from a dock. His owner's case was tried in Savannah in 1846. Liability depended on how the court would define the employer's duty when the injury to the slave was caused by the negligence of a free employee, in this case the captain of the boat. The court confessed that it was "disposed to adopt and recognize" the fellow servant rule, which absolved an employer from liability if the victim's co-worker was negligent. In this context, however, "interest to the [slave] owner, and humanity to the slave, forbid its application to any other than *free white agents.*" The court did not perceive how the policy of the fellow servant rule, which was to encourage workers to act safely, could apply to slaves. The court seemed particularly impressed by the forced nature of slave labor:

> Slaves dare not intermeddle with those around, embarked in the same conduct. Neither can they exercise the salutary discretion, left to free white agents, of quitting the employment when matters are mismanaged or portend evil. . . . [T]hey have nothing to do but silently serve out their appointed time, and take their lot in the mean while in submitting to whatever risks and dangers are incident to the employment.

The court concluded that no slave would be safe if the fellow servant rule was recognized.[13]

Most of the other slave hire appeals involved whether the slave was being used within the terms of the contract at the time of injury, and if not, what standard of liability applied. As early as 1849 the Georgia court decided that when a slave was used for a purpose different than intended by the parties, or for a longer period, the hirer was absolutely liable for any injury. On the other hand, if the injury took place when the slave was working within the contract, the hirer was liable only if acting without "ordinary diligence." The legislature codified this rule, providing that hirers were not to put the slave to any use other than that for which the slave was hired and to take "ordinary care" in the slave's use. Stat-

[13] *Scudder v. Woodbridge*, 1 Ga. 195, 199-200 (1846). Later, Section 2973 of the 1861 *Code* exempted slaves from the fellow servant rule.

utes also placed the burden of proving a lack of fault on the hirer when a slave died during the hire period.[14]

Another important type of antebellum appeal involved injuries to employees of railroads and collisions between railroads, persons, and other property, including livestock. Injured white employee cases, all involving railroads as defendants, were infrequent. Two of the three cases denied liability, one by applying the fellow servant rule, and another by holding that Georgia's wrongful death statute did not apply to the Western & Atlantic Railroad, in which the state had an ownership interest. In the other case, *Cooper v. Mullins*, decided in 1860 and upholding a verdict for the plaintiff, the court suggested that the rationale for the fellow servant rule was to protect the public by encouraging employees to look after the safe practices of other employees. There the employee, a machinist, had an arm shattered during a collision on a trip between Chattanooga and Atlanta. As in the carrier and passenger areas, however, the legislature eventually modified the court's holdings to the advantage of victims. It abolished the fellow servant defense in 1856 by providing that if an employee's injury was caused entirely by the fault of another employee, the injured employee could make a claim against the company.[15]

A larger number of cases resulted from injuries to livestock. An 1840 statute set the early standard by creating a presumption of liability for losses caused by railroad companies. More radically, it indicated that proof of fault by the railroad was not required. This rule was politically significant because Georgia's rural population had a property right in the free range of livestock, meaning, in accident law terms, that livestock owners were generally not liable for damages caused by their roaming livestock. Of course, unfenced livestock was inevitably killed by locomotives, especially at night. In addition, the 1840 law established a mandatory procedure by which each party was allowed to choose a "disinterested

[14]*Gorman v. Campbell*, 14 Ga. 137 (1853) (slave killed on steamboat); *Collins v. Hutchins*, 21 Ga. 271 (1857) (slave killed on railroad); *Collier v. Lyons*, 18 Ga. 648 (1855) (slave killed while working out of normal scope of duty); *Columbus v. Howard*, 6 Ga. 216, 219 (1849) (the lessee of a slave "ought. . . to use the thing, and to take the same care in the preservation of it, which a good and prudent father of a family would take of his own"); *Georgia Code* (1861), ss. 2056-2081.

[15]*Shields v. Yonge*, 15 Ga. 349 (1854); *Cooper v. Mullins*, 30 Ga. 146, 150 (1857); *Walker v. Spullock*, 23 Ga. 435 (1857); *Georgia Code* (1861), s. 2980.

Joseph Henry Lumpkin served twenty-two years on the Supreme Court, from 1845 to 1867. *Photograph courtesy of the Georgia Department of Archives and History.*

freeholder," who would then choose another person to assess the damages. If this failed to resolve the dispute, a suit could begin in the courts.[16] The statute reveals a great deal about the early politics of accident law. The Georgia legislature was most interested in encouraging settlement, punishing the railroads for unreasonable failures to compensate for losses, and in creating a kind of liability without fault that would protect the livestock of white farmers.

However, the absolute liability standard, much like in the carrier cases, was short-lived. Toward the end of the antebellum period the legislature altered the claims process so as to dispose of absolute liability and abbreviated procedure. This appears to have

[16]*Georgia Statutes* (1845), art. IV, s. 1, paras. 95-96.

been partly in response to hostile court decisions. The legislature adopted a more court-centered process and made liability expressly contingent on railroad negligence. The new law provided that any injury to livestock created a presumption of liability, which the railroad could rebut by showing that it was not negligent. No livestock cases reached the Georgia Supreme Court until the 1840 statute had been modified. When the court eventually confronted the issue it applied the negligence rule.[17]

