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# A BLEAK HOUSE: THE STORY BEHIND THE OLDEST LEGAL CONTROVERSY IN THE STATE OF GEORGIA

by Clayton T. Kendrick\*

## I. INTRODUCTION

*Bleak House*<sup>1</sup> is a novel written by Charles Dickens, which centers around the fictional English Court of Chancery case *Jarndyce and Jarndyce*.<sup>2</sup> The fictional case concerns a dispute surrounding a large inheritance that drags on for several generations.<sup>3</sup> As Dickens put it,

Jarndyce and Jarndyce drones on . . . . Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it . . . . The little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world.<sup>4</sup>

The story discussed in this Article does not revolve around one extended lawsuit, but rather one extended controversy. And while the subject of this controversy is not the inheritance of money, it is about the

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<sup>1</sup> CHARLES DICKENS, BLEAK HOUSE (1853).

<sup>2</sup> *See id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

inheritance of a difficult situation complicated by politics, greed, and tragedy.

In 2018, the United States District Court for the Southern District of Georgia played host to a matter of first impression regarding the Eleventh Amendment<sup>5</sup> and sovereign immunity.<sup>6</sup> The matter was implicated by an argument unique to Chatham County, Georgia—an argument linked to the intriguing and untold story of the oldest legal controversy in the state: the management of the Chatham County jail.<sup>7</sup>

This controversy finds its roots in 1760, just before King George III began his reign as King of Great Britain (and Ireland), fifteen years before the American Revolution, and twenty-eight years before Georgia became a state by ratifying the United States Constitution. The controversy continued throughout the Nineteenth century and was largely settled by 1881, sixteen years after the end of the American Civil War. But the controversy reappeared in 1979, 1990, and again in 2018.

Stretching four centuries, this story involves a struggle for control of the Chatham County jail and its revenue, and public outcry over the jail's conditions. And while documentation of this controversy consists largely of legislation and local newspapers, there are five cases that provide insight into the story. This Article will discuss the controversy's background, all relevant legislation, cases, and public references throughout the Eighteenth, Nineteenth, and Twentieth centuries. This Article will then discuss the most recent case and how the United States District Court for the Southern District of Georgia addressed a matter of first impression stemming from legislation related to this controversy.

## II. BACKGROUND

### A. *Georgia & Savannah*

Named after King George II, the colony of Georgia was founded in 1733 by James Edward Oglethorpe who soon laid plans for the town of Savannah. Before leaving England, Oglethorpe was very active in prison reform. In those times, prisoners were required to pay fees to prison administration for decent arrangements. In 1728, a close friend of Oglethorpe's who was imprisoned for a simple debt, and was therefore

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<sup>5</sup> U.S. CONST. amend. XI.

<sup>6</sup> *Ajibade v. Wilcher*, No. CV416-082, 2018 U.S. Dist. LEXIS 12386, at \*3 (S.D. Ga. Jan. 25, 2018).

<sup>7</sup> *Griffin v. Chatham Cty.*, 244 Ga. 628, 628, 261 S.E.2d 570, 571 (1979).

unable to pay any fees, died after he was placed in a cell with a prisoner suffering from smallpox.<sup>8</sup>

Oglethorpe was alarmed, not only at the horrible conditions of prisons in England, but also at the number of British citizens incarcerated for simple indebtedness. As a result, Oglethorpe and other reformers decided to create a colony in America that would give England's debtors a place and an opportunity to become skilled workers and hopefully avoid prison. By the time Oglethorpe and others left for America, however, there was not a single formerly jailed debtor among them because King George II's funding was conditioned on advancing England's economic circumstances rather than a charitable idea.<sup>9</sup>

Consider the irony. The founder of Georgia was a well-known leader in prison reform who originally sought to establish a colony in North America to reform debtors without imprisonment. Yet, this Article details the plight of the Chatham County jail and its prisoners, many of whom were imprisoned for simple debts. Also consider that Oglethorpe banned lawyers in Georgia until 1755.<sup>10</sup> In what is perhaps a mere coincidence, it was only five years later that the oldest legal controversy in the state began.

Between 1760, where this story begins, and 1777, when the Georgia General Assembly was created, Georgia was under British rule.<sup>11</sup> During this time period, legislative power was vested in three branches: the Royal Governor, the Upper House, and the Commons House of Assembly. The Upper House was made up of leading men in the colony, but was not representative in its makeup, and the Commons House was made up of elected delegates.<sup>12</sup> This General Assembly met in Savannah as directed by the Royal Governor, who, much like today, had the power to veto laws passed by the General Assembly.<sup>13</sup>

Once the General Assembly was created, it met in Savannah (the capital at the time) from 1777 to 1778 before retreating to Augusta when the British captured the city during the Revolutionary War. The General Assembly returned to Savannah when the British left in 1782, and

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<sup>8</sup> Edwin L. Jackson, *James Oglethorpe (1696–1785)*, NEW GA. ENCYCLOPEDIA (Dec. 2, 2003), <https://www.georgiaencyclopedia.org/articles/government-politics/james-oglethorpe-1696-1785> (last updated Aug. 1, 2019).

<sup>9</sup> *Id.*

<sup>10</sup> *History of Savannah*, VISITHISTORICSAVANNAH.COM, <https://www.visitsavannah.com/article/history-savannah.html> (last visited Nov. 1, 2019).

<sup>11</sup> Edward J. Cashin, *Royal Georgia, 1752–1776*, NEW GA. ENCYCLOPEDIA (June 8, 2017), <https://www.georgiaencyclopedia.org/articles/history-archaeology/royal-georgia-1752-1776>.

<sup>12</sup> *History of the Georgia House*, GA. GEN. ASSEMBLY, <http://www.legis.ga.gov/Legislation/Archives/19951996/house/hishou.htm> (last visited December 21, 2019).

<sup>13</sup> Cashin, *supra* note 11.

between 1783 and 1795 the General Assembly met in both Savannah and Augusta (which was Georgia's second capital).<sup>14</sup> In 1796, Louisville<sup>15</sup> became the capital of Georgia; the General Assembly met there until 1804, when the capital was moved to Milledgeville. The General Assembly remained in Milledgeville until 1868, when the capital moved to Atlanta.<sup>16</sup> The legislation in this story stems from both the Commons House of Assembly and the General Assembly, and there is legislation from the General Assembly that comes from each of Georgia's previous capitals. There is not one capital or location in which the General Assembly was held that did not produce legislation related to this story.

As this story progresses, the reader will see a distinction between the city of Savannah's government and Chatham County's government. Savannah is located in Chatham County, Georgia. The county is governed by a board of commissioners, led by a chairman; whereas the city is governed by the mayor, who works with aldermen who serve in certain districts throughout the city (much like city commissioners). Remember these distinctions going forward. The mayor and aldermen are characters in this story as are, eventually, the county commissioners.

#### *B. The Research Process*

What stuck with the Author while researching this story was the ease of access to the many sources relied upon for this Article. There is a searchable, online database for Georgia historical newspapers between the years 1763 and 1963.<sup>17</sup> These archives, however, do not always contain complete sets. In those instances, there are fairly complete sets of microfilmed newspapers in the basement of the University of Georgia's main-campus library and at the Georgia Historical Society in Savannah. Two other excellent resources were the Digital Commons<sup>18</sup> for the University of Georgia's School of Law and the Digital Collections<sup>19</sup> for the city of Savannah.

The Digital Commons for the University of Georgia's School of Law maintains copies of legislation that were passed prior to the Georgia Public Laws collection. Prior to Georgia maintaining its own collection of

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<sup>14</sup> *Id.*

<sup>15</sup> Louisville was named after King Louis XVI of France in honor of France's aid during the Revolutionary War. *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Georgia Historic Newspapers*, DIGITAL LIBR. GA., <https://gahistoricnewspapers.galileo.usg.edu> (last visited Nov. 4, 2019).

<sup>18</sup> See <https://digitalcommons.law.uga.edu>. This website contains archived collections of Georgia laws.

<sup>19</sup> See <https://www.savannahga.gov/747/Digital-Collections>. This website contains archived collections of city ordinances and letters from the Mayor.

public laws, private individuals maintained collections, such as Watkins Digest (Robert Watkins, for whom Watkinsville, Georgia is named)<sup>20</sup> or Clayton's Compilation (Augustin Smith Clayton, for whom Clayton County and Clayton, Georgia are named).<sup>21</sup> Even old superior court opinions were maintained in private collections. In this Article, the first two cases discussed come from the R.M. Charlton collection. Robert M. Charlton, coincidentally, was the mayor of Savannah from 1839 to 1841.<sup>22</sup>

The majority of sources used in this Article are quite old. The English language has evolved and the reader may notice outdated spelling, grammar, and punctuation. For example, the word jail was spelled "gaol," the word jailer was spelled "gaoler," or "jailor," and the word authorize was spelled "authorise," just to name a few. Rather than make changes to spelling and grammar, the Author has largely left quotations as they appear in their original source to preserve authenticity. Additionally, many of the sources used in this Article have deteriorated over time, such as handwritten letters from the mayor; the paper has deteriorated and the ink faded.

The reader will also notice that as time passes in the Article, spelling and grammar evolve. And while ink and paper may lose their integrity over time, and spelling and grammar may change, what is just as strong today as it was then is the power of the English language. The Author has consciously chosen to heavily quote material from these sources for three reasons: (1) so the reader can experience how this story revealed itself to the Author; (2) so the reader can experience the inspiring and compelling way in which people so commonly used the English language in the past; and (3) so the sources that make up this story, which required substantial time to gather, can be accumulated all in one place. This Article seeks not only to tell the story of the oldest legal controversy in the state, but to also serve as a collection of content for all related materials, such as newspaper articles, city ordinances, letters, and legislation. This story will be told in chronological order, beginning with the Eighteenth century.

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<sup>20</sup> Robert E. Luckett, *Watkinsville*, NEW GA. ENCYCLOPEDIA (Sept. 24, 2014), <https://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/watkinsville>.

<sup>21</sup> Michael J. Gagnon, *Augustin Smith Clayton (1783–1839)*, NEW GA. ENCYCLOPEDIA (Aug. 5, 2015), <https://www.georgiaencyclopedia.org/articles/government-politics/augustin-smith-clayton-1783-1839>.

<sup>22</sup> See BETHANY L. FORD, *A LIST OF MAYORS AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA, 1790–2012* (1981).

## III. EIGHTEENTH CENTURY

In 1979, in a case regarding control over the prisoners of the Chatham County jail, the court in *Griffin v. Chatham County*<sup>23</sup> noted that “[this] controversy was already mature in 1823, having been a legislative controversy since 1760.”<sup>24</sup> This statement was likely informed by the 1823 lawsuit *The State v. Mayor and Aldermen, City of Savannah*,<sup>25</sup> in which the presiding judge referenced a May 1, 1760 Act.<sup>26</sup>

The 1760 Act ascertains the boundaries of the town common of Savannah and states that the land within the town common “shall be and continue the common property of the lot-holders in the said town, and shall not be aliened or granted away for any purpose whatsoever, than by act of the general assembly.”<sup>27</sup>

The 1760 Act, however, did not quite serve its purpose; one year later, a June 9, 1761 Act<sup>28</sup> was passed to ratify the unauthorized appropriation of land in the town common that had already been allotted for public use without permission.<sup>29</sup> In particular, the 1761 Act appropriated Lot G to the town common of Savannah “whereon a prison formerly stood” stating that Lot G “shall be and continue for the use and purpose of a public g[ao]l.”<sup>30</sup>

It only took one year to violate the 1760 Act. But perhaps that speaks to the need the city had for a jail at the time. It was so necessary that local officials saw fit to violate the law. Indeed, a large part of this story is about the necessity of a new jail. This Article contains numerous references to a new jail and numerous acts of the Georgia General Assembly regarding a new jail (although the majority of these acts never actually resulted in a new jail). The first reference comes from a February 26, 1784 Act.<sup>31</sup> This Act instructs that “[t]he court house and gaol shall be erected, and the elections held in and for the county of Chatham, in the town of Savannah.”<sup>32</sup>

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<sup>23</sup> 244 Ga. at 628, 261 S.E.2d at 570.

<sup>24</sup> *Id.* at 628 n.1, 261 S.E.2d at 571 n.1.

<sup>25</sup> R.M. Charlton 250 (1823).

<sup>26</sup> *Id.* at 251 (citing An Act for the Better Regulating [sic] the Town of Savannah, and for Ascertaining the Common Thereunto Belonging, WATKINS DIGEST, No. 66, at 65 (1800)).

<sup>27</sup> WATKINS DIGEST, No. 66, § 2, at 66.

<sup>28</sup> An Act for Amending an Act, entitled “An Act for the Better Regulating [sic] the Town of Savannah, and for Ascertaining the Common Thereunto Belonging,” WATKINS DIGEST, No. 78, at 73.

<sup>29</sup> *Id.* § 1, at 73.

<sup>30</sup> *Id.* § 1, at 74.

<sup>31</sup> An Act for the Fixing and Establishing [sic] Court Houses and Gaols, and the Fixing and Regulating [sic] Elections in the Different Counties of this State, WATKINS DIGEST, No. 291, at 298.

<sup>32</sup> *Id.* § 1, at 298.

Recall the 1760 and 1761 Acts regulating the town of Savannah; these Acts prohibited conveying land in the town common without an act by the General Assembly. Not anymore. A February 19, 1787 Act<sup>33</sup> repealed all former laws passed for the better regulation of Savannah.<sup>34</sup> Land could now be conveyed without an act by the General Assembly, although there seems to be some confusion in the future about whether that is true.

Up to this point, the General Assembly had called for a jail to be built in Savannah, and all other counties throughout the state. But who was to oversee these jails? That question was answered by a February 1, 1788 Act,<sup>35</sup> which granted the judges of the superior courts of each county the power to appoint three or more people to be commissioners of the jail and courthouse.<sup>36</sup> These commissioners would collect fines and other monies resulting from the management of the courthouse and jail and, at the superior court judges' discretion, use those funds to either repair the structures or build new ones—meaning, having control over the jail could be a source of revenue.<sup>37</sup> The superior courts would soon have a counterpart to assist in such matters after the passage of the first comprehensive Judicial Regulatory Act<sup>38</sup> in Georgia.

A December 23, 1789 Act<sup>39</sup> established the inferior court<sup>40</sup> and called for five justices to be named in the commission of the peace by the governor (what would today be an appointment process).<sup>41</sup> Pay attention to the development of the inferior court, it will be a recurring character in this story.

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<sup>33</sup> An Act for Better Regulating the Town of Savannah and the Hamlets Thereof, WATKINS DIGEST, No. 367, at 354.

<sup>34</sup> *Id.* § 11, at 355.

<sup>35</sup> An Act for the Better Regulating of Taverns; and for Establishing a Fund for Building and Keeping in Repair the Court Houses and Jails in the Counties of this State, WATKINS DIGEST, No. 389, at 374.

<sup>36</sup> *Id.* § 3, at 374.