Another category of appeals dealt with accidents to persons and property at railroad crossings. One particularly bloody event, described at the beginning of this article, produced several appeals during the 1850s. A train crushed a carriage and killed a slave and three white children; the accident also injured the mother and a fourth child. Reflecting the legal distinction between injuries to property and persons, the plaintiff bifurcated the case into separate personal and property damage actions. The initial suit, tried in Bibb County, addressed the loss of the slave and carriage. The plaintiff's strategy was prompted by the absolute liability for livestock property contained in the 1840 statute. Arguably, the absolute liability rule was still in effect in 1851 when the accident took place. In fact, in 1847 the legislature extended the scope of the 1840 act to include damages to "other property," such as slaves. At trial, the plaintiff won a verdict under this law for the death of the carriage driver.[18]

However, on appeal the supreme court reversed, largely by deciding that a superceding 1850 statute imposed liability only if the railroad was at fault. Actually, the language of the 1850 statute regarding the standard of liability was vague and the court's discussion revealed sharp tension about what arm of government would be allowed to define the scope of liability. The court expressed contempt for absolute liability. It criticized the trial judge's suggestion that the 1847 law "makes the companies liable for injuries to property, at all events and under all circumstances, irrespective of

[17] *Georgia Code* (1861), s. 2978; *Georgia Code* (1873), ss. 3042-3050; *Central R.R. and Banking Co. v. Davis*, 19 Ga. 437 (1856).

[18] *Macon & W. R.R. v. Davis*, 13 Ga. 68, 70, 72 (1853); *Macon & W. R.R. Co. v. Davis*, 18 Ga. 679 (1855); *Macon & W. R.R. Co. v. Winn*, 19 Ga. 440 (1855); *Macon & W. R.R. Co. v. Winn*, 26 Ga. 250 (1857); *Macon & W. R.R. v. Davis*, 27 Ga. 110 (1859).

the negligence on the part of either party." To the supreme court, this gave "the Act of 1847. . . a character of monstrous injustice, unparalleled in the history of legislation." The legislature did not intend "to do a thing so grossly absurd, and so flagrantly inequitable." The court justified this limitation on liability so as to protect railroads, stating "it would deny to the public the incalculable benefits of Railroads, for no company would long exercise franchises thus encumbered."[19]

In summary, the outstanding fact about pre-Civil War accident law was that the supreme court's cases primarily involved claims for damages to property. Few personal injury appeals appeared. Doctrine clearly distinguished between the possibilities of personal and property actions, with higher standards of liability existing for the protection of property. Absolute liability prevailed in some contexts, although briefly. Most important, the property cases involved the property and property owners that had special economic and political significance in Georgia: livestock, agricultural goods in transit, carriers, slaves, and slaveholders. Perhaps because of these groups' economic interdependence and high ranking among the politically advantaged, the legislature and the supreme court seemed to agree that each kind of property deserved protection, although the legislature tended to be more interested in compensation for the older forms of property, such as livestock, agricultural goods, and slaves.

As a consequence, antebellum accident law's primary intent was neither to subsidize modern devices such as the railroad by imposing accident costs on the injured, nor, conversely, to freely compensate victims. In the railroads' favor were the supreme court's general defense of negligence as opposed to absolute liability, the legislature's gradual abandonment of absolute liability for property losses, and the court's decision to permit railroads to contract out of absolute common carrier liability. On the other

[19]The 1847 Act provided that railroad companies "shall be held liable in law for any damage done to livestock or other property." The 1850 statute provided that when judgment was entered against the company under the abbreviated process, the railroad could appeal, and the "claim for damages shall stand for trial before the special jury at the first term after such appeal, upon the same terms, restrictions and liabilities as apply to and govern other appeal cases." *Davis*, 13 Ga. at 70, 72, 82, 85-87 (1853).

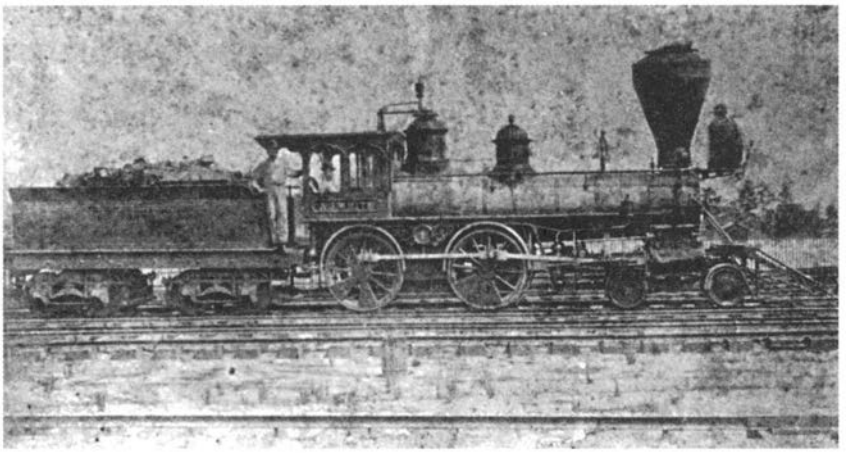
hand, the legislature and the court banned the fellow servant rule and created a presumption of negligence against railroads in livestock cases. The result was a system that offered significant protection for the most important kinds of Georgia property, including slaves, cotton, and the railroads. As yet, however, the negligence principle was largely untested as a mechanism for the relief of injured free men and women.