<sup>37</sup> *Id.*

<sup>38</sup> An Act for Regulating the Judiciary Departments of this State, WATKINS DIGEST, No. 421, at 389. Perhaps this Act was inspired by the Judiciary Act of 1789, which was signed into law by President George Washington three months earlier on September 24, 1789. 1 Stat. 73 (establishing a six-member Supreme Court of the United States, federal circuit courts, and federal district courts).

<sup>39</sup> An Act for Regulating the Judiciary Departments of this State, *supra* note 39, No. 421 § 36, at 396.

<sup>40</sup> For a detailed history of the inferior court in Georgia *see* Warren Grice, *The Old Inferior Court*, 1942 GA. B. J. 5, 9–10 (“It was a court whose judges received no compensation. The leading citizens of the county accepted the office willingly, and cheerfully gave to the public the benefit of their services without any compensation whatever.”).

<sup>41</sup> An Act for Regulating the Judiciary Departments of this State, *supra* note 39, No. 421 § 36, at 396.

Two years later, a December 15, 1791 Act<sup>42</sup> called for the government to render aid towards building and repairing courthouses and jails throughout the state:

WHEREAS it is but reasonable that government shall render its support and aid towards building and repairing court houses and gaols in the different counties . . . . *Be it enacted by the senate and house of representatives of the State of Georgia . . . [t]hat the commissioners of the court houses and gaols . . . which have not heretofore received such sum of money from the government . . . shall be and they are hereby entitled to receive from the public treasury, for and to the use of said several court houses and gaols, the sum of one hundred pounds sterling, the said several commissioners giving security for the faithful application of such monies to the uses intended by this act.*<sup>43</sup>

The Act also mandated that “the mayor and aldermen of the city of Savannah, for the time being, and their successors in office shall be, and they are hereby appointed commissioners of the court house and gaol in Chatham county.”<sup>44</sup> This meant that the commissioners selected by the superior court judges pursuant to the 1788 Act no longer held that title, the mayor and aldermen did. This marks the beginning of the struggle for control over the Chatham County jail.

One year later, a December 18, 1792 Act<sup>45</sup> authorized the commissioners of the courthouse and jail (the mayor and aldermen), together with the justices of the inferior court to levy a tax on citizens of Chatham County for the purpose of repairing the courthouse, building a new jail, poor house, and hospital.<sup>46</sup> This led to action. A few months later an advertisement ran in the *Georgia Gazette*<sup>47</sup> newspaper. It read as follows:

The Justices of the Inferior Court, and the Commissioners of the Courthouse and Gaol, in the County of Chatham, being empowered by an act of the Legislature to build a Gaol and Hospital in the City of Savannah, give notice to any persons who are desirous of undertaking the said buildings that they may send in their plans and proposals to

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<sup>42</sup> An Act to Grant Monies for the Purpose of Building and Repairing Court Houses and Gaols, WATKINS DIGEST, No. 452, at 433.

<sup>43</sup> *Id.* § 1, at 433.

<sup>44</sup> *Id.* § 2, at 433.

<sup>45</sup> An Act for Vesting Certain Powers in the Commissioners of the Court House and Jail in the County of Chatham, and for Other Purposes Therein Mentioned, WATKINS DIGEST, No. 473, at 471.

<sup>46</sup> *Id.* § 2, at 471.

<sup>47</sup> The *Georgia Gazette Newspaper* was the first newspaper in Georgia, published as early as 1763. See Georgia Historic Newspapers, DIGITAL LIBR. GA., <https://gahistoricnewspapers.galileo.usg.edu> (last visited Nov. 28, 2019).

either of the subscribers on or before the 10th day of July next. The buildings are to be made of brick or stone, on the most modern and convenient construction, of the same model and dimensions, and not to exceed 70 feet square and two stories high. Any person who will contract for supplying stone, brick, or lime, or for the iron work of the gaol, will please deliver in their terms to [the commissioners of the courthouse and gaol].<sup>48</sup>

It is unclear if or when this jail was completed. But on February 13, 1796, an Act<sup>49</sup> was passed that may have helped the city raise funds that could be used for a new jail and courthouse. The Act read as follows:

WHEREAS, it would greatly promote the welfare and advantage of the city of Savannah and the inhabitants, to grant to the corporation thereof, the power of holding courts for the trial of causes to a certain fixed amount:

I. *Be it therefore enacted by the senate and house of representatives of the State of Georgia in general assembly met*, That it shall be lawful for the mayor and aldermen of the city of Savannah, and they are empowered at any time after the passing of this act, to hold courts once in every month throughout the year, to appoint such officers as they may deem necessary, and to settle and allow reasonable fees not exceeding one half the fees allowed for like services in the inferior courts in suits cognizable therein; and to have jurisdiction of, and to hear and determine all civil causes not involving the right or title to any land or real estate arising within the jurisdiction of the corporation, so [long] as the demand in such suit or action do[es] not exceed fifty dollars; and to give judgment, and award execution therein, according to law.<sup>50</sup>

The court this Act created became known as the Mayor's Court. Note, this Act allows the mayor and aldermen to collect reasonable fees not exceeding half of that which the inferior court would have made for similar services. Furthermore, the preamble of this Act identifies it as beneficial ("greatly promote the welfare and advantage of the city") to the city and its inhabitants. Therefore, it is likely that the Mayor's Court provided a source of revenue for the city.

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<sup>48</sup> *The Justices of the Inferior Court*, GA. GAZETTE, May 23, 1793. Seventy square feet is the size of a small guest bedroom.

<sup>49</sup> An Act to Extend the Authority of the Mayor and Aldermen of Savannah to Have Jurisdiction of Civil Causes to a Certain Amount, WATKINS DIGEST, No. 548, at 589.

<sup>50</sup> *Id.*

On February 21, 1796, another Act<sup>51</sup> was passed empowering the justices of the inferior courts to erect and keep in good repair, at the expense of the county, one courthouse and “one sufficient gaol, with the necessary apartments for the safe keeping of criminals and debtors, well secured with iron bars, bolts and locks, and shall cause to be erected contiguous thereto, one pillory, whipping-post and stocks.”<sup>52</sup>

Additionally, the justices of the inferior court were given full power and authority by the 1796 Act to “inquire into the conduct of gaolers and the state of gaols in their respective counties, and on neglect of duty to cause such gaolers to be removed by an order to the sheriff for that purpose.”<sup>53</sup> The justices of the inferior courts were even given power to collect county funds for the purpose of building courthouses and jails.<sup>54</sup> Nearing the close of the Eighteenth century, through a February 9, 1797 Act,<sup>55</sup> the inferior courts were given full and concurrent jurisdiction with superior courts in all civil cases, with few exceptions.<sup>56</sup>

The inferior court grew in power and responsibility. Not only did its jurisdiction grow, allowing it to hear more cases, but its role in the community grew, leaving it the task of overseeing the jail alongside the mayor and aldermen of the city of Savannah; hence the justices of the inferior court’s role in this controversy.

An April 28, 1797 newspaper article<sup>57</sup> in the *Columbian Museum and Savannah Advertiser* shed some light on the progress (or lack thereof) of the new jail mentioned in the 1792 Act and the 1793 newspaper article. In what appears to be a superior court judge’s presentment to a grand jury, it is discussed that amongst the grievances that may come to the grand jury’s knowledge there is none of “greater magnitude” than the lack of a decent jail. The judge calls the jail a “house of misery” and tells the grand jury that upon viewing the jail they will be set on inquiring into the funds for building a new jail with the mayor and aldermen of the city of Savannah.<sup>58</sup>

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<sup>51</sup> An Act for Building and Keeping in Repair the Court Houses and Gaols in the Respective Counties Within this State, and for the Support of the Poor, WATKINS DIGEST, No. 555, at 595.

<sup>52</sup> *Id.* § 1, at 595.

<sup>53</sup> *Id.* § 2, at 595.

<sup>54</sup> *Id.*

<sup>55</sup> An Act to Revise and Amend the Judiciary System of this State, WATKINS DIGEST, No. 582, at 619.

<sup>56</sup> *Id.* § 60, at 636 (leaving real estate matters and appeals to the exclusive jurisdiction of the superior courts).

<sup>57</sup> *Gentlemen of the Grand Jury*, COLUMBIAN MUSEUM & SAVANNAH ADVERTISER, April 28, 1797.

<sup>58</sup> *Id.*

The grand jury found there were considerable funds belonging to the courthouse and jail of Chatham County and recommended the commissioners pay to house prisoners who had violated state law in the federal jail because the present state of the local jail was not “suitable.”<sup>59</sup> The grand jury’s final recommendation was that the commissioners of the jail (the mayor and aldermen of the city of Savannah) adopt a “speedy mode” for the erection of a jail and the rebuilding of the courthouse.<sup>60</sup> It seems the repeatedly proposed new jail had not yet been built.

Perhaps in response to the outcry above, a February 2, 1798 Act<sup>61</sup> was passed empowering the mayor and aldermen of the city of Savannah (because of its size and resources) to draw the sum of 100 pounds sterling without the requirement of entering bond and security.<sup>62</sup> The reader may recall a similar Act from 1791.<sup>63</sup> The 1791 Act required the commissioners of the courthouses and jails across the state to give security ensuring they would use the 100 pounds sterling for the purposes of building a courthouse and jail, while simultaneously stripping the previous commissioners of the courthouse and jail in Chatham County (who had been selected by the superior court judges) of their power by appointing the mayor and aldermen of the city of Savannah as commissioners of the courthouse and jail.<sup>64</sup>

Judging by this 1798 Act, it appears the city of Savannah never received its government funds from 1791 to build a courthouse and jail because of a failure to pay security. Why would the newly appointed commissioners of the jail not pay security ensuring they would use the government funds for the appropriate reasons when the city desperately needed a new jail?

Before entering the Nineteenth century, it is important to note two significant events that happened in the late 1700s that likely affected this story. First, note the gap in legislation between 1761 and 1784.<sup>65</sup> This was most likely the result, in part, of a higher priority at the time: independence. The American Revolutionary War took place between 1775 and 1783. Once the war was over, the 1784 Act was passed

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> An Act to Authorize the Mayor and Aldermen of the City of Savannah, as Commissioners of the Court House and Jail of the County of Chatham, to Draw the Sum Granted by Law, to Each County, for Building and Repairing Court Houses and Jails, WATKINS DIGEST, No. 613, at 675.

<sup>62</sup> *Id.*

<sup>63</sup> See text accompanying *supra* notes 42–43.

<sup>64</sup> See text accompanying *supra* notes 42–44.

<sup>65</sup> See text accompanying *supra* notes 28–31.

regarding courthouses, jails, and the fixing and regulating of elections (something quite important to a free country).<sup>66</sup>

Second, the Great Fire of 1796. One evening in late November of 1796, a small fire broke out and began to spread across the city of Savannah.<sup>67</sup> By the next morning, a majority of the city had been burned to the ground leaving hundreds homeless and many without work.<sup>68</sup> Note that the grand jury's recommendations about an unsuitable jail and the superior court judge's deeming of the jail as a "house of misery" came only a few months after the fire.<sup>69</sup> It is likely the fire played a role in the need for a new jail. As this story enters the next century, try to remember the events and legislation discussed above.

#### IV. NINETEENTH CENTURY

##### A. *The City's Contribution*

At the turn of the century, a November 30, 1801 Act<sup>70</sup> served to give sole power over the Chatham County jail to the mayor and aldermen of the city of Savannah. The Act read as follows:

WHEREAS, the gaol of the county of Chatham has been built and erected on lots belonging to, and within the jurisdiction and chartered limits of the city of Savannah, and out of the funds of the said city; and whereas, it will be expedient and proper to place the entire management, care, inspection and direction of the same, together with the court-house of the said county, which also stands within the same jurisdiction and limits, in the mayor and aldermen of the said city of Savannah, for the time being . . . [they] are hereby vested with the sole management, care, inspection and direction of the same, with full power and authority to appoint a gaoler and such other officers as may be necessary; and also to pass such ordinances and resolutions for the government and direction of the said gaoler and other officers, and all persons confined in the said gaol, as they shall from time to time deem necessary and proper[.]<sup>71</sup>

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<sup>66</sup> See text accompanying *supra* notes 31–32.

<sup>67</sup> THOMAS GAMBLE, JR., A HISTORY OF THE CITY GOVERNMENT OF SAVANNAH, GA., FROM 1790 TO 1901 (1900). In 1900, Thomas Gamble, Jr. was secretary to the mayor of Savannah and the book he wrote was done under the direction of the city council. *See id.* The Author points this out to alert the reader to any potential for bias when citing this source.

<sup>68</sup> *Id.*

<sup>69</sup> See text accompanying *supra* notes 58–60.

<sup>70</sup> To Vest the Government and Regulation of the Gaol of the County of Chatham, in the Mayor and Aldermen of the City of Savannah, and Appointing Them Sole Commissioners of the Court-House and Gaol of the Said County, CLAYTON'S COMPILATION, No. 6, at 5.

<sup>71</sup> *Id.* § 1, at 5.

Where the inferior court once had the authority to inquire into the state of the jail and the conduct of the jailer, this Act took that power away and vested it solely with the mayor and aldermen. This Act also makes clear three things: (1) in 1801 there was at long last a new jail; (2) the Chatham County jail was built within the city limits of Savannah on lots belonging to the city; and (3) the jail was built with city funds. Any sense of entitlement over the jail exhibited by the city was likely the result of the city's investment in the jail. In fact, there is record of Mayor John Young Noel's inaugural address in July 1804 where he stated,

Despite the liberal resources of which this city has had the benefit during several years, that its revenues should still be scanty and inadequate to extensive improvements is due to the erection of the gaol and rebuilding the court house for the use of the county with funds of the city, producing a deficit of more than \$30,000. This use of the city funds for a purpose so beneficial and important was made in reliance on the good faith of the State in imposing an annual tax on the county for the purpose of gradually refunding to the city the sums which it might expend upon these county buildings. For want of this just provision the corporation has necessarily been employed during several years past in putting into execution one resource after another until it is ascertained that our revenues still continue in a state of depression from which nothing but the justice of the Legislature can relieve it.<sup>72</sup>

The tension is palpable in this address. And it stewed for years. That is, until the 1820s when the city made a decision it thought would relieve the apparent burden of maintaining the jail—a decision it would soon regret.

### *B. A Change of Heart*

The next relevant mention of the Chatham County jail was over twenty years later in the *Savannah Daily Republican* newspaper in the city treasurer's yearly financial report.<sup>73</sup> The report implies that there had been previous writings on the jail, none of which could be found by the Author. But luckily, the report gives some insight into what was going on with the jail before the 1820s:

I must again advert to the situation of the County Jail . . . . Every exertion has been made within the scope of the authority of Council to remove paupers from the building—but when imprisoned for crimes, by state officers, or plaintiffs in execution[,] their efforts are fruitless. The only remedy for this increasing evil appears to be by an

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<sup>72</sup> GAMBLE, *supra* note 67, at 66.

<sup>73</sup> *Finances of the City*, SAVANNAH DAILY REPUBLICAN, August 1, 1822.

application to the Legislature for the passage of an act compelling plaintiffs in execution in all cases to give security for the payment of Jail fees; and an additional act, compelling the Justices of the Inferior Court, under a stipulated penalty, to levy a tax upon the county to raise the ballance [sic] required. It is true they are now authorized to adopt that measure, yet the other expences [sic] of the County, have for many years past absorbed the county tax, and the city is left alone to bear this heavy burthen [sic]. Why should this continue?<sup>74</sup>

This newspaper article expresses the city's frustration with footing the bill of the "county" jail. Remember that, during those times, people were imprisoned for debts. When a debtor was placed in jail, it was unlikely he could pay the required jail fine. This report also submits that legislation should be passed requiring a plaintiff in execution of a debt to pay security for their debtor's jail fees. And lastly, the report submits that legislation should be passed compelling the justices of the inferior court to levy a tax upon the county to cover these unpaid expenses, or risk penalty (something, according to Mayor Noel, the city relied on when using its own funds to erect the new courthouse and jail). The city was not happy about the current apportionment of the county tax.

Three years earlier, on December 18, 1819, an Act<sup>75</sup> was passed that nullified the Mayor's Court,<sup>76</sup> which was created for the benefit of Savannah and its inhabitants. This 1819 Act created the "Court of Common Pleas and Oyer and Terminer," mandated that all open cases in the Mayor's Court be transferred to the newly created court, and repealed the Act that created the Mayor's Court.<sup>77</sup> One source attributes the following development to the lost revenue resulting from the abolishment of the Mayor's Court and the expense of maintaining the Court of Common Pleas and Oyer and Terminer.<sup>78</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> An Act for the Organization of a Court of Common Pleas, and of Oyer and Terminer, for the City of Savannah, and for Repealing the Civil Jurisdiction Given by the Laws of this State to the Mayor and Aldermen, or to the Mayor of said City, LAMAR'S COMPILATION, No. 296, at 387 (1821) [hereinafter An Act for the Organization of a Court of Common Pleas]. Lamar's Compilation was compiled by Lucius Quintus Cincinnatus Lamar I, a member of the Georgia Bar in the early 1800s whose son, Lucius Quintus Cincinnatus Lamar II, served as a United States Senator and an Associate Justice of the Supreme Court of the United States, and who also served as the namesake for Lamar County, Georgia. Nancy Dixon Anderson, *Lamar County*, NEW GA. ENCYCLOPEDIA (Dec. 10, 2019), <https://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/lamar-county>.

<sup>76</sup> See text accompanying *supra* notes 49–50.

<sup>77</sup> An Act for the Organization of a Court of Common Pleas, *supra* note 75, No. 296 §§ 23, 24, at 392.

<sup>78</sup> GAMBLE, *supra* note 67, at 155.

The aforementioned development came in October of 1822 in the form of two letters written by Savannah's clerk of council *pro tempore*. The letters are found in the mayor's letter book. This first letter stated,

His Honor the Mayor [r]esolved that the Mayor be authorized to apply to the delegation of Chatham County in the legislature on behalf of this Body requesting their exertions to have repealed the law of the State vesting the control of the court house and jail of Chatham County in the Mayor and Aldermen of the City of Savannah.<sup>79</sup>

In another letter written the same day, the mayor urges the representatives in the legislature to pass an act "confirming the titles heretofore made by council in fee simple or otherwise of any session of the City Common according to the terms [] in said titles."<sup>80</sup>

On November 11, 1822, the mayor of the city of Savannah, James Morrison, wrote a letter<sup>81</sup> to Joseph Webber Jackson,<sup>82</sup> a member of the Georgia House of Representatives.<sup>83</sup> The letter read as follows:

Upon referring to an act of the Legislature [passed] Dec. 15, 1791[,] it will appear that the Mayor and aldermen of the City of Savannah were appointed for the time being Commissioners of the Court House [and] Jail in the County of Chatham—the object which [the] Legislature had in mind was to enable the Corporation to receive the surplus revenue arising from the jail[,] which it was then believed would be a source of revenue to the Commissioners. So far from realizing the expectations [therein contained,] the Corporation ha[s] been subjected to an annual expence [sic] in supporting those institutions for the last seventeen years of one thousand dollars per annum. The amount now due to the City from the County falls but little short of fifty thousand dollars. Nearly thirty thousand dollars were expended by the City in building the jail and nearly twenty have

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<sup>79</sup> Letter from Savannah's Clerk of Council *pro tempore* to John M. Berrien, Mordecai Sheftall, Sr., and Steele White (October 31, 1822), in *Mayor's Letter Book of Savannah, Georgia, 1817–1851*, at 44 (1851). John M. Berrien was a Georgia senator; Mordecai Sheftall, Sr. and Steele White were members of the Georgia House of Representatives. See *The Election*, SAVANNAH DAILY REPUBLICAN, Oct. 8, 1822.

<sup>80</sup> Letter from Savannah's Clerk of Council *pro tempore* to John M. Berrien, Mordecai Sheftall, Sr., and Steele White (October 31, 1822), in *Mayor's Letter Book of Savannah, Georgia, 1817–1851*, at 44.

<sup>81</sup> Letter from James Morrison to Joseph Webber Jackson (Nov. 11, 1822), in *Mayor's Letter Book of Savannah, Georgia, 1817–1851*, at 42–43.

<sup>82</sup> Joseph Webber Jackson was born near Savannah, Georgia in 1796. *Jackson, Joseph Webber*, HISTORY.HOUSE.GOV, [https://history.house.gov/People/Listing/J/JACKSON,-Joseph-Webber-\(J000023\)/](https://history.house.gov/People/Listing/J/JACKSON,-Joseph-Webber-(J000023)/). In his lifetime, he was a member of the Georgia Bar, the mayor of Savannah, a Georgia senator, and a member of the thirty-first and thirty-second Congress. *Id.* He also served as a superior court judge. *Id.*

<sup>83</sup> *The Election*, *supra* note 79.

since been expended[, we suspect]. It is true that the justices of the inferior court are authorized to levy a tax to support the jail, but the amount which they have heretofore levied has been exhausted by them in repairing [roads,] and not more than one thousand dollars even have been appropriated to the support of the jail. The Corporation feel[s] that in permitting this state of things to continue they are doing a manifest injustice to the Citizens of Savannah in as much as they are compelling them to assist the expence [sic] of an institution which should be borne by the whole County.<sup>84</sup>

These letters reflect an adoption of the city treasurer's report and recommendations.<sup>85</sup> At this juncture, the city of Savannah no longer wished to maintain control over the Chatham County jail. Where it once desired sole authority over the jail, it now sought to transition that authority to the county. The letters also express the initial motivation for maintaining control over the jail: the idea of "surplus revenue" from the jail being available to the commissioners of the courthouse and jail (the mayor and aldermen). After seventeen years of falling short of that hope, the mayor wanted change.

The November 11, 1822 letter also referenced the 1760 Act that prohibited conveying land in the town common.<sup>86</sup> Apparently, the city of Savannah had conveyed property within the town common and was questioned about the legitimacy of those conveyances by way of the 1760 Act.<sup>87</sup> In the letter, the mayor urges that these prior conveyances be confirmed.<sup>88</sup> In the Author's opinion, these conveyances would have been legal, assuming they were made after the 1787 Act, which repealed the law requiring permission from the General Assembly to convey land within the town common.<sup>89</sup> Regardless, the above letters proved effective. A December 21, 1822 Act<sup>90</sup> declared as follows:

The mayor and aldermen of the city of Savannah having been prohibited, by an act passed on the first of December, [1760], from alienating or granting away for any purpose whatsoever, than by an act of the General Assembly, the common appertaining to the said town; and it being represented to the Legislature that the said mayor and aldermen, to the great advantage of the lot holders, and with much profit to the treasury of said city, have at different times heretofore alienated, granted, and conveyed certain parts or lots of the said

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<sup>84</sup> Morrison, *supra* note 81.

<sup>85</sup> See text accompanying *supra* notes 73–74.

<sup>86</sup> Morrison, *supra* note 81.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See text accompanying *supra* notes 33–34.

<sup>90</sup> 1822 Ga. Laws 132.

common; and justice requiring that the agreements made by the corporation with the purchasers be confirmed;

Be it enacted by the Senate and House of Representatives of the State of Georgia, in General Assembly met, and it is hereby enacted by the authority of the same, That all and singular the conveyances heretofore made of the said town common under the authority of the mayor and aldermen, whether in fee-simple or otherwise, shall be, and they are hereby declared to be legalized, confirmed, and made valid, to all intents and purposes, according to the covenants, limitations and agreements of the same.

§ 2. *And be it further enacted*, That from and after the first day of January next, the direction of the court-house and jail of Chatham county, hitherto under the superintendence of the corporation of Savannah, shall be vested and continued in the justices of the Inferior Court and in the sheriff of said county, under the general laws regulating county jails in this State; and the mayor and aldermen shall thenceforth be discharged from the rights and duties of commissioners of the said court-house and jail: *Provided always*, that nothing herein contained shall operate to deprive the said mayor and aldermen of their right to sue for and recover any moneys which may be due to them from other counties during the time the said mayor and aldermen were commissioners of the jail of the county of Chatham under the act hereby repealed; *and provided further* that the said mayor and aldermen of the city of Savannah shall be, and they are hereby authorized to prosecute their claim for the recovery of any moneys due in manner aforesaid, by action at law against the justices of the Inferior Court of the county from which such money is due[.]<sup>91</sup>

In addition to confirming previous conveyances that were thought to be in violation of the 1760 Act, the city of Savannah was now less likely to be responsible for financing the jail, and it had an avenue to pursue money owed to it from other counties and the justices of the Inferior Court of Chatham County. It seems the mayor got what he hoped for. Or maybe not. He got the legislation he wanted, but when the time came to relinquish control of the jail, he was not willing to do so.

### *C. Why the Resistance?*

What follows is a collection of letters sent from Mayor James Morrison two months after his requested legislation was passed, all relating to the Chatham County jail.

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<sup>91</sup> *Id.*

**1. To Sheriff Abraham D'Lyon—January 1, 1823<sup>92</sup>**

Sir,

In answer to your communication requesting the possession of the keys of the jail, I have to remark that Council will be convening tomorrow at 10 O'clock when the subject will be laid before them and an answer will be immediately given to you.<sup>93</sup>

**2. To the Jailer, Major Hugh McCall—January 1, 1823<sup>94</sup>**

Sir,

You will please retain in your possession the keys of the jail until Council shall direct to whom they shall be delivered.<sup>95</sup>

**3. To Sheriff D'Lyon—January 2, 1823<sup>96</sup>**

Sir,

In conformity with my note to you of yesterday, Council has this day convened and the above resolution<sup>[97]</sup> will inform you of their proceedings. I will communicate further to you on Saturday.<sup>98</sup>

**4. To Sheriff D'Lyon—January 14, 1823<sup>99</sup>**

Sir,

Your communication of yesterday in relation to the jail has been received, and will be laid before Council at their next session when the result of their deliberations will be communicated to you.<sup>100</sup>

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<sup>92</sup> Letter from James Morrison to Abraham D'Lyon (Jan. 1, 1823), *in* Mayor's Letter Book of Savannah, Georgia, 1817–1851, at 45.

<sup>93</sup> *Id.*

<sup>94</sup> Letter from James Morrison to Hugh McCall (Jan. 1, 1823), *in* Mayor's Letter Book of Savannah, Georgia, 1817–1851, at 46.

<sup>95</sup> *Id.*

<sup>96</sup> Letter from James Morrison to Abraham D'Lyon (Jan. 2, 1823), *in* Mayor's Letter Book of Savannah, Georgia, 1817–1851, at 46.

<sup>97</sup> The Author could not locate a legible resolution of the city council within this specified time frame.

<sup>98</sup> Morrison, *supra* note 96.

<sup>99</sup> Letter from James Morrison to Abraham D'Lyon (Jan. 14, 1823), *in* Mayor's Letter Book of Savannah, Georgia, 1817–1851, at 46.

<sup>100</sup> *Id.*

**5. To Sheriff D'Lyon and the City of Savannah Police—  
February 19, 1823**<sup>101</sup>

Sir,

I have the honor to acknowledge, this evening the receipt of the writ of mandamus from the Judge of the Superior Court of the County of Chatham commanding the mayor and aldermen of the City of Savannah “To admit or cause to be admitted Abraham D'Lyon the Sheriff of the County of Chatham to the possession of the jail of the County of Chatham and the custody of the prisoners confined in the same.” This late hour on which the writ was served on me precludes the possibility of convening Council this evening. Tomorrow morning at 10 O'clock the aldermen will be convened, the writ will be laid before them and an answer immediately furnished you.<sup>102</sup>

**6. To Major McCall and the City of Savannah Police—February  
20, 1823**<sup>103</sup>

Sir,

Enclosed you will receive an extract from the proceedings of Council at their session this day. In obedience to its provisions you will please deliver to Abraham D'Lyon Sheriff of the county of Chatham the possession of the jail, the custody of the prisoners confined therein, retaining in your possession all evidence of debts to the corporation of the city of Savannah from any individual or corporate body.<sup>104</sup>

**7. To Sheriff D'Lyon—February 20, 1823**<sup>105</sup>

Sir,

In furtherance of the remark in the letter I last night addressed you I have to [observe<sup>106</sup>] that enclosed are the proceedings of the Council in relation to the surrender of the jail. Major McCall the present jailor will deliver to you the possession of the jail [and] the custody of the prisoners in conformity to the same.<sup>107</sup>

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<sup>101</sup> Letter from James Morrison to Abraham D'Lyon and the City of Savannah Police Office (Feb. 19, 1823), in *Mayor's Letter Book of Savannah, Georgia, 1817–1851*, at 47.

<sup>102</sup> *Id.*

<sup>103</sup> Letter from James Morrison to Hugh McCall and the City of Savannah Police Office (Feb. 20, 1823), in *Mayor's Letter Book of Savannah, Georgia, 1817–1851*, at 48.

<sup>104</sup> *Id.*

<sup>105</sup> Letter from James Morrison to Abraham D'Lyon (Feb. 20, 1823), in *Mayor's Letter Book of Savannah, Georgia, 1817–1851*, at 48.

<sup>106</sup> This word was illegible and is the Author's best guess.

<sup>107</sup> Morrison, *supra* note 105.