The Civil War dramatically affected the kinds of white property so prominent in antebellum accident cases. First, the abolition of slavery eliminated approximately $400 million of human property, at least half the wealth of the state. Second, wartime destruction dismantled railroad systems, produced reductions in livestock populations, and shattered old market relations. Yet the transition to a new economy began immediately after Appomattox. Some of the changes simply restructured old forms of oppression. White landowners imposed a cash crop peonage on the freedmen, quickly pushing cotton production past pre-Civil War levels. Other changes were more novel. Entrepreneurs built a new and more extensive railroad network, in large part fueled by state endorsement of railroad construction bonds. The tracks linked an increasing number of Georgia towns and farmers to faraway markets. Not surprisingly, railroad construction also had an important effect on the development of accident law.[20]

In the fifteen years after the Civil War negligence concepts continued to be applied in property damage appeals. Most of these appeals arose from losses by common carriers, killings of livestock by railroads, and injuries caused by local governments. The end of slavery eliminated the slave hire cases, but it did not end contention over standards of care or who would pay for property losses arising out of an increasing number of accidents caused by railroads.

The most important development in common carrier doctrine before the Civil War was the acceptance of carriers' attempts to limit liability by contract. After the Civil War this area experienced a continued movement toward regulation by contract. In fact, the state's 1873 *Code* confirmed the pre-war rule, allowing car-

[20]On Georgia during Reconstruction, see Bartley, *Creation of Modern Georgia*, 29-74.



A Georgia locomotive, ca. 1874, with J. E. Flanders, engineer (in window), and Jack Hutch, fireman. *Georgia Historical Society.*

riers to enter into contracts with shippers that reduced the potential for liability. Carrier contracts universally provided that the carrier was only liable for negligence. The result for litigants after 1865 was generally equal appellate success. Many disputes involved injury to agricultural goods, especially cotton, being moved within the region by railroads and express companies.[21]

Making carrier liability depend on contract terms meant that most of the appeals focused on the meaning of shipper-carrier contracts and the relationship between provisions in the *Code* to the contracts. For example, in *Purcell v. Southern Express Co.*,[22] the supreme court allowed the carrier, after proving there was a contract with the shipper, to be liable under a negligence standard that required the carrier to prove it was not at fault. The case involved thirty-three bales of cotton destroyed by fire in Augusta. The large number of cases decided between 1865 and 1880 addressed similar issues. In results, the contractual basis of liability, as opposed to the old absolute liability standard, made it difficult

[21] *Georgia Code* (1873), s. 2068.
[22] 34 Ga. 315 (1866).

or impossible for some shippers to recover for losses.[23] Equally important, the increased number of cases made the contractual allowance more important than it had been before the Civil War. As a result, the carrier cases reflected a liability-reducing shift from absolute liability to negligence and from public oversight to contract. The evidence from Georgia suggests that the shift helped reduce carriers' liability.

Before the Civil War the question of who should pay for killings of livestock by railroads received considerable attention from Georgia lawmakers, most notably in the 1840 absolute liability statute. After 1865, the issues associated with livestock injuries grew in importance, primarily because the growth of railroads helped increase the number of livestock appeals. Georgia regulated liability in livestock-railroad accidents by statute throughout the post-war period, but statutory livestock accident doctrine changed little from 1860 through the 1870s. Railroads were liable for any damage to livestock "unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence—the presumption in all cases being against the company." The statutes required companies to make a public record of livestock killings and allowed the animal owner to bring an action before a local justice of the peace.[24] This procedure cut costs and ensured rural control over initial proceedings.

Judicial application of the statutes proved relatively simple, in part because the supreme court also accepted, by the late 1860s, that the standard for liability was "ordinary and reasonable care," with a presumption of negligence against the company. In addi-

[23]See, e.g., *Southern Express Co. v. Everett*, 37 Ga. 688 (1867) (judgment for shipper reversed on the ground that court improperly refused to instruct jury on possible concealment of value of goods shipped); *Everett v. Southern Express Co.*, 46 Ga. 303 (1872) (in reversing verdict for shipper, court noted that "Unfortunately, there is not the same carefulness [by juries] to do only strict justice in cases where rich corporations are parties"); *Wallace v. Sanders*, 42 Ga. 486 (1871) (judgment for shipper reversed for railroad on ground that, despite the general prohibition against contracting by receipt, a wartime receipt, with "at own risk" clause, could be enforceable); *East Tennessee & G. R.R. v. Montgomery*, 44 Ga. 278 (1871) (judgment for shipper reversed on ground that letter from railroad agent to another shipper did not impose additional duties on the company); *Southern Express Co. v. S. & J. Palmer & Co.*, 48 Ga. 85 (1873) (reversing judgment for shipper on ground that there was no proof of a contract); *Green v. Southern Express Co.*, 45 Ga. 305 (1872) (refusing claim for larger damages by shipper when verdict was similar to value of goods stated by the shipper in the receipt).

[24]*Georgia Code* (1873), ss. 3033, 3038-3050.

tion, the court was generally willing to defer to anti-railroad juries. Verdicts for plaintiffs were affirmed in a majority of appeals. Of twenty cases, judgment was rendered against the railroads in fourteen. Most often the court reached favorable results for plaintiffs by deferring to juries on disputed facts, by denying claims of procedural defaults, by enforcing the whistle and speed requirements of the *Code*, and by allowing jury discretion in determining damages.[25]

The perspective of the Georgia court appeared most clearly in its 1880 decision to affirm a verdict for an African-American man whose mule had been killed. In this Newton County case, the engineer testified that the mule appeared suddenly from behind a hedgerow and the accident could not be prevented. Others, however, testified that the mule must have got on the tracks at a crossing some fifty yards from the collision and could have been seen. Considering the disputed facts, the court applied the presumption of liability imposed by statute. Nonetheless, its ambivalence toward the standard showed. It remarked: "With the policy of the law and the harshness with which it bears on railroad companies, we have nothing to do; our business is to expound and enforce it as we find it on the statute books."[26] Perhaps this suggests why the presumptive negligence standard still resulted in success in about 30 percent of the livestock appeals for the railroads. These reversals were most often the consequence of the court's inability to resist second-guessing a jury on negligence, a result that would not have been possible under the 1840 law creating absolute liability.[27]

Finally, details in the opinions suggest that neither doctrine nor outcomes reveal the full impact of the negligence standard in livestock cases. They provide examples of railroad delays, refusals to pay, and employee fabrications. Also, most disputes involved relatively small losses of twenty-five, fifty, or one hundred dollars. Although these were not insignificant sums in post-Civil War

[25]*Macon & W. R.R. Co. v. Baber*, 42 Ga. 300, 305 (1871); *Southwestern R.R. v. Knott*, 48 Ga. 517 (1873); *Georgia R.R. & Banking Co. v. Monroe*, 49 Ga. 373 (1873); *Western & A. R.R. Co. v. Main*, 64 Ga. 649 (1880); *Woolfolk v. Macon & A. R.R. Co.*, 56 Ga. 457 (1876); *Atlanta & W. P. R.R. v. Hudson*, 62 Ga. 679 (1879).

[26]*Georgia R.R. & Banking Co. v. Cox*, 64 Ga. 619, 621 (1880).

[27]See, e.g., *Georgia R.R. & Banking Co. v. Neely*, 56 Ga. 540 (1876) (facts do not support a finding of negligence); *Macon & A. R.R. Co. v. Vaughn*, 48 Ga 464 (1873) (railroads are not liable for unavoidable accidents).

Georgia, the trouble and expense of defending appeals to the supreme court in Atlanta for this amount of damage was undoubtedly discouraging to small farmers.

Another important variety of property cases arose from the neglect of local governments. About ten local government appeals were heard after 1865. Most involved accidents on roads and bridges supposedly maintained by a county or a municipality. Generally, the primary question was not the standard of liability, because the standard was always understood to be ordinary negligence. Instead, the issue was immunity, or whether there was legal authority for the court to hold a county or city accountable. The supreme court recognized that the liability of a county or municipality depended on the statutory language that created the local government. A typical case, in which the court found that the city was not liable, involved an injury to property on a ferry owned by the city of Athens that crossed the Oconee River. The court reasoned that the city lacked the legal power to operate the ferry, so it could not be liable for any damage caused by the ferry.[28] The leading exception to government immunity was the rule that an incorporated municipality could be liable for injuries if its charter or ordinances included a duty to act in a certain manner.[29] Overall, immunity rules helped counties and municipalities win most of their property damage appeals between 1865 and 1880.

The effect of accidental injury to property law changed significantly after 1865. Prior to the Civil War negligence doctrine in Georgia applied almost exclusively to claims for losses of property. Plaintiffs sought damages for killed livestock, lost agricultural goods, and killed or abused slaves. The negligence system operated to balance the interests of property holders against those doing the damage, most particularly railroads. In developing this property-protecting system the supreme court eliminated absolute liability for carriers of goods, deflected legislative efforts to establish absolute liability for livestock killings, and yet held defendants

[28]See *Scales v. Ordinary*, 41 Ga. 226 (1870) (in a defective bridge case, holding that sections of the state code giving counties authority over bridges did not make counties liable for injury to property even when the injury resulted from a failure to perform a public duty); *Cooper v. Athens*, 53 Ga. 639 (1875) (city not liable for injuries on ferry it lacked authority to create).

[29]See *Wannack v. Macon*, 53 Ga. 162 (1873) (town can be liable for damage resulting from fireworks used as a result of town's negligence).

responsible for a wide variety of injuries. After the Civil War the number of property damage cases confronting the court increased dramatically. This altered the balance achieved in the prewar court because it was caused, at least in part, by increased damages associated with the operations of railroads. Although the formerly important slave injury cases disappeared, appeals involving damages to goods transported by common carriers and for the killing of livestock by railroads grew. Certain claims for property losses that were inconsequential before the Civil War, such as against local governments, also increased after 1865. Altogether, with the slaveholder eliminated as a class of plaintiff and the expansion of the state's railroad network, property damage appeals after 1865 tended to be contests among agricultural shippers, livestock owners, and railroads.

Doctrine and results, particularly in the carrier and livestock cases, reflected the triumph of negligence and a subtle shifting of costs. By 1880 carriers' liability to shippers was a matter of contract, which meant that successful claims for damages depended

The railroad disaster near Blackshear, Georgia. From *Harper's Weekly*, March 31, 1888.

on proof of fault by the carrier. The negligence standard also prevailed in the livestock cases. The application of this rule in property cases tended to produce results about equally favorable to plaintiffs and defendants, with plaintiffs prevailing in a majority of the cases. It would be incorrect, however, to conclude that this suggests overwhelming solicitude for those with destroyed property. Instead, the negligence standard applied by the supreme court in property cases held costs to defendants to a reasonable minimum. First, appellants tended to be an alleged injurer, not the injured. As a result, approximately equal outcomes meant high reversal rates. Second, if absolute liability had been allowed to prevail in the carrier and livestock areas very few of the property damage appeals brought by defendants would have had any legal basis. The overall result was that by 1880, defendants, meaning primarily railroads, had defeated efforts to hold them fully accountable for the increasing costs of their operations and had destroyed the more balanced distribution of costs among property holders that existed before the Civil War.