Judicial intervention was required before the mayor would give possession of the jail to the sheriff—even though it was the mayor’s letter that prompted the new Act (transferring control of the jail from the city of Savannah to the sheriff and justices of the Inferior Court of Chatham County). Apparently, the city sought to hold the jail ransom until the county reimbursed it for funds it had expended on the jail.<sup>108</sup> The next section of this Article will discuss the case that resulted in the writ of mandamus mentioned in the above letters: *State v. Mayor & Aldermen*.<sup>109</sup>

#### *D. The First Lawsuit*

The mayor and aldermen presented three arguments in resistance to the writ of mandamus: (1) the jail and the lots upon which it was built are the property of the mayor and aldermen; (2) by virtue of prior Acts of the General Assembly, the mayor and aldermen are vested with the care, management, and direction of the jail; and (3) that as commissioners of the jail, the mayor and aldermen were never entitled to the possession of the jail, but rather the jailer, Major Hugh McCall, was entitled to possession.<sup>110</sup>

#### **1. The Lots upon Which the Jail Stand are the Property of the Mayor and Aldermen and, as such, are Subject to Their Control**

In asserting this claim, the mayor and aldermen referenced heavily the language of the 1801 Act, which states the jail was built on lots belonging to the city with funds belonging to the city.<sup>111</sup> Additionally, the mayor and aldermen pointed out that they expended large sums of money to maintain the jail without assistance from the county.<sup>112</sup>

Even so, the superior court reminded the parties that the property upon which the jail sat formed

part of the town common which by the Act of 1760, is declared to be common property of the lot holders of Savannah. But neither the advances of money to put up the buildings, nor the fact that it is erected upon lots belonging to and within the chartered limits of the city of Savannah, can give to the Mayor and Aldermen such an exclusive ownership of the premises, as will authorize them to direct it to any other object than a county Jail, or to exclude the Sheriff of the

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<sup>108</sup> GAMBLE, *supra* note 67, at 155.

<sup>109</sup> R.M. Charlton 250 (1823).

<sup>110</sup> *Id.* at 250–51. The mayor and aldermen also argued that Abraham D’Lyon was not the true sheriff of Chatham County, but the court gave that argument little attention. *Id.*

<sup>111</sup> See text accompanying *supra* notes 70–71.

<sup>112</sup> *Mayor & Aldermen*, R.M. Charlton at 251–52.

county for using it as such, if the Legislature has repealed the laws, which made the Mayor and Aldermen the commissioners of the Jail.<sup>113</sup>

The court then identified several acts done by the mayor and aldermen that only served to dismantle their argument. In December 1798, the city council took steps to begin work on the jail despite its knowledge of inadequate funds between the city treasury and the county.<sup>114</sup> Accordingly, the council chose to sell lots (something many believed it did not have the authority to do according to the 1760 Act) to accomplish the building of the jail, as evidenced by a council report stating that

although the erecting of a Jail is the duty of the county at large, as it will be for their benefit and use, and ought to be their property, yet it appears it will be in vain to wait the slow and ineffectual progress of county funds, for the accomplishment of an object in which the city is so materially interested, and that the safety and reputation of the city, render it the duty of the corporation without delay to apply such funds as can be raised for this valuable purpose, hoping for reimbursement hereafter, by such sums of money belonging to the county as may come into their hands.<sup>115</sup>

There can be no doubt, the court stated, that the city council looked to the county for reimbursement from the tax the county was empowered to levy by the Act of 1796.<sup>116</sup> But this was not the only instance of the city applying county funds to the jail. On February 25, 1799, the city council applied for 100 pounds sterling, which had been previously allotted to the county for a courthouse and jail by the legislature in 1795, and placed it in the city treasury.<sup>117</sup> In summary on this point, the court stated,

In December 1798 [the city council] determined to build a County Jail, and used their powers in many instances as commissioners of the county Jail. To effect this object, county funds [were] applied by them in common with their own to such purpose. On the 19th October, 1801, after the present Jail had been completed, by a resolution of their own body, they applied to the Legislature to have vested in them the sole and entire government of the Jail of Chatham County. Such an Act was passed, and on the 1st February 1802, they accept[ed] the trust

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<sup>113</sup> *Id.* at 252. Despite this portion of the opinion regarding ownership of the jail not being exclusively that of the mayor and aldermen, this argument is made persistently throughout the Nineteenth century.

<sup>114</sup> *Id.* at 252–53.

<sup>115</sup> *Id.* (quoting a report from city council regarding the building of the jail). The Author was unable to locate the original report of council.

<sup>116</sup> *Id.*; see also text accompanying *supra* notes 51–54.

<sup>117</sup> *Mayor & Aldermen*, R.M. Charlton at 253–54.

and advertise[d] for the election of Jailor, who, by the same ordinance, (in which they speak of themselves as commissioners of the Jail of Chatham County,) is sworn in as the Jailor of Chatham County. The title and preamble of the act of 1801, with their consent designate this building as the Jail of the County of Chatham; and lastly, from the year 1801 to 1819, they apply for and receive money at different times from the Justices of the Inferior Court, for advances made by them on account of the Jail of Chatham County. I cannot but believe that enough has been shown to disprove the claim of all exclusive property in these premises.<sup>118</sup>

This opinion sheds light on the 1801 Act where the mayor and aldermen were given sole power over the jail. Once again, it seems the city wanted sole power over the jail in 1801 because it believed it alone financially contributed to the jail's completion. The opinion also reveals what was happening during the period of silence between 1801 and 1822<sup>119</sup>: the city council was applying for funds from the justices of the inferior court to reimburse themselves for money spent on the jail.

## **2. The Mayor and Aldermen are Entitled to the Management, Care, Inspection, and Direction of the Jail by the 1791 and 1801 Acts of the General Assembly**

In response to the mayor and aldermen's second argument, the court's reasoning was straightforward: what the legislature giveth, it can taketh away. The court stated that city government is a creature of the legislature and has "no power which is not held at the will of the Legislature."<sup>120</sup> In perhaps the most powerful part of this section of the opinion, the court stated that,

if the statute destroys the character in which persons have acted in a civil or public trust, without pointing out a new mode how the trust is to be performed, the trust and the character are both at an end. In this instance however, we are not left to conjecture. The intention of the Legislature by the introduction of the Sheriff in conjunction with the Justices into the Act, manifests an obvious intention to put the Jail upon the old footing, and the utmost certainty upon this point is attained, when the Act declares, that the Jail shall be vested in the Justices and the Sheriff[.]<sup>121</sup>

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<sup>118</sup> *Id.* at 254–55.

<sup>119</sup> See text accompanying *supra* notes 70–71.

<sup>120</sup> *Mayor & Aldermen*, R.M. Charlton at 256.

<sup>121</sup> *Id.* at 257.

### 3. The Jailer is Entitled to Possession of the Jail and Its Prisoners, Not the Sheriff

Lastly, the mayor and aldermen argued that, regardless of who controls the jail, it is the jailer who maintains possession.<sup>122</sup> The court had two things to say about this. First, the jailer was appointed by the mayor and aldermen under the 1801 Act, and as soon as that law was repealed “which gave existence to his place, the place fell with it.”<sup>123</sup>

Second, the court referenced the letter in which the mayor commanded the jailer to retain the keys to the jail until further directed,<sup>124</sup> concluding as follows:

I cannot close my eyes to the source from which the obstruction to the operation of the Act of 1822 has arisen, and against it must the remedy be directed. In fine, the views which I entertain upon this subject and which are the result of laborious research, [are, that the act of 1822, vesting the Jail in the Justices and the Sheriff, is an entire repeal of the powers which the Mayor and the Aldermen had, as former commissioners, under the Acts of 1791 and 1801: that the Jail is the County Jail, and subject to such regulations, as the Legislature may, from time to time enact; and that the only officers who can by law exercise any control over it, are the Justices of the Inferior Court and the Sheriff of the County of Chatham.<sup>125</sup>

And that is the first lawsuit involving the Chatham County jail. The court’s opinion is the timeliest recollection of the earliest events that embody this controversy and provides unique insight into its origins. This is also the last mention of the jail in historical records for twelve years. Without much warning, the story picks back up in 1834.

#### *E. The Second Lawsuit*

The events leading up to the second lawsuit involve an 1834 Act<sup>126</sup> of the General Assembly and some discussion in local Savannah newspapers. Although, to begin, a prior Act<sup>127</sup> was passed in 1825 “to amend and consolidate the several acts which have been passed in relation to the powers and privileges of the corporation of the city of

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<sup>122</sup> *Id.* at 257–58.

<sup>123</sup> *Id.* at 257.

<sup>124</sup> See text accompanying *supra* notes 94–95.

<sup>125</sup> *Mayor & Aldermen*, R.M. Charlton at 258–59.

<sup>126</sup> 1834 Ga. Laws 246.

<sup>127</sup> 1825 Ga. Laws 186.

Savannah and the hamlets thereof,"<sup>128</sup> which might have inspired the 1834 Act. The preamble of the 1825 Act reads as follows:

WHEREAS, the various acts of the legislature passed in relation to the incorporated and chartered rights of the city of Savannah and the hamlets thereof are subject to much difference of opinion, thereby occasioning much embarrassment, and requiring frequent appeals to legislative interference in relation to concerns purely municipal and local:

. . . .

SEC. 7. *And be it further enacted by the authority aforesaid*, That the said mayor and aldermen or a majority of them, are hereby authorised to raise by a poll tax upon all such persons as reside within the corporate limits of Savannah . . . or by tax or assessment upon all real and personal estate within the corporate limits as aforesaid, any sum or sums of money necessary for the use and good government of the said city of Savannah and the hamlets thereof . . . .

SEC. 8. *And be it further enacted by the authority aforesaid*, That the said mayor and aldermen or a majority of them shall have power and authority to borrow money or contract loans for the use of the city, . . . and also shall have power to purchase any real or personal estate for the use and benefit of the corporation, and sell and dispose of all or any part of the property[.]<sup>129</sup>

This Act confirmed that the city of Savannah no longer needed approval from the General Assembly to convey property within the town common, as was previously thought (or debated).<sup>130</sup> The "occasioning much embarrassment" portion of the preamble likely referred to previous occasions where the city had to ask for approval of conveyances of property made without permission (whether or not that permission was actually needed).<sup>131</sup> The Act also reveals that the city now had several avenues through which to levy taxes and collect fines, including the ability to arrest and confine offenders of the law and impose fines up to \$100.<sup>132</sup> Perhaps the newfound approval for these sources of revenue gave the city the funds it needed to feel comfortable with managing the jail again after the nullification of the Mayor's Court and the creation of the Court of Common Pleas and Oyer and Terminer. On November 13, 1834, there was a correspondence in the newspaper which read,

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.* §§ 7, 8, pp. 186–88.

<sup>130</sup> See text accompanying *supra* notes 27, 33–34, & 86–89.

<sup>131</sup> See text accompanying *supra* notes 33–34 & 87–89.

<sup>132</sup> See 1825 Ga. Laws 186, 188–89 §§ 10, 11.

Gentlemen:

I have sent you all the information I can procure today. I was in the Senate Chamber all the morning, and am therefore unable to send you the Journal of the House, but learn that Mr. Shick, of our city, gave notice that he would move for the appointment of a Committee to report a Bill to restore to the Corporation of Savannah, the control of the Jail of Chatham county.<sup>133</sup>

A few days later, a citizen going by the pen name “WATCH” had this to say to the editor of the *Daily Savannah Republican* newspaper:

Mr. Editor—It appears that a member from Chatham has obeyed the Petition of the Honorable Corporation of the City of Savannah by introducing into the Representative Branch of the Legislature a Bill to divest the Sheriff of Chatham County of the Jail, or to vest it in the Corporation and Justices of the Inferior Courts. It is something extraordinary, that the application of Council was not known to the body of the people, and equally so, that its proceedings on a matter of such importance should not have been published for general information. I know not from whose brain emanated the scheme, perhaps it gently flowed from one, who is attached to experiments, particularly, if they promised pay to new born partisans. But we shall see how things will terminate in due season.<sup>134</sup>

The writer of this correspondence wrote as though he had insider information. Whatever the case, this was an intriguing publication. It implied that the city council (and perhaps the editor of the *Daily Savannah Republican* newspaper) took steps to influence favorable correspondence to the legislature to spearhead a changing of the guard regarding control and management of the jail. There is no documentation, however, of the mayor resolving to address the legislature as there was before the 1822 Act.

A few weeks later, on December 8, 1834, the previously eluded to Act<sup>135</sup> was passed. The 1834 Act served to repeal the 1822 Act and mandated that, beginning January 1835, “the direction, management, and control of the jail of Chatham county shall be vested in the Mayor and Aldermen of the city of Savannah.”<sup>136</sup> The mayor and aldermen were also given the authority to appoint a jailer and other officers (removeable at their will) for terms no longer than three years.<sup>137</sup> The Act also empowered the justices of the Inferior Court of Chatham County, “in

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<sup>133</sup> *Editorial Correspondence*, THE GEORGIAN, Nov. 13, 1834.

<sup>134</sup> *For the Savannah Republican*, DAILY SAVANNAH REPUBLICAN, Nov. 18, 1834.

<sup>135</sup> 1834 Ga. Laws 246.

<sup>136</sup> *Id.* § 1.

<sup>137</sup> *Id.*

their discretion, to appropriate and apply any county funds . . . to the erection of a new jail, which, when so erected, shall become the jail of said county, under the direction of the said Mayor and Aldermen of the City of Savannah[.]”<sup>138</sup> Finally, the Act subjected the jail to visits and inspections by the justices of the inferior court and the grand jury.<sup>139</sup> The justices and the grand jury were to report to the city council any misconduct or concerns they witnessed, and to make recommendations for redress or remedy.<sup>140</sup>

One month later, in the January term of the Superior Court of Chatham County, *State v. Dews*<sup>141</sup> was decided. John I. Dews, who had been elected sheriff in January 1834, resisted the 1834 Act by refusing to give control and possession of the jail over to the newly appointed jailer, arguing that, by virtue of his recent election, he was entitled to hold the office of sheriff for the duration of his elected term, and entitled to enjoy the rights and privileges attached to said office—namely, possession of the jail and the custody of its prisoners. Dews believed his interest in the office of sheriff could not be divested “by any Act of the Legislature before the expiration of his term of office[.]” and therefore, he argued, the portion of the 1834 Act that gave the mayor and aldermen control of the jail was void.<sup>142</sup>

The court’s opinion can be summarized by the following excerpt:

It is true, that the appointment of Sheriff confers upon him the right to execute the duties of the office, but from the nature of the office, those duties may be changed by law. It is in this State a purely ministerial office, whose function and province is, to execute duties prescribed by law . . . . The idea that the duties of a ministerial officer cannot be changed, will involve an inversion of the order of things, and be a flagrant absurdity; it would invest him, who is a mere minister and servant, with authority to limit the power of, and exercise an overmastering control over those from whom he is to receive the law.<sup>143</sup>

The opinion in this case was forty-five pages long and read like a treatise on constitutional law. It does little to add to the facts of this story other than to—once again—show how controversial a change in control over the jail was, and to show how the sheriff used tactics similar to those previously used by the city in the face of unfavorable legislation.

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<sup>138</sup> *Id.* § 2.

<sup>139</sup> *Id.* § 3.

<sup>140</sup> *Id.*

<sup>141</sup> R.M. Charlton 397 (1834).

<sup>142</sup> *Id.* at 399.