Shifting burdens in property claims was important, but after 1865 an explosive growth in personal injury actions revolutionized Georgia's accident law. Whereas in the fifteen years before the Civil War the number of personal injury verdicts appealed totaled less than ten, by 1880 the supreme court heard more than fifteen personal injury cases each year. This dramatic change transformed the antebellum negligence system, in which more than 90 percent of the appeals concerned property losses. The shift was overwhelmingly directed to the human costs imposed by railroads, as a huge majority of the new personal injury actions pitted injured individuals against railroads. In general, there were four broad categories of personal injury actions addressed by Georgia's supreme court between 1865 and 1880: (1) a wide range of miscellaneous accidents, not involving common carrier passengers, railroad crossings, or employees; (2) injuries to passengers on common carriers, almost always railroads; (3) accidents at railroad crossings and on railroad tracks; and (4) injuries to employees, almost all of whom were railroad workers.

The first group of personal injury appeals included claims of diverse origins. The most prominent sub-class involved suits against local governments. Principles of governmental immunity

caused some results favorable to defendants, especially counties. Overall, nine of the outcomes in Georgia's seventeen appeals benefited local governments. For example, one decision held that counties were not liable, on immunity grounds, for damages caused by poor bridge maintenance. The case arose when a bridge over a creek in Harris County collapsed, causing the plaintiff to lose a leg. Decisions for cities were based on a range of theories, including lack of negligence, contributory negligence, or absence of legal duty.[30] Perhaps most important, although the number of cases was relatively small, there were as many personal injury actions against local governments between 1865 and 1880 as the entire total of personal injury appeals before the Civil War.

Appeals involving injuries to passengers on common carriers also increased dramatically. Plaintiffs fared badly. The Georgia court decided about twenty-five passenger injury cases between 1865 and 1880 and railroad companies prevailed in almost 60 percent of the decisions. It is difficult to explain these outcomes by reference to legal doctrine. The *Code* provided that carriers were bound to "extraordinary diligence" to protect passengers, imposed a presumption of negligence on the companies in case of injury, and allowed only diminishment of damages if the plaintiff was also at fault. Yet these rules failed to result in even a majority of judgments for plaintiffs. The best examples of the limits of doctrine were collision cases. There the greater likelihood of negligence on the part of the company and the absence of fault by the plaintiff presumably increased the chance of liability. Yet plaintiffs won just over half of these cases. In *Brunswick & Albany R.R. Co. v. Gale*, for example, the court held there was no liability for injuries caused by the train's running over a bull, which resulted in a derailment. The plaintiff was riding in a passenger car at night in Worth County, happily chatting with other passengers, when the train, traveling at the robust speed of fifteen miles per hour, crashed into the bull. There was evidence that the engineer did

[30] *Collins v. Hudson*, 54 Ga. 24 (1875); *Zettler v. Atlanta*, 66 Ga. 195 (1880) (contributory negligence in straying from sidewalk); *Rivers v. Augusta*, 65 Ga. 376 (1880) (municipality is not liable for injuries to child caused by a cow despite former ordinance, then suspended, forbidding the running of cattle at large in the town); *Daniels v. Athens*, 54 Ga. 79 (1875) (town has no obligation to maintain county-owned bridge within its limits); *Wilson v. Atlanta*, 60 Ga. 473 (1878) (evidence supports judge's granting of new trial after verdict for plaintiff on grounds of lack of negligence).

not blow the whistle and that the bull could have been seen in time to slow the train. The supreme court reversed a $2,000 verdict for the victim despite the presumption of negligence and the extraordinary diligence standard because it believed there was insufficient evidence of negligence. On another occasion the supreme court reversed a judgment for a plaintiff because the deceased victim, in an 1865 accident, was standing on a car platform when the car was hit from behind by a freight train. The supreme court concluded that both parties were at fault and sent the case back to the trial court in Bibb County for a reduction in damages.[31]

Other passenger appeals resulted from injuries to persons entering or exiting cars and from intentional assaults. Liability in the entering and exiting cases usually turned on whether the plaintiff was negligent. In *Central R.R. & Banking Co. v. Perry*, for example, a man injured running to catch a train was held to be at fault. According to the supreme court, the extraordinary diligence standard imposed on railroads did not protect "unnecessarily late passengers." In contrast, when a company stopped its train to unload passengers beside a ditch, or when a conductor told a man that the train would not stop, but would only slow down at his station, and that he would have to jump to get off, the court affirmed judgments for plaintiffs. In the latter case, a man riding from Atlanta to News Station in DeKalb County injured his ankle when the train only slowed for his exit. In the unloading cases the Georgia court recognized that railroads had a duty, measured by extraordinary diligence, to protect passengers from other passengers and was willing to hold a railroad responsible for the intentional acts of its employees. This principle also applied to create liability when an African-American man was threatened by a white conductor and beaten by a white baggage master in Troup County. The plaintiff requested a check for a piece of baggage that belonged to his wife. His request was refused and an exchange of words led to

[31] *Georgia Code* (1873), s. 2067; *Miller v. Southwestern R.R.*, 55 Ga. 143 (1875) (wife, not legal representative, has right to sue in wrongful death action); *Sawtell v. Western & A. R.R.*, 61 Ga. 570 (1878) (before wrongful death action plaintiff must instigate a criminal prosecution against wrongdoer); *Brunswick & Albany R.R. Co. v. Gale*, 56 Ga. 322, 324-25 (1876); *Macon & W. R.R. Co. v. Johnson*, 38 Ga. 409 (1868) (man warned by company employees to get off the platform).