<sup>143</sup> *Id.* at 404.

*F. Working Towards a New Jail*

Recall that the 1834 Act empowered the justices of the inferior court to appropriate and apply county funds to the erection of a new jail.<sup>144</sup> According to the following August 5, 1839 excerpt from the *Daily Savannah Republican*, the justices were ready to begin work towards a new jail: “The communication from the Justices of the Inferior Court of Chatham county in relation to building a new Jail was referred to a select committee, composed of aldermen Cuyler, Cumming and Anderson.”<sup>145</sup>

Two years passed before another mention of the jail. On September 20, 1841, there was an advertisement in the newspaper seeking bids for building a new jail.<sup>146</sup> The specifications allowed two years for completion of the work and demanded the best quality materials be used.<sup>147</sup> The building was “[t]o contain 60 cells, a chapel, workroom, and hospital, 12 rooms for superior prisoners, and suitable apartments for the Jailor and his family—the whole enclosed by a boundary wall to cover a space of 300 feet east and west, by 222 feet north and south.”<sup>148</sup>

Unfortunately, this plan never came to fruition. Three years later, new plans were submitted for a jail, and on November 18, 1844, a new call for proposals to build a jail was published in the local newspaper.<sup>149</sup> These efforts were fruitful. A new jail was built by the county in 1845, but at a higher cost than planned.

One year later, on September 17, 1846, a city ordinance<sup>150</sup> conveyed the justices of the Inferior Court of Chatham County four lots in Lafayette ward, along with the brick wall enclosing said lots, in fee simple in hopes that the lots would be sold by the justices and the proceeds paid to the city. The ordinance read as follows:

WHEREAS, in and by a memorial of the honorable, the Justices of the Inferior Court of Chatham County, it is represented to the city council, that after many embarrassments they have succeeded in accomplishing their wishes by the erection of a new jail and are waiting only until the walls have become sufficiently dry to authorize its being inhabited, to place it under the control of the city authorities, and also that “the cost of the building has not only exhausted the funds of the county, but it has also exceeded the means of payment,” and they request them that an Ordinance be passed, or such other means

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<sup>144</sup> See text accompanying *supra* notes 135–138.

<sup>145</sup> *Proceedings of Council*, DAILY SAVANNAH REPUBLICAN, Aug. 5, 1839.

<sup>146</sup> *Proposals*, THE GEORGIAN, Sept. 20, 1841.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *To Builders*, SAVANNAH DAILY REPUBLICAN, Nov. 18, 1844.

<sup>150</sup> CHARLES S. HENRY, A DIGEST OF ALL THE ORDINANCES OF THE CITY OF SAVANNAH 236 (Savannah, Purse’s Print 1854).

adopted as will carry into effect the resolution of council, of the 19th of August, 1839<sup>151</sup>: And whereas, by a report of a committee of council, adopted by council on that day it was recommended “that the proceeds of the sales of the four lots which will be laid off from the present jail lot to be given for the purpose of aiding in the erection of a new jail,” as well as the materials of the present jail, or an equivalent thereto in money.

SEC. 1. Be it ordained by the Mayor and Aldermen of the City of Savannah and the Hamlets thereof, in Council assembled, and it is hereby ordained by the authority of the same, That lots Nos. (11, 12, 13, and 14,) . . . and the wall now enclosing and all the buildings and improvements on the same and within the said wall, be and the same are hereby granted to the Justices of the Inferior Court of Chatham County and their successors in office and assigns in fee simple, this grant to take effect from and immediately after the delivery of the new jail to the city authorities.<sup>152</sup>

This ordinance mentions that the county “exhausted” its funds in erecting the new jail. It must have made the city happy to see the shoe on the other foot (with county money being spent on the jail and not city money). And surely added pleasure was taken in labeling the county’s prior attempts at erecting a new jail as “embarrassing.” Two weeks later, a local newspaper reported the new jail complete and the prisoners transferred<sup>153</sup>:

We are requested to mention that the prisoners were all yesterday removed to the new Jail recently erected by order of the Inferior Court of Chatham County. It is a very substantial, convenient, and costly structure, and we have no doubt [it] will be kept in superior order by the careful and efficient Jailor[.]<sup>154</sup>

One month later, on November 3, 1846, an advertisement was run in the newspaper by the justices of the Inferior Court of Chatham County offering for sale the four lots and encompassing wall previously

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<sup>151</sup> The Author could not find any resolution dated August 19, 1839.

<sup>152</sup> HENRY, *supra* note 150, at 236–37.

<sup>153</sup> *The New Jail*, SAVANNAH DAILY REPUBLICAN, Oct. 3, 1846.

<sup>154</sup> *Id.* The Author cannot help but detect sarcasm. Recall that the city believed the jailer was the rightful caretaker of the jail, regardless of whose control the jail was under. This newspaper article somewhat begrudgingly (“We are requested to mention” and “costly structure”) mentions the new jail and ultimately gives its praise to the jailer (“careful and efficient jailor”). As is the case today, certain media outlets have a reputation for picking sides. See text accompanying *supra* note 134 where a citizen writing under the pen name “WATCH” expresses his suspicion that the editor of a local newspaper sided with the city in the jail controversy and was perhaps complicit in a scheme to further the city’s position in the matter.

mentioned.<sup>155</sup> The following month, another article<sup>156</sup> was written about the new jail in the local newspaper:

The Committee on the Jail take much pleasure in being able to report that the new Jail is completely finished and has been occupied the past two months, sufficiently long to test its comparative advantages and disadvantages. We congratulate its projectors in being able to combine so much neatness, comfort and security. The building, externally, is comely in its general appearance, displaying great skill in the architect and builders.

The apartments provided for the family of the Jailor are spacious, comfortable and convenient. Passing through which, and entering the prison, you can scarcely realize the change. The cells are constructed in such a manner as to preclude the possibility of an escape. It being necessary in all cities to have a prison, we congratulate ourselves and the community generally, in having one that can be relied on for strength, neatness of appearance and durability.

With regard to the management of the Jail the past year, it has been conducted by the same person who had charge of it the two previous years, and gave such general satisfaction.—While the expenses have been nearly the same as former years, it is a source of gratulation that the receipts have considerably diminished, shewing [sic] an evident improvement in the morals of our city.<sup>157</sup>

Officials seemed quite happy with the new jail (and themselves). But pride always comes before a fall. It was a mere two years before the community's perception of the jail changed.

### *G. Living Graves*

This section of the Article consists of several grand jury presentments and other spectators' opinions, as seen in local newspapers, along with local ordinances and acts related to the condition of the long-awaited jail built in 1845. A collection of these newspaper articles and other materials are presented with little narration to paint a clear picture of the public's perception of the jail at the time.

On May 16, 1848, the *Savannah Daily Republican* published a grand jury presentment regarding the jail.<sup>158</sup> The grand jury resolved to create

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<sup>155</sup> *Old Jail and Lots*, SAVANNAH DAILY REPUBLICAN, Nov. 3, 1846.

<sup>156</sup> *Jail*, SAVANNAH DAILY REPUBLICAN, Dec. 1, 1846.

<sup>157</sup> *Id.* This article was authored by the committee on the jail and, for obvious reasons, provides a more colorful review than the initial newspaper announcement.

<sup>158</sup> *Grand Jury Presentments*, SAVANNAH DAILY REPUBLICAN, May 16, 1848. The Grand Jury Presentment was dated May 11, 1848.

a committee of three to examine the jail and report back to the grand jury itself after investigating the state of the jail.<sup>159</sup> The presentment read as follows:

The Committee of the Grand Jury who were appointed to examine into the condition of the Jail and its Police, have discharged that duty, and beg leave to Report, That they proceeded through the whole of the building and visited the cells, and that they conceive that its whole structure is defective. The cells are too narrow and contracted—the ventilation Imperfect, and from the inadequate supply of water, the sewers communicating with the cells, from their imperfection, are continually being obstructed, the accumulation of an atmosphere at once disgusting and deleterious is the consequence—the latter, however, is an evil incident to continued dry weather, but as this is liable to recur at any time, proper means ought to be adopted, to ensure an ample supply of water. The Jailor reports that to purify the building daily three thousand gallons of water are necessary that [sic] now all that is obtained does not exceed three hundred gallons, a quantity altogether insufficient. Your Committee are of the opinion, that this is an evil requiring prompt and immediate action. The cells in which the prisoners are confined, your Committee report to be unfit for occupation by human beings. The law in its tenderness presumes all men innocent of crime until conviction, but in these living graves, there appears to be no discrimination between the accused and the guilty. Such unmitigated rigor, not to use a harsher term, might have been tolerated in the dark ages, but that a grievance so great should exist unrebuked at the present time, when an advanced state of civilization has spread its softened and ameliorating influence over society, we cannot repress the expression of our surprise and reprobation—These cells are (we suppose) 10 feet by 5, with a small aperture for ventilation. The sewer opening within a few inches of the head of the bedstead, with the outer door closed, ventilation is impossible. Living in such an atmosphere, vitiated and deprived of its vital principle, and encompassed with filth, as the prisoner must be, is a condition incompatible with a healthy existence. The criminal, under the grave charge of murder, or the man committed for some slight misdemeanor, in the absence of security, alike become the inmates of these cells. Surely humanity and common reason dictates a different arrangement.

The associating together of slaves and free persons of colour, confined as aliens, is not now permitted; this evil has been rectified within a few days, but to what extent the injury from free intercourse has gone is yet to be seen. During the day the slaves of both sexes are allowed to be together, unless specially ordered by their owners to close

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<sup>159</sup> *Id.*

confinement. A continued supervision over them is impossible, as the Jailor or Deputy has other duties. Your Committee do not deem this condition of things as being conducive to enhance the value or improve the morals of the slave. At night they are locked up in their cells to meditate on the lessons that a free and unintercepted communion with each have given them during the day. Your Committee are perhaps trespassing beyond the latitude conferred by your body, but they cannot close their report without urging a recommendation on the part of the Grand Jury that some occupation be required from the slaves confined, by which they may be debarred from mutual improper intercourse, and at the same time, that their services may be made available to the County.<sup>160</sup>

Of course, as was so entertainingly common at the time, a reply was to be expected. On May 22, 1848, the jailer, Charles B. Patterson, wrote the following letter to the editors of the *Savannah Daily Republican*:

Gentlemen:—It is not without reluctance that I ask leave to trespass on your columns. If the public mind is prejudiced against the Jail, and the Grand Jury see fit to condemn it, I do not, nevertheless, see why an attack should be made upon me in consequence of it, nor am I willing to acknowledge the justice of passing censure on my administration of the establishment. Any person or persons who assert that I do not faithfully use my best endeavors to keep the County Jail in a clean and healthy condition, do me great injustice. When originally, I took charge of the old Jail, it was in a miserably filthy condition—and how long did it remain so under my supervision? I can say what is within the knowledge of scores of my fellow citizens, that in less than two months, the prison was put in repair, cleansed and purified throughout, that the offensive odor was subdued, and the premises kept clean and sweet thereafter.

. . . I know too well by my own experience, that these gentlemen<sup>161</sup> cannot please everybody. The public condemned the old Jail because many prisoners were necessarily put in company with each other. As they could not be separately confined, the fact of confinement had very few terrors for those disposed to misbehave themselves. The Justices

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<sup>160</sup> *Id.* This presentment ends with a recommendation of prisoner labor for the benefit of the county. This would likely be in the form of a chain gang, which was eventually established. See text accompanying *infra* notes 231–234.

<sup>161</sup> The ellipsis that begins this paragraph takes the place of one sentence that cannot be completely read due to a crease in the newspaper itself before it was scanned into the Georgia Historical Newspaper online database, which can be accessed at <https://gahistoricnewspapers.galileo.usg.edu>. For context to the “gentlemen” comment, the omitted sentence references, in part, “the Honorable Justices of the Inferior Court.” *To the Editors of the Republican*, SAVANNAH DAILY REPUBLICAN, May 22, 1848. The “gentlemen” referred to is likely the justices of the inferior court.

have provided a remedy for that difficulty by erecting a Jail with separate cells, and this plan of construction is now condemned by many. I do not think it right that censure should be cast upon the Justices. Their intentions were honorable and just, and they took counsel of individuals said to be skilled in these matters. They were doubtless informed, that if the cistern were kept full of water, no unpleasant odor would arise from the cells. For myself, I was so informed. Now, that this assertion is erroneous, was proved during the heavy rains of last summer. We had as much water as we could manage, with chloride of lime in different parts of the Jail, and yet an offensive odor existed to a considerable degree.

But let me not be understood as objecting to the cells altogether, for I think them indispensable with the outer or wooden door unclosed, nor do I think it humane to confine a prisoner in one of the cells who may be guilty only of some trifling offence. No doubt the Justices thought it would be proper to confine prisoners in them incarcerated for slight offences, but not so thinking myself, I have taken the liberty of suggesting an addition of four rooms to the Jail. It has always been my wish too, to have a watchman or guard at the Jail, but I have no power to employ one. The power belongs to Council alone.

His Honor the Mayor, and the members of Council, composing the Jail Committee, have spared no trouble nor expense to keep the Jail in order. They have both pumps put down as deep as the markmen said it could be done, and they continue to do all they can for the health and comfort of the prisoners.

In conclusion, I am proud to say that my prisoners like me, and believe that I do all I can for their health and comfort.<sup>162</sup>

Another grand jury presentment was published exactly one year later in the *Savannah Georgian*.<sup>163</sup> It appears the previous year's recommendations were somewhat heeded and this grand jury was careful to avoid offending the jailer. A large portion of this newspaper article contains an excerpt from the previous year's presentment quoted above, and has therefore been removed:

The Grand Jury, through a Committee of their body, have examined the condition and management of the County Jail, and although they find no neglect of duty on the part of the Jailor, who has discharged his trust with ability and fidelity, they view with deep concern the present condition of the Jail, arising chiefly from its imperfect construction, being altogether inadequate to the original design.—In

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<sup>162</sup> *To the Editors of the Republican*, *supra* note 161.

<sup>163</sup> *Presentments of the Grand Jury of Chatham County*, SAVANNAH GEORGIAN, May 22, 1849.

confirmation of their views on this subject, they would refer to a report contained in the presentment of the Grand Jury, May Term, 1848 . . . . The Grand Jury have ascertained, that although means have been adopted whereby a sufficient supply of water has been procured necessary for the cleanliness of the Jail and the health and comfort of its inmates, the evils arising from the construction of the sewers, the vitiated state of the atmosphere where ventilation is almost impossible and the confinement of prisoners within damp, narrow and contracted cells, still exist to a fearful extent. They believe the present condition of the Jail deserves prompt and immediate attention, and ought no longer to be tolerated in an enlightened and civilized community, alive to the dictates of justice and feelings of humanity.<sup>164</sup>

The next mention of the Chatham County Jail came one year later in a May 28, 1850 grand jury presentment published in the *Daily Morning News*.<sup>165</sup> It read as follows:

The Grand Jury, in presenting the condition of the Common Jail of the County, are aware that on two former occasions presentments have been made by Juries, and both have passed unnoticed and disregarded. With the expectation that this presentment may meet a similar fate, they still deem it their duty to bring the condition of the Jail before the notice of the Court, and through it to the public, with the hope that this reiterated expression of disapprobation on the part of the Grand Inquest of the county, may not be unattended, with, at least, respectful attention. The importunity of the widow compelled the unrighteous Judge to redress her wrongs.<sup>[166]</sup> On a like principle, those who have the control of the Jail, if “they fear not God or regard man,” may, to escape importunity, consent to remove these grounds of complaint on the part of the Grand Jury. We present the Jail as defective in its construction. We present it as being insecure,—as being inhuman,—and as demoralizing to those whose crimes or misfortunes bring them within its portals.

This being the case, in our opinion, we have no other mode to effect a reform, than by this indirect appeal to the power under whose control the Jail is.

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<sup>164</sup> *Id.*

<sup>165</sup> *Presentments of the Grand Jury of Chatham Co., May Term, 1850*, DAILY MORNING NEWS, May 28, 1850 [hereinafter *Presentments of the Grand Jury*].

<sup>166</sup> This is a reference to the parable in the Bible often referred to as the parable of the persistent widow. The story involves a poor widow repeatedly approaching an unsympathetic judge who constantly rejects her requests only to later give in to her persistence to save himself the trouble. See *Luke* 18:1–8. This is also where the quote in the next sentence comes from (“if they fear not God or regard man”).

*First*, We present the Jail as being defective in its structure. Security of the prisoner is all that the law expects; to ensure which, apartments might be constructed, having a due regard to ventilation, cleanliness, and personal comfort. As it now stands, the cells are 9[.5] by 5 feet, flagged with stone, and humid to such a degree, that, by report of the Jailor, in the morning the sides and floors are washed with moisture; ventilation is very imperfect, and with the doors closed, appears nearly impossible. Such a condition of things appears entirely incompatible with health and, if persisted in, any protracted confinement, should it not destroy at once, will entail lasting disease on its inmate. In a northern and cold climate, cells so constructed would be enduring, but in a damp, hot climate such as ours, the air becoming vitiated and redolent with all sorts of miasma, no extenuation can be offered, unless, in this boasted age of progress, we are emulous of surpassing in rigor the prisons of the Inquisition.

*Secondly*, We present the Jail as being insecure. Out of the number of cells, there is but one from which escape would not be easily accomplished. Every lock but that of the one mentioned being defective.

*Thirdly*, We present the condition of the Jail, because no distinction is made in the treatment of him who is incarcerated for a trivial offence, or, it may be, on suspicion, and the convicted felon. Both alike are immured in these living graves. The law, in its tenderness, supposes all men innocent until convicted. The exercise of some discrimination, it seems to the Grand Jury, would not be misplaced or inappropriate. A Jail is intended as a place of safe keeping. Punishment belongs to the Penitentiary,—with wonderful economy, the Jail of Chatham county answers for both.

*Lastly*, We present the condition of the Jail, because the wards for the colored prisoners are still common to male and female; during the day they mingle together without any restraint, and having no occupation, can it be supposed otherwise, but that corruption and debasement must follow? Did propriety admit of it, revelations could be made, amply confirming that this is the fact. This is a prominent evil and calls loudly for redress.

The Grand Jury present this opinion of the condition of the Jail to the Court, with the most entire respect.—If the language be strong, it at least carries with it no exaggeration, it being the desire of this body to state only facts, and to hope that some step be taken by those who have the power to remove or modify what we consider a great grievance.

This presentment does not mean to reflect at all on the Jailor. The Grand Jury takes pleasure in awarding him all praise for his assiduity

in maintaining the cleanliness of the building under his charge—and still more for his humane consideration for the comfort of those placed in his custody.<sup>167</sup>

After all the public flattery, it may not come as a surprise that on January 16, 1851, the jailer received a raise in salary: up to \$1500 annually.<sup>168</sup> There was no more mention of the jail in local newspapers for three years. But on June 15, 1854, a city ordinance was passed setting aside a triangular space of ground in what was known as Crawford Ward for the site of a new jail.<sup>169</sup> The drawback, however, was if the building of the jail was not commenced by June 1, 1855, the land would revert back to the city.<sup>170</sup>

Unfortunately, there is nothing to indicate that the building of a new jail ever commenced in or around 1855. The land previously set aside for a new jail presumably reverted back to the city. On December 3, 1855, there was again mention of the poor jail conditions in the *Savannah Daily Republican*:

The committee have nothing favorable to say in their final report about the Jail. It is in wretched condition, and is incapable of being repaired. It is also unhealthy, rendered so by its peculiar construction and want of ventilation. It should be a cause of gratulation that the subject has been brought before the Legislature, and that authority is now sought from that body to levy a tax to erect a new and suitable building. Of the propriety and absolute necessity of building a new Jail at a more suitable place, and of appointing an energetic and active jailor to superintend it, there can be no doubt.<sup>171</sup>

This was certainly a step in the right direction. It is curious, though, that the appointment of an “energetic and active jailor” was mentioned, as if the perception of the then-current jailer had changed. Soon thereafter, an Act titled, “An Act to authorise the Justices of the Inferior Court of Chatham county to borrow money, and levy and collect an extraordinary tax for the building of a new Jail for said county”<sup>172</sup> was passed.<sup>173</sup> The Act, which was approved on February 16, 1856, read as follows:

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<sup>167</sup> *Presentments of the Grand Jury*, *supra* note 165.

<sup>168</sup> HENRY, *supra* note 150, at 71.

<sup>169</sup> *Id.* at 242.

<sup>170</sup> *Id.*

<sup>171</sup> *Jail*, SAVANNAH DAILY REPUBLICAN, Dec. 3, 1855.

<sup>172</sup> 1855 Ga. Laws 483.

<sup>173</sup> *Id.*

WHEREAS, the present Jail of said county is inadequate to the purposes for which it was intended, and the Justices of the Inferior Court of Chatham county, on repeated presentments of Grand Juries of said county, deem it proper to erect a new Jail suitable to the public wants, but have not the means of doing so without borrowing money, and refunding the same out of taxes for that purpose to be raised:

14. Section I. Be it therefore enacted, . . . That the Justices of the Inferior Court of Chatham county, or any three of them, be, and they are hereby authorised and empowered to obtain on loan, not to exceed the term of three years, the sum of thirty thousand dollars on the faith and credit of said county, for the purpose of erecting or aiding in the erection of a new county Jail in the city of Savannah[.]

15. Sec. II. And be it further enacted, That the said Justices of the Inferior Court of Chatham county, or any three of the bench of Justices of said Court shall have power, and they are hereby authorised and empowered to levy a tax upon the inhabitants of said county, (over and above the State and county tax,) not to exceed the sum of ten thousand dollars each and every year, for the space of three years, so as to make the said sum of thirty thousand dollars, and shall be authorised to have the same collected by the Tax Collector of said county, which said tax when so levied and collected, shall be by the said Tax Collector paid over to the Justices of the Inferior Court of Chatham county, and be by them applied to the payment of such loan[.]<sup>174</sup>

This was certainly good news. A loan for \$30,000 would have been a huge step towards building a new jail. Unfortunately, not much seemed to happen. About one year later, on December 2, 1856, what appears to be a grand jury presentment was published in the *Savannah Georgian & Journal*.<sup>175</sup>

The Committee on the Jail respectfully report:

That the Jail has been repaired throughout at a cost of some five hundred dollars, one-half of which was borne by the county. The tank upon the roof having been repaired and thoroughly cleared out of deposit and rubbish, and a new force-pump put into operation, (all of which is embraced in the expenditure above stated,) an ample supply of water is now at all times afforded for the regular cleansing of the cells. About one-half of these having been found unavailable from broken fastenings and other insecurity,—rendering it necessary to crowd the prisoners several in one cell,—have also been repaired and brought into use. A portion of the roof has also been retinned, and the whole made perfectly tight. A new set of books has been opened;

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<sup>174</sup> *Id.* at 483–84.

<sup>175</sup> *The Committee on the Jail Report*, SAVANNAH GEORGIAN & J., Dec. 2, 1856.

embracing in one book both white and colored prisoners, instead of having separate books for each, as heretofore, and by a new arrangement, in other respects, presenting upon each page a full record for the day in every particular, and affording new checks upon the Jailor, and all the data at a glance, for an examination into the condition of the Jail, its conduct, and management. The rules for its government, adapted by Council in 1838, which had been lost sight of entirely have also been re-printed and revived. The diminution in the revenue of the Jail is attributable mainly to the existence of private establishments in our city, to which colored prisoners are now mostly sent for temporary confinement. Formerly the proportion of white and colored inmates of the Jail were about one-half of each, whilst the latter are now only in the proportion of one to about five or six to the former. There are also a great number of paupers who are committed and from whom no fees can be collected, and there has perhaps been more of this class the past year than usual. Many of these persons remain there perfectly indifferent as to their release, and oftentimes are recommitted, time after time, within a few hours after their discharge. A new and proper Jail, in a more convenient location, with a workhouse attached, it is believed, would be an efficient remedy for the whole matter. The Jail, as it is and where it is, will always remain a tax upon the city, and which will be constantly increasing. It is impossible for any committee to give it the necessary supervision at its present distance. It is also too far from the Courts, and too far from districts where arrests are usually made. From its isolation also, it is much less secure than it otherwise would be. Should at any time the Jailor, or a party committing a prisoner, need assistance at a late hour of the night, it would be difficult, if not impossible, to obtain it. As it is there is no security either night or day. The committee are of the opinion that a location east of or near the old cemetery is unquestionably the best, and should if possible be made available, even though it involved some expenditure on the part of the city.

The committee concur in and reiterate all that has been said by previous committees in regard to the Jail's general unfitness and unhealthfulness. It is unworthy of our city and of the age, and humanity as well as the public interest, calls aloud for immediate action in the work of reform.

The Jailor should always be a man of family (who should reside with him at the Jail) and of well known humanity of disposition as well as of general reliability of character.<sup>176</sup>

Although much more subtle in its approach, and even somewhat complimentary, this report still conveyed the need for a new jail. The report also indicated a significant drop in jail population, and a decline

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<sup>176</sup> *Id.*

in revenue due to private establishments housing the majority of African-American inmates—the ratio once being one-half, it had become approximately one-fifth. It also indicated a rise in the incarceration rates of paupers who were unable to pay jail fees. Revenue from the jail was negatively impacted by all of these factors.

After such a continued negative perception of the jail, it is likely some of that negativity was attributed to the mayor and aldermen of the city of Savannah. So far, though, it seems any disapproval was directed towards the jailer or the justices of the inferior court. But a short publication in the *Daily Morning News* on November 30, 1857, may show some disapproval of the mayor and aldermen.<sup>177</sup> The publication identifies a bill that was introduced by Mr. Harrison “to transfer the jurisdiction of the jail of Chatham county, from the Mayor and Aldermen of the city of Savannah, to the Inferior Court and Sheriff of said county.”<sup>178</sup> Up to this point, there have been two shifts in control over the jail: (1) from the mayor and aldermen to the sheriff and justices of the inferior court, and (2) back to the mayor and aldermen. This publication proposes an additional shift. With the last two shifts ending in lawsuits, this must have upset local politicians. Who was this Mr. Harrison?

George Paul Harrison, Sr., coincidentally, was a justice of the Inferior Court of Chatham County in 1857 and, eventually, served as a Brigadier General in the Georgia militia during the American Civil War.<sup>179</sup> The mayor and aldermen could rest easy though. Mr. Harrison’s proposal went nowhere. Nearly two years later, however, on March 19, 1859, an insightful piece was published in the *Daily Morning News*.<sup>180</sup> It was insightful because it quoted a justice of the inferior court who spoke to the city council and gave an explanation as to why having control of the jail was desirable:

Of the Justices of the Inferior Court of Chatham County, relative to a new jail, stating “that this court is fully impressed with the importance of removing the present structure, not only with a view to the erection of a more humane and more secure place of confinement, but of promoting the improvement of a valuable portion of the City of Savannah”—asking Council to make an appropriation of land suitable for the location of the new jail, and to donate the land occupied by the present jail, so that this court may begin the construction of a new jail—the county having contributed \$30,000 towards the construction

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<sup>177</sup> *Bills Introduced*, DAILY MORNING NEWS, Nov. 30, 1857.

<sup>178</sup> *Id.*

<sup>179</sup> A.B. Caldwell, *George Paul Harrison, Sr.*, in 3 MEN OF MARK IN GEORGIA 141 (William J. Northern ed., 1911); see also *Election Notice*, DAILY MORNING NEWS, OCT. 3, 1857.

<sup>180</sup> *Proceedings of Council*, DAILY MORNING NEWS, Mar. 19, 1859.

of the new jail—“of which the corporation over which you preside will reap the benefit; this court respectfully suggests, finally, that the donation of the land would be an easy and not disproportionate contribution on its part—such a donation would involve no outlay of money; and the corporation constituting by far the most important interest in the county, has the use and absolute control of the jail, and derives from it whatever revenue it may be capable of producing.”<sup>181</sup>

This confirms the justices of the inferior court successfully levied taxes “not to exceed the sum of ten thousand dollars each and every year, for the space of three years” as provided in the 1856 Act.<sup>182</sup> It also confirms the justices contributed that money towards the completion of a new jail. Seven months later, the chairman of the committee on the jail, an alderman, “called the attention of Council to the unhealthy and insecure condition of the present Jail building, and requested the Justices of the Inferior Court of Chatham county and the Jail Committee to meet at the Mayor’s office” the following week to have a conference about the building of a new jail.<sup>183</sup> This was at least one showing of the city and the justices of the inferior court attempting to work together towards a new jail. Perhaps the meeting at the mayor’s office was to discuss whether the city would donate the land requested during the city council meeting. There is no evidence to suggest the land was donated, however.

Just over one year later, an Act<sup>184</sup> was passed to help raise funds for a new jail. The Act was titled, “An Act to authorize the Justices of the Inferior Court of Chatham county to levy and collect an extra tax for the building of a new Jail for said county, and for other purposes.”<sup>185</sup> The preamble states that “[t]he amount already raised for the erection of a new jail under the Act of 1856 by the Inferior Court of Chatham county, is insufficient for the purpose desired.”<sup>186</sup> The Georgia General Assembly, therefore, enacted that the justices be empowered to, once again, levy an extra tax on Chatham County citizens “not to exceed the sum of ten thousand dollars each and every year, for the space of three years, so as to make the sum of thirty thousand dollars[.]”<sup>187</sup> Unfortunately, this proved ineffective as the new jail would not soon be built. One large factor in the 1860 Act’s ineffectiveness was undoubtedly the American Civil

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<sup>181</sup> *Id.*

<sup>182</sup> 1855 Ga. Laws at 484. *See* text accompanying *supra* note 174.