the beating by the baggage master. On a subsequent trip on the same railroad the African-American man was recognized by a conductor and threatened with shooting. The passenger lost at trial. The all-white supreme court reversed and sent the dispute back for retrial, stating that the railroad employees' actions fell well below the "gentlemanly" behavior required.[32]

In sum, passenger appeals after 1865 tended to favor railroads. Despite agreement that railroads owed "extraordinary diligence" to their passengers, the supreme court was reluctant to translate this rule into judgments for plaintiffs. Further, the defense of contributory negligence reduced the likelihood of successful claims. One reason is that after the Civil War the Georgia court had increased expectations of plaintiffs. It assumed that railroads were no longer a novelty and passengers should be familiar with what was necessary to ensure their safety, including how to act during a train crash.

Compared to the number of appeals involving railroad passengers and employees, cases arising out of killings and injuries to persons at railroad crossings were limited, numbering about ten. The facts in these disputes were similar. Persons, including children, were struck by trains at a crossing, depot, or switching point. The similar circumstances encouraged legislative regulation. The Georgia *Code* required a whistle to be blown at crossings and that a train slow down so as to be able to stop if someone was seen on the road. Despite the safety laws, railroads won seven of the eleven appeals in crossing and collision cases. Railroad success on the issue of negligence was actually greater than these numbers suggest, however, because of an unusual number of procedural disputes. Although plaintiffs and defendants fared equally well in the procedural appeals, about half of the crossing cases depended on a determination of negligence, and these were overwhelmingly decided in favor of railroads. Plaintiffs' negligence often served as the significant barrier to recovery. In fact, the statute allowing recovery if the plaintiff was at fault and could not have avoided the injury was nullified in practice. In some cases the supreme court

[32] *Central R.R. & Banking Co. v. Perry*, 58 Ga. 461, 467-69 (1877); *Montgomery & W.P. R.R. Co. v. Boring*, 51 Ga. 582 (1874); *Georgia R.R. & Banking Co. v. McCurdy*, 45 Ga. 288 (1872); *Holly v. Atlanta St. R.R.*, 61 Ga. 215 (1878); *Gasway v. Atlanta & W.P. R.R.*, 58 Ga. 216 (1877).

ruled that the plaintiff entirely caused his injuries, thus barring recovery. For example, one Macon County case involved an intoxicated man who passed out on the defendant's tracks and was then run over by a train. Miraculously, he survived. The court, however, held that a drunken person was automatically prohibited from winning a favorable verdict. A plaintiff was most likely to avoid a successful defense only when the railroad's fault was exceptional, such as in a Columbia County case in which the railroad left timbers projecting more than six feet from the side of the train and one of the logs struck a pedestrian.[33]

Although there was a dramatic increase in passenger, collision, and crossing appeals after 1865, no category of personal injury cases surpassed the claims brought by employees against employers for on-the-job injuries. In this pre-workers' compensation era, these suits constituted more than 40 percent of all personal injury appeals. There were less than five such cases in the fifteen years before the Civil War but more than forty in the fifteen years after the war. Equally significant is that over 90 percent of the cases involved injuries or deaths to railroad employees. Further, unlike in the livestock, crossing, and collision cases, employee accident law was remarkably free from legislative interference. An especially powerful example of the discriminatory treatment of railroad labor was the Georgia legislature's refusal to extend the

[33]*Georgia Code* (1861), s. 680; *Allen v. Atlanta St. Ry.*, 54 Ga. 503 (1875) (under statutes father of two-year-old could not recover damages for child's future services); *Georgia R.R. & Banking Co. v. Wynn*, 42 Ga. 331 (1871) (a husband cannot recover for the negligent killing of his wife); *McDowell v. Georgia R.R.*, 60 Ga. 320 (1878) (although father not entitled to recover for killing of eighteen-year-old daughter, he could recover for loss of services from the time of injury until she was twenty-one); *East Tennessee & G. R.R. v. Cox*, 57 Ga. 253 (1875) (husband allowed to join wife in suit for damages for injury to her); *Central R.R. v. Brinson*, 64 Ga. 475 (1880) (noting that the significant burdens on railroads have "been guarded by qualifications [such as contributory negligence] which are in the highest degree important to these companies, and in the absence of which oftentimes they might suffer great injustice"); *Southwestern R.R. v. Hankerson*, 61 Ga. 114 (1878) (when man was voluntarily drunk and placed himself on the tracks he could not recover); *Southwestern R.R. v. Johnson*, 60 Ga. 667 (1878) (holding that verdict for plaintiff was contrary to law when plaintiff was hit while lying on the tracks); *Central R.R. v. Moore*, 61 Ga. 151 (1878) (when company rebutted the presumption of negligence imposed by statute, it was wrong to also require the company to show that the plaintiff was contributory negligent); *Batson v. Georgia R.R.*, 60 Ga. 339 (1878) (man on track with permission of railroad was struck with piece of lumber projecting several feet from one of the cars; plaintiff did not cause the injury by standing too close to the tracks).