<sup>183</sup> *New Jail*, DAILY MORNING NEWS, Oct. 29, 1859.

<sup>184</sup> 1860 Ga. Laws 227.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

War, which lasted from 1861–1865. The war placed a temporary hold on the discussion of the jail.

The next mention of the jail came nine years later on January 12, 1869, in the *Savannah Morning News* where the newspaper presents a letter<sup>188</sup> from the sheriff affirming its previous remarks:

We present below a note from Sheriff Dooner, substantiating our remarks regarding the condition of the County Jail. The Sheriff says:

Savannah, January 11th, 1869.

Editors Morning News:

In connection with your remarks upon the County Jail, in this place, permit me to say that I have inspected that institution, and I found it unclean, badly ventilated, very much out of repair, and by no means a secure place of confinement for the large number of prisoners now in the custody of the Jailor.

Very respectfully,

James Dooner, Sheriff of Chatham County.

We understand, also, that owing to the present condition of the Jail, policemen have to be withdrawn from their proper sphere of duty in the city, and sent out to the jail every night as an extra guard. It is a duty which the Board of Aldermen owe to humanity, to its own reputation and the safety of our citizens, to take the condition of the jail into immediate consideration, with a view to its improvement. Reports of its being unfit for the confinement of criminals reached us weeks ago, but we had no idea that the jail was so badly in need of attention as it proved to be on examination.<sup>189</sup>

It is hard to believe that someone “had no idea that the jail was so badly in need of attention.”<sup>190</sup> But perhaps that was the product of nine years of silence regarding the jail. This particular newspaper, however, is not done with its condemnation of the jail. Approximately two months later, on March 22, 1869, it published the following:

We paid a visit to the Jail the other day and we wish many of our readers would do the same and see the condition of things there for themselves. We do not know who is to blame, but we do know that the

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<sup>188</sup> *Local Matters: The Jail*, SAVANNAH MORNING NEWS, Jan. 12, 1869.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

prisoners there are living in a state that is a reflection upon the humanity of their keepers.

Passing around through the halls we find the cells small, not ventilated, and with no means of making their occupants in the least comfortable, or providing for their health, as the law requires distinctly. The bolts are many of them loose and in an unsafe condition, the prisoners are huddled together, five or six in a cell, without any fresh air to prevent them from sickening from sheer deprivation of that greatest of all human needs. Many of them are there in filthy rags, which they have no means of replacing. During all the cold weather which has occurred lately very many of these prisoners have been without blankets or covering of any kind. During the last week or so there were fifty persons without blankets, and during the month of February there were one hundred.

We have examined into the law upon this subject which reads:

“It shall also be the duty of the Sheriff to furnish such persons so confined with a sufficient quantity of blankets and clothing for the health and comfort of persons so confined; provided the person or persons so confined have not the power of procuring blankets and clothing themselves.”

Another section of the same law declares that where the Sheriff neglects to perform this duty he shall be liable to a penalty of \$500; and section four further provides that where he shall have incurred any expense in the performance of this duty, the Inferior Court (now the Ordinary)<sup>191</sup> shall pay the same in preference to all other claims.

The condition of the prisoners is then clearly in violation of the law. In this county it is the Jailor and not the Sheriff who is responsible for the condition of the Jail. Now, whoever it is that is responsible for the wretched condition of the prisoners, it should be known. There is clearly neglect of duty somewhere: and whatever the offences these persons confined in Jail may have committed, and no matter how great a pest they may be to society, there can be no excuse for treating them with downright cruelty. We think this matter needs investigation. The law which we have quoted above is plain and distinct, and it should be known to the people who it is that is responsible for its violation.<sup>192</sup>

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<sup>191</sup> The inferior courts were abolished in 1868 and replaced by the Court of Ordinary. See GA. CONST. of 1868, art. V, §§ 1, 5, & 14.

<sup>192</sup> *Locals Matters: The Jail*, SAVANNAH MORNING NEWS, Mar. 22, 1869.

Two years later a grand jury presentment<sup>193</sup> was published—again discussing the poor condition of the county jail:

The condition of the Public Jail is a matter which has caused an extended investigation on our part. It is very much out of repair, and we believe it is not secure. It will be necessary, in order to make it safe and comfortable, to expend a large amount of money. And as it seems to be the general desire of our people to have another jail erected on some other site, we hesitate to recommend the appropriation of the large amount of money we think necessary to put the old jail in proper repair. It will be necessary, however, to put some work upon it, in order to make it safe until the county feels itself able to enter upon the enterprise of building a new one.<sup>194</sup>

This presentment makes it clear the community wanted a new jail, but felt money should be spent to make repairs that were immediately necessary. Given the length of outcry over the conditions of the jail, it seems likely the jail underwent several futile attempts at repair.

On August 23, 1872, an Act<sup>195</sup> was passed that altered some of the management structure of the jail. The Act read as follows:

SECTION 1. *The General Assembly of Georgia do hereby enact, That, from and immediately after the passage of this act, the mayor and aldermen of the city of Savannah shall have the right to fix and regulate the fees for dieting county prisoners in the jail of Chatham county, under the direction, control and management of the mayor and aldermen of the city of Savannah; and further, the fees and charges for examining and auditing jail bills against said Chatham county shall be payable by the county, and not by the said city.*<sup>196</sup>

This Act did two things: (1) it allowed the mayor and aldermen to regulate fees for dieting prisoners and (2) it shifted the responsibility of paying for audits of those fees from the city to the county. Surely the mayor and aldermen intended to raise fees so they could collect more money from the jail, which had proven to be a poor investment. This Act allowed the mayor and alderman to both make more money and save more money.

Two years later, an Act<sup>197</sup> was passed that related to the election process of the jailer and the jailer's salary.<sup>198</sup> Curiously though, section

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<sup>193</sup> *Presentment of the Grand Jury of Chatham County, Georgia—January Term*, SAVANNAH MORNING NEWS, Feb. 14, 1871.

<sup>194</sup> *Id.*

<sup>195</sup> 1872 Ga. Laws 255.

<sup>196</sup> *Id.* at 255–56.

<sup>197</sup> 1874 Ga. Laws 386.

<sup>198</sup> *See id.*

one of the Act states that “the jail of Chatham county shall continue, as heretofore, under the direction, control and management of the Mayor and Aldermen of Savannah, with all rights and duties of Commissioners of the same.”<sup>199</sup> This seems like an odd codification. Why “enact” something that was already in place? Perhaps this was meant to send a message to the community or to give the mayor and aldermen some reassurance. Either way, it likely stemmed from a conversation in the community that disapproved of the mayor and aldermen’s influence over the jail. The Act also stated that the jailer’s salary was to be set at \$2500 (a \$1000 raise), and that the deputy jailer’s salary was to be \$900.<sup>200</sup>

A few days later, the mayor published his annual report in the *Savannah Morning News* on February 18, 1874<sup>201</sup>:

The Jailor’s report shows that the total number of prisoners received during the year were 1,255 . . . . The amount due<sup>[202]</sup> the city of Savannah by the county of Chatham is \$2,292.80; by other counties \$1,196.25.

The Jailor casually remarks that the jail was originally built to accommodate forty-eight prisoners, while, during the past year, there has been an average of eighty confined in it. The condition of the institution is none of the best, and as may be inferred, there has been some crowding among the prisoners.<sup>203</sup>

This report confirms the jail produced at least some revenue for the city of Savannah. In fact, the amount listed as due in this report would have covered the jailer and his deputy’s salary.

#### *H. A Taxation Problem*

In the mid-1870s, the city council’s finance committee prepared a statement for the board of aldermen, which read as follows:

By strict economy and a reduction of expenditures, the committee stated, the City had endeavored to make its resources equal to the demands upon it. The object in view, though, was defeated by the action of citizens. The system of taxation which had been pursued by

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<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 386–87 §§ 4, 5.

<sup>201</sup> *The Mayor’s Annual Report*, SAVANNAH MORNING NEWS, Feb. 18, 1874.

<sup>202</sup> It is unclear whether “due” refers to charges outstanding or an annual invoice. If it refers to charges outstanding, then the revenue produced by the jail would seem fairly adequate. If “due” refers to an annual invoice, then the revenue produced by the jail was less appealing. See text accompanying *infra* note 204 for context, where it appears the revenue from the jail is typically much higher than that just mentioned.

<sup>203</sup> *The Mayor’s Annual Report*, *supra* note 201.

different administrations for many years as apparently satisfactory to the public, had been continued by the present Board when it assumed charge. It was unexpectedly discovered, late in 1874, to be in conflict in its principal feature with one of the provisions of the State Constitution of 1868, and proceedings were commenced by several citizens to obtain an injunction against the City to prevent the collection of taxes alleged to be thus illegal. It was then too late to correct the defect in the tax ordinance already passed or to provide new taxes for the year 1874. And as it was absolutely necessary to meet the current expenses of the City, Council continued to receive taxes under these ordinances from all that would voluntarily pay, but was obviously unable to enforce payment from any. Thus not only those who had applied for the injunction, but all who would not voluntarily pay, withheld their taxes from the treasury, thereby entailing great actual loss, and resulting finally in compelling the administration to stop the payment of its coupons, increasing the public debt, and forcing a condition of things in the highest degree detrimental to all private as well as public interests. In framing the tax ordinance for the year 1875, the illegal feature of the previous ordinance was abandoned. But similar litigation was commenced with regard to that ordinance also, which remained pending in the courts at the close of 1876. The Supreme Court decided during the progress of the litigation that the collection of City revenues could not be thus interrupted by injunction, but this decision was announced late in 1876, so that the pendency of the controversy had the same effect upon the collection of the taxes for 1875 and 1876 as in 1874.

The city government was scarcely set free from the operation of the temporary injunction thus disapproved by the Supreme Court, than the yellow fever appeared. The ravages of this scourge had a disastrous effect upon all pecuniary interests. Distressed as the treasury was, it was no time to pursue the unfortunate citizens with demands for taxes, whether for other reasons they had merited clemency or not. Forbearance was imperatively demanded by a decent respect for the common misfortune. By these means the revenue of the City unexpectedly fell short in the following amounts: Taxes for 1874 \$10,837.69, taxes for 1875 \$51,602.28, taxes for 1876 \$200,619.01, a total of \$263,058.98, to which there was to be added \$27,103.30, due from Chatham county on jail account and \$3,201.60 due by other counties, making a total due the City from these sources of \$293,363.78 in three years. Had the large sums due been collected, the committee held, the reasonable hopes of Council would have been realized and the floating debt of the City reduced to an inconsiderable sum notwithstanding the paralyzing effects of the epidemic.<sup>204</sup>

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<sup>204</sup> GAMBLE, *supra* note 67, at 292–93.

The report goes on to say that a resolution was introduced before council to declare the city bankrupt and to suspend “the payment of all outstanding liabilities excepting current expenses until such time as the debts could be arranged in a manner satisfactory to the creditors and the people of Savannah.”<sup>205</sup> The resolution did not pass, however, and council eventually called on citizens to “contribute to aid the City in its embarrassment.”<sup>206</sup> This would certainly explain the lack of funding for a new jail during the mid-1870s.

### *I. Waring Russell Feud*

This Article would not be complete if it did not mention longtime jailer of the Chatham County jail, Waring Russell. His tenure, however, was almost over before it started because of a feud he had when he first became jailer.

Mr. Russell was elected jailer on September 1, 1859.<sup>207</sup> His term was to expire in January of 1862.<sup>208</sup> Just two months after his election, on November 14, 1859, however, he was tried by a special meeting of council on the charge that “on November 11 he sent and had delivered to Hon. John M. Millen, when in the court house on his way to take his seat as Judge of the City Court, a challenge for a duel.”<sup>209</sup> The council concluded that this was official misconduct because “Judge Millen [wa]s a judicial officer and sworn to maintain the laws, and Mr. Russell [wa]s the official keeper of all such as may be convicted thereof and confined to prison when the offense had been committed in the city or county[.]”<sup>210</sup> This resulted in Mr. Russell’s removal from office.<sup>211</sup>

Mr. Russell appealed this decision to the superior court and, in 1861, the superior court “reversed the action of Council and ordered Mr. Russell re-instated.”<sup>212</sup> In making the decision, Judge Fleming of the superior court stated that Mr. Russell was “responsible to the Mayor and Aldermen for the faithful discharge of his [official] duties, and to the laws of the country for the discharge of his duties as a citizen.”<sup>213</sup> The superior court did not want to hold Mr. Russell’s personal actions as a citizen against him in his official capacity as jailer. On September 11, 1861, Waring Russell was reinstated as jailer by the city council and paid a

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<sup>205</sup> *Id.* at 293.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 242.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

settlement of \$3007.<sup>214</sup> Not only was he reinstated as jailer, but he was re-elected several times despite his prior removal from office. He must have been well liked by the community.

That story certainly sets the stage for Mr. Russell's 1875 feud. As previously mentioned, during the public outrage over jail conditions, the jailer was occasionally scrutinized. Waring Russell, however, was not one to be accused lightly. A fierce craftsman of words, his critics were often left crippled, peeling their pride from the pages of the local newspaper. One such example (the Author's favorite) can be found in a February 5, 1875 newspaper article entitled "To the Public."<sup>215</sup>

The article starts, "For some months past[,] myself and my official position have from time to time been made the subject of editorial comment in the columns of the *Savannah Advertiser*."<sup>216</sup> It appears the manager of the *Advertiser*, F.W. Sims, published letters between the mayor of Savannah and the General Assembly in which Waring Russell was falsely identified as the author of a scandalous letter addressed to local representatives in the General Assembly.<sup>217</sup> The letter discussed the salary of the jailer and was seen as an unauthorized communication by Waring Russell to influence local representatives.<sup>218</sup>

The only problem was Waring Russell claimed he never wrote such a letter. And he presented evidence to that effect in the form of a letter from two local representatives apologizing for any misunderstanding.<sup>219</sup> Mr. Russell sent this letter to F.W. Sims requesting as follows: "I ask that these matters be laid before the readers of the *Advertiser* in the same manner in which the various assaults you have been pleased to make upon me have been given."<sup>220</sup> Mr. Sims, however, refused to publish the letter as written, stating, "Sir: I decline to publish the correspondence and therefore return it entire."<sup>221</sup>

This refusal led to Waring Russell publishing with the *Savannah Morning News* all communications between himself, local

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<sup>214</sup> *Id.* See also *Proceedings of Council*, SAVANNAH MORNING NEWS, Nov. 16, 1859; *Proceedings of Council*, SAVANNAH REPUBLICAN, Sept. 14, 1861 ("That the word misconduct in the [1834 Act] means *official misconduct*, I think is evident because the power to remove necessarily implies the right to *try* the Jailer for the misconduct. Now the Corporation has no power to try its officers except for misconduct in office.")