A dangerous place. The depot at Tifton, Georgia, ca. 1890. *Photograph courtesy of the Hargrett Rare Book and Manuscript Library, University of Georgia Libraries.*

benefits of comparative negligence to employee accidents.[34] The incredible result was that employees lost roughly 80 percent of their appeals. Given that almost all of these decisions reversed jury verdicts for the injured, the effect of negligence is unusually clear. The lack of legislative protection and the wide range of common law defenses, including contributory negligence, an ingenious use of liability-waiving contracts, and assumption of risk, combined to make appellate success for Georgia's railroad workers exceedingly difficult.

Most of the judgments for defendants, about two-thirds, resulted from favorable rulings on contributory negligence. For example, the supreme court held that a speeding engineer, a track hand killed when he failed to jump off a moving train, a man killed trying to uncouple moving cars, an engineer killed after leaving his station fifteen minutes behind schedule, following orders from the conductor, and an "old" engineer who jumped from a train in anticipation of a collision could be contributory negli-

[34]The legislature provided that any plaintiff fault would bar recovery, in contrast to its adoption of comparative negligence in other contexts. *Georgia Code* (1873), s. 3036.

gent, thus preventing recovery. The contributory negligence decisions also tended to reverse jury verdicts for plaintiffs.[35]

Another type of employee case was particularly threatening. In three decisions the court enforced contracts between employees and railroads in which the employee waived claims for injuries. The first and most important was *Western & Atlantic R.R. Co. v. Bishop.* Lucien Bishop, in December 1871, was severely injured trying to couple a tender to a freight car in Catoosa County. He was crushed between the two cars and it was "questionable whether he will be perfectly sound again." Unfortunately for Bishop, he had signed a contract promising that he "will in no case hold the company liable for any injury or damage he may sustain in his person or otherwise, by what are called accidents or collisions, on the trains or road, or which may result from the negligence, carelessness or misconduct of himself or another employee." In reversing a jury verdict for $5,000 for Bishop, the court enforced the contract:

> Labor is property, and the laborer has, and ought to have, the same right to contract to it as other freemen have in reference to their property. . . . I do not hesitate to say that I know of no right more precious, and one which laboring men ought to guard with more vigilance, than the right to fix by contract the terms upon which their labor shall be engaged. It looks very specious to say that the law will protect them from the consequences of their own folly, and make a contract for them wiser and better than their own. . . . The railroad company has no monopoly of service. It is only one of a million of employers with whom the husband of the plaintiff might have sought employment. He deliberately, and for a consideration, undertook what he knew to be a dangerous service. . . . We are ready to hold railroad companies to the duties the law casts upon them. But juries should remember that before the law, the rich and poor, the strong and the weak, have equal rights.

Similar contracts, at least one of which was "signed" by an illiterate, were also enforced, resulting in judgments for defendants. The holdings in these cases contrasted sharply with the limitations

[35] *Rowland v. Cannon,* 35 Ga. 105 (1866); *Atlanta & R.A. Ry. v. Ayers,* 53 Ga. 12 (1874); *Marsh v. S.C. R.R.,* 56 Ga. 274 (1876); *Georgia R.R. & Banking Co. v. McDade,* 59 Ga. 73 (1877); *Central R.R. & Banking Co. v. Roach,* 64 Ga. 635 (1880).

on liability-waiving contracts for shippers, which never allowed railroads to avoid liability to this extent for injured property.[36]

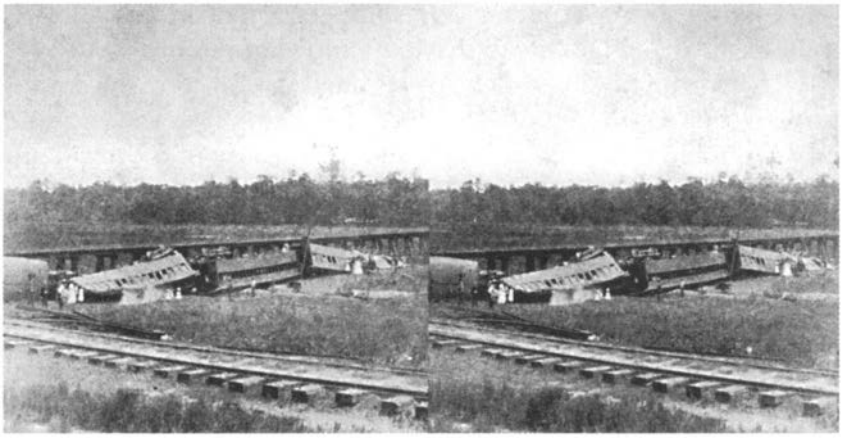
The fortunate 20 percent of employees who were successful won most often when the negligence of the employer was extreme or when the employee was unrelated to the cause of the accident. In one decision, involving a collision and an injured engineer, the court held that because there was evidence of negligence in the road's maintenance it would not interfere with the jury's verdict in favor of the plaintiff. A large bank of dirt covered the tracks in a cut of the Central Railroad near Macon; a train hurdled into the dirt and derailed, severely hurting the plaintiff. A quintessential example of corporate negligence, which resulted in plaintiff success, occurred when none other than the president of the Macon & Augusta Railroad was driving his company's locomotive, and the engine, traveling at a speed inappropriate to "common sense," caused a collision.[37]

The employee cases symbolized the potential of a pure version of negligence. The court imposed a vast array of burdens and defenses on victims, even allowing an employer to absolve itself of negligence by contract. The burden of proving negligence was on the plaintiff, negligence was not shown by the existence of defective and dangerous equipment, employees assumed an enormous amount of risk, and even if the company was shown to be negligent, the employee's claim could be defeated by contributory fault.

Georgia's personal injury law between 1865 and 1880 possessed several significant characteristics. Most important, there was a huge increase in the number of appeals. These appeals tended to be the result of injuries to passengers on trains, employees of railroads, and persons crossing railroad tracks. Moreover, doctrine in the personal injury cases was linked to the characteristics, or status, of plaintiffs. Generally, passengers and persons at crossings received the most protection, in part because of already established duties of carriers to passengers and statutes imposing safety requirements on railroads. In contrast, government immu-

[36] *Western & Atlantic R.R. v. Bishop*, 50 Ga. 465, 468, 471-73 (1873); *Western & A. R.R. v. Strong*, 52 Ga. 461 (1874); *Galloway v. Western & A. R.R.*, 57 Ga. 512 (1876).

[37] *Macon & A. R.R. v. Mayes*, 49 Ga. 355 (1873); *Eagle & Phenix Manufacturing Co. v. Welch*, 61 Ga. 444 (1878); *Central R.R. v. Mitchell*, 63 Ga. 173 (1879).



A side effect of industrial progress. *Photograph courtesy of the Hargrett Rare Book and Manuscript Library, University of Georgia Libraries*

nity often made it impossible for the victims of local governments to recover. Employees fared least well. Before 1880 they received no special protection and were forced to run a legal gauntlet punctuated by the pro-defendant doctrines of assumption of risk and contributory negligence.

Together, the growth of personal injury actions and subtle shifts in property cases after 1865 altered the balance between plaintiffs and defendants achieved before the Civil War and imposed greater burdens on victims. These burdens appeared most clearly in results. First, plaintiffs in personal injury actions lost most of their appeals. Second, the supreme court used contract law to make less likely the imposition of liability in property damage suits involving carriers, where plaintiffs lost roughly half of their appeals. Third, roughly 40 percent of the personal injury cases involved employees as victims. These workers lost 80 percent of their appeals. Finally, roughly 60 percent of all personal injury cases decided after 1865 were either employee suits or claims against the often-immunized wrongs of local governments.

One cannot explain the outcomes only by reference to legal doctrine. Instead, the relationship between parties, doctrine, and outcomes is best understood as a function of a property-protecting attitude among supreme court judges. Between 1865 and 1880 the court viewed negligence doctrine as an economic device that could

shield property-owning defendants from the costs of increasing deaths and injuries, especially to employees. To be sure, this did not mean that railroads or anyone else were entirely safe from liability, even from workers. Yet the Georgia court was very concerned about "excessive" liability, which in this pre-insurance era was understood in economic terms: liability that would either put railroads out of business or make them less profitable. It followed that the costs of some injuries could be fairly passed to the public because the public benefited from railroads. Negligence and its doctrinal retainers served as an appropriate vehicle for this result. After 1865 workers, passengers, shippers, and livestock owners bore an increased portion of the cost of the transportation deemed essential to Georgia's commercial economy. As a result, the court rulings represented a shift from the greater balance in cost sharing achieved among property holders before the Civil War.

The central themes of accident law in nineteenth-century Georgia are the law's functional transformation between 1846 and 1880 and the direct connection between Georgia's nineteenth-century accident law and the political values of the state's decision-makers. Before the Civil War, Georgia's commerce was dominated by trafficking in slaves, livestock, and the production of staples, particularly cotton. This was significant for accident law because these economic relationships did not generate the kind of conflicts between man and machine that became more important after 1865. As a result, Georgia's antebellum negligence system was almost entirely directed to the protection of the state's leading kinds of property. Disputes involving slave hires, railroads, and livestock injuries characterized accident law in the 1840s and 1850s. Parties, for the most part, were slave owners, shippers of cotton, livestock owners, and railroad companies owned by Georgians, including the state government. The most important fact about the legislature and the supreme court's response to these parties was to use negligence in a manner that did not burden excessively either plaintiffs or defendants. For example, through the failed attempts at absolute liability for livestock accidents and the serious compromising of the absolute liability doctrines applicable to common carriers, the negligence standard demonstrably defeated plaintiff interests. On the other hand, before the Civil War carriers were limited in the ways they could avoid liability,

both by evidential presumptions and the negligence standard itself. The effect of pre-war negligence was to give each kind of property interest a degree of protection for loss or from liability. Of course, the railroads were the largest winners in this compromise. The rights formerly assured shippers or livestock owners were partly transferred to the railroads because negligence required that other property interests absorb some of the costs of previously non-existent railroad accidents.

After the Civil War the property-owners' compromise was fundamentally altered. Personal injury actions became dominant. Most important, unlike in the antebellum period, late nineteenth-century victims were not primarily slave owners and shippers who had lost property. Instead, they were workers walking home along railroad tracks, rural girls on their first train trip, and tenant farmers whose mules were killed by the railroad. When confronted with their claims, Georgia's supreme court generally chose to burden victims. In doing so the court tried to sustain the property-protecting function of antebellum negligence law. Despite radical changes in the types of injury claims, accident law remained an adjunct of property law. In particular, the supreme court's reaction to the claims of free labor was decidedly in contrast to its willingness to construct a compromise with the new class of property-owning defendants before the Civil War. Post-war developments destroyed the previous balance among property-owning plaintiffs and defendants and produced an appellate environment in which plaintiffs usually lost. By providing greater protection for property than persons, Georgia's negligence system reflected the political values of its creators. Although the law suggested a basic consistency of purpose between the 1840s and the 1870s, it produced vastly different effects during and after slavery.