<sup>215</sup> *To the Public*, SAVANNAH MORNING NEWS, Feb. 5, 1875.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* The newspaper article Waring Russell references could not be found in the online database, or on microfilm at the University of Georgia or the Georgia Historical Society. Mr. Russell's article, however, provides great context.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

representatives, and Mr. Sims.<sup>222</sup> Mr. Russell then proclaimed the following:

My fellow-citizens of Savannah, who have been familiar with the controversy from its inception to its close, will, after a careful perusal of the foregoing, bear me out in the assertion that I have used every legitimate and honorable means within my reach to obtain from Mr. Sims the justice which is due me. Failing in this, they can but sustain me in the only resource which is left to me—the one which I now pursue. In the opinion of some valued and trusted friends, I know I would be warranted in adopting a more summary and violent remedy for the persistent wrong which has been done me without provocation. In the opinion of many others, I am sure, I should be justified if I should pursue this remedy. But in deference to a popular sentiment which I respect, and which, as an officer of the law, I feel bound to regard, I elect to submit the matter in this shape to the calm judgment of a just and enlightened people.

As a public journalist Mr. Sims has seen fit to assail without cause myself and family. Upon a respectful demand for reparation he added injury to insult by contemporaneous comment upon myself and the gentleman who bore my demand. As a public journalist Mr. Sims has used his power and position to publish matter false in substance and derogatory to my character, both as a man and an officer; and as a public journalist he has persistently and without reason assigned refused to permit me in a respectful manner to vindicate myself through the same medium through which I have been assailed. The merits of this controversy I do not propose to discuss for they are not pertinent to the issue. In enquiry for the cause which should have instigated a series of assaults upon myself, I am left to conjecture that Mr. Sims may still remember with unappeased rancor that many years since, when as a subordinate upon a prominent journal of this city devoted to assaults upon the Democracy, he always met me in the front ranks of that party, the party which he now assumes to lead.

But be this as it may, he has repeatedly done me wrong, and has as repeatedly refused the slightest reparation. In the face of such fact, I can but conclude and say fortune or accident has placed him in a position, the duties of which he does not understand, and the responsibilities of which he is incompetent to meet. In his action towards myself, he has shown himself as incapable of harboring that first and highest instinct of a gentleman, which makes it a sacred duty always to repair a wrong. He has proven himself full of the bravado and bluster of the bully and blackguard, with none of the courage and courtesy of the gentleman and man of honor. He has not hesitated to prostitute the power of a great and honorable engine of public good, to

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<sup>222</sup> *Id.*

his own petty piques and prejudices, and to make it the cover from which to assail public and private reputation.

Having convinced me that he is insensible to justice, a stranger to integrity, a man utterly irresponsible for his words or acts, and a would-be conservator of the peace and morals of a community, while bearing a damaged reputation, dirty hands and besmirched garments, I leave him to the judgment of those whom he essays to teach and lead.<sup>223</sup>

The Author could not find any reply to this publication. And who could blame Mr. Sims for not responding? The article provided evidence that Mr. Sims wrongly accused Mr. Russell of being the author of the subject letter and then, in the face of such evidence, refused to make amends.

Waring Russell had an accomplished life. His family came to the colony of Georgia with General James Oglethorpe.<sup>224</sup> After being appointed sheriff of Chatham County in 1857 and holding that position for two years, he went on to serve as jailer for twenty-four years.<sup>225</sup> In 1877, he was a member of the convention responsible for framing the Constitution of the State of Georgia, and, in 1885, he was elected treasurer of Chatham County.<sup>226</sup> Waring Russell served in public office since the age of twenty one.<sup>227</sup> It would appear this feud did not negatively affect his public perception.

#### *J. The Shame of Chatham County*

Another grand jury presentment<sup>228</sup> painted the jail in a bad light on February 8, 1875, in the *Savannah Morning News*:

The committee of the grand jury appointed for the purpose of examining the condition of the jail and the prisoners confined therein, respectfully report that we found the jail in a clean and healthy condition. The prisoners seem to be well cared for by their custodian, and they appear to be in health. The floor of the cells are of stone and the dampness arising from it is deleterious to the health of any human being. The jail requires considerable repairs, and it is undoubtedly unsafe in the present dilapidated condition. Your committee

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<sup>223</sup> *Id.*

<sup>224</sup> BIOGRAPHICAL SOUVENIR OF THE STATES OF GEORGIA AND FLORIDA: CONTAINING BIOGRAPHICAL SKETCHES OF THE REPRESENTATIVE PUBLIC, AND MANY EARLY SETTLED FAMILIES IN THESE STATES 710 (Chicago, F.A. Battey & Co. 1889).

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at 710–11.

<sup>227</sup> *Id.* at 711.

<sup>228</sup> *Presentments of the Grand Jury: November Term, 1874*, SAVANNAH MORNING NEWS, Feb. 8, 1875.

recommend that all necessary repairs be immediately commenced, as it is indispensably necessary for the safe keeping of the inmates. We find there is not sufficient light or ventilation on the prison portion of the building, and recommend that four large windows should be made in the upper and lower portion of said building. We further recommend that an additional guard be furnished to the jail, so that the prisoners alternately be allowed out of their cells, at such times as may seem practicable, to enable them to have proper exercise. There were over fourteen hundred prisoners committed to jail for various offence within the last twelve months, of which fifteen were lunatics, eighteen charged with murder, and the others for offences of a lighter grade. Four deaths have occurred in the jail during the year 1874, who were furnished with medical attendance during their illness, three of whom were charged with the offence of murder and who had been confined in jail for nearly two years, and the other was committed to jail when sick for a misdemeanor. There have been no escapes from this prison. We recommend that in addition to the present rations that the prisoners be allowed a pint of coffee in the morning, which, we believe, is allowed by law, and which they do not receive, as coffee is not furnished to the jailer for the prisoners, and we also recommend that vegetables be furnished prisoners who have been in confinement beyond three months.<sup>229</sup>

In addition to poor conditions, this article paints a grim picture of the jail by citing deaths and recommending basic necessities for prisoners, such as vegetables. Although, oddly, the article starts off positively by describing the jail as being in a “clean and healthy condition.”<sup>230</sup> Another article,<sup>231</sup> entitled “*The Shame of Chatham County*,” was published in the *Savannah Morning News* on July 8, 1875. It read as follows:

Time and again have we called attention in the columns of the Morning News to the condition of the county jail, and suggested, as but in accordance with the dictates of humanity, that the authorities devise some plan whereby the unfortunate wretches confined within its unsightly walls might at least enjoy treatment that is due human creatures. Grand jury after grand jury have commented in the severest terms upon the interior arrangements, and sought to impress upon the authorities the importance of enlarging the jail, or erecting a new and more modern building, not inaptly characterizing the present edifice as a shame to the county, and a blot upon her fair escutcheon. Committees have been appointed to examine into the matter, and have made their reports, and in every instance has there been a remarkable unanimity of opinion expressed as to the importance and necessity of

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<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *The Shame of Chatham County*, SAVANNAH MORNING NEWS, July 8, 1875.

action in the premises. These reports, like the presentments of the grand jury, have been read, discussed and filed away as "information." No practical, sensible steps have been taken to remedy or ameliorate the evil complained of.

The reason of this dilatoriness, inaction apathy, or whatever you may call it, is given that the county has no money, is not in a financial condition to enter upon the work. It is well known that Chatham county is one of the largest taxpaying counties in the State, and it seems strange that there should be this continual cry of no money. Taxes are levied, and can be collected, and if collected there should be no difficulty in properly maintaining her public institutions.

With the resources which exist, it seems but reasonable to expect that enterprising, intelligent and progressive administration could utilize them advantageously. Some scheme or plan might be devised by which money could be raised or the taxes more closely collected, and the condition of the county improved.

In reference to the jail, there should be prompt action taken, as there is quite a neat sum in possession of the county, known as the jail fund,<sup>[232]</sup> it would not appear difficult. It is presumable that this fund is at the disposal of the county authorities, though we hear there is some doubt expressed touching their right to use the money. Upon what grounds we know not and would be pleased to learn if there are any.

These remarks are preliminary to the introduction of a report from the Jail Committee, which was submitted at the meeting of the Board of County Commissioners, and which presents the facts of the case in sufficiently strong terms, to render unnecessary further comments by us. We earnestly hope that some intelligent action will be taken on the subject, and if it be found at all possible that the vacant lot adjoining the police barracks be obtained from the city, and a new building, appropriately designed for the purpose, be erected thereon. We commend the report, which is as follows, to the careful consideration of all who are interested in our county affairs:

Savannah, July 7, 1875.

*To the Honorable Commissioners, Etc.:*

Your honorable board is without doubt fully acquainted with the yearly increasing want of room in the Chatham county jail for the custody of its prisoners. Several grand juries have justly and strongly

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<sup>232</sup> See text accompanying *supra* notes 172-74 & 184-87 to see where this "jail fund" originated.

adverted to it, embodying in their presentments numerous suggestions for amelioration. The prominent fact is that with only forty-seven cells the jail is required to provide for the custody of an average of ninety prisoners. About one-third of these are usually on the chain-gang, but are brought in for confinement on Saturday evening and taken out on Monday morning. During that period it is not uncommon to see three prisoners confined in one cell.

The direction of the various grand jury presentments has been towards a new jail of a capacity to suit the new condition of society, and a report of the Jail Committee of Council, under date of January 10, 1870, has wisely recommended as a proper site a portion of the city ground near the police barracks. The committee now addressing your honorable board apprehend that the time is still distant in which the said report and county presentments can be carried out.

Meantime, humanity calls for something to be done. Notwithstanding the efficient care of the jailer and the attention of this committee, the jail as it now stands is a blot on this community by reason of the insufficient room provided for its inmates. To remedy this in part this committee now address your honorable body, asking that a small portion of the fund understood to be in your hands be devoted by law to a new jail, or additions to the present building, be applied to carry out the plan embodied in the accompanying sketch of the City Surveyor.

If the hope of a new or better building could soon be realized, this committee would hesitate to recommend any considerable expenditure on the present structure; but not indulging that hope, they are bound in the interest of a common humanity and good government to ask that your honorable board will divert a small portion of the Chatham jail investment for the object stated.<sup>233</sup>

Not only does this article ask an important question (what is being done with the jail fund?), it introduces a new incentive for why the mayor and aldermen of the city of Savannah might want control over the jail: the free and presumably profitable labor of a chain gang.<sup>234</sup>

*K. This Generation Has Had Its Burdens, Let the Next Have Its Share*

A few months later, an informative article<sup>235</sup> was published that helped explain the history of the jail controversy and the reasons behind

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<sup>233</sup> *The Shame of Chatham County*, supra note 231.

<sup>234</sup> For information on the horrors of chain gangs in the south, see DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2008).

<sup>235</sup> *Chatham County's Jail*, SAVANNAH MORNING NEWS, Jan. 6, 1876.

its delay.<sup>236</sup> The article recapped the key pieces of legislation discussed thus far and put them into perspective. It read as follows:

The condition of our county jail has for many months been a subject of serious consideration by the authorities, and various projects for its improvement have been suggested, only to be abandoned. Several grand juries have reported upon the matter, and the last one characterized the institution as "an outrage upon humanity, and a disgrace to the city and county." Others have recommended the construction of a new and more modern, as well as more suitable, building, leaving the ways and means necessary for the carrying out of the recommendation to the Board of County Commissioners, who have sole control over the county funds. At a recent meeting of the commissioners the subject was referred to a committee for report, and, as will be observed by the proceedings of the regular monthly meeting held yesterday, the committee have discharged this duty, and we now present the result of their labors in the following very able and interesting report, in which the subject is thoroughly discussed:

The undersigned, a committee appointed under a resolution passed at the last meeting, to look into the matter of building a new jail, the probable cost of the same, and the amount of funds now in the treasury for that purpose, beg leave to make the following report. And your committee think it proper, first to call the attention of the County Commissioners to the local laws which regulate and control the jail of Chatham county:

In the year 1791 the Mayor and Aldermen of the city of Savannah were appointed Commissioners of the court house and jail of Chatham county; and in 1801 they were vested "with full power and authority to appoint a jailor and such other officers as might be necessary," and they had under this act full control of the jail until the passage of the act of the 21st of December, 1822, the first clause of the 2d section of which act reads as follows: "That from and after the first day of January next (1823) the direction of the court house and jail of Chatham county, hitherto under the superintendence of the corporation of Savannah, shall be vested and continued in the Justices of the Inferior Court and in the Sheriff of said county, under the general laws regulating county jails in this State, and the Mayor and Aldermen shall thenceforth be discharged from the rights and duties of Commissioners of the said court house and jail."

The Justices of the Inferior Court of Chatham county had full control of the jail, after the passage of this act, from January, 1823, to the passage of the act of December 8, 1834, the first clause of the first section of which act is as follows: "That from and after the first day of

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<sup>236</sup> *Id.*

January next (1835) the direction, management and control of the jail of Chatham county shall be vested in the Mayor and Aldermen of the city of Savannah and the hamlets thereof, who are hereby constituted Commissioners thereof, with all the rights and duties thereto appertaining.”

The second section of this act reads as follows: “That it shall and may be lawful for the Justices of the Inferior Court of Chatham county, in their discretion, to appropriate and apply any county funds in the treasury of said county, or which shall have after come to said treasury, to the erection of a new jail, which, when so erected, shall become the jail of said county under the direction of the Mayor and Aldermen of the city of Savannah, in the same manner and with the same rights, powers and duties as are provided by the first section of this act. Section 3d. That the said jail shall be subject at all times to the visits and inspection of the Justices of the Inferior Court of Chatham county, and the grand inquest of said county and city, who may or shall report to the City Council of said city any misconduct in the officers thereof, or evils existing therein, and recommend to the said City Council any mode of redress or remedy therefor.”

It will thus be seen that the act of 1834, under which the present jail was built, vests the full control of the jail of Chatham county in the Mayor and Aldermen of the city of Savannah, and that the County Commissioners have no authority in the matter, except to report any evils which may exist and recommend matters of redress.

In 1856 an act, with the following preamble, was passed. “Whereas, The present jail of said county of Chatham is inadequate to the purposes for which it was intended, and the Justices of the Inferior Court of Chatham county, on repeated presentments of grand juries of said county, deem it proper to erect a new jail suitable to the public wants, but have not the means of doing so without borrowing money and refunding the same out of taxes for that purpose to be raised.”

The second section of this act gave the Justices of the Inferior Court authority to levy and collect a special tax—to raise the sum of ten thousand dollars per year for three years. This tax was levied and collected, and thirty thousand dollars raised, which, by the vicissitudes of the war and other causes, dwindled to a fund of eight or nine thousand dollars at the end of the war. This fund, at this date, with interest and dividends on the same, stands thus: 77 shares Southwestern Railroad stock, par value \$7,700, market value \$6,160; 11 city of Savannah bonds, par value \$4,900, market value \$3,410; 1 Savannah, Skidaway and Seaboard Railroad bond, par value \$500, market value \$300; 3 Atlantic and Gulf Railroad income bonds, value \$750; making an available fund of about \$10,620. This sum is too small to build a new jail, unless the lots on which the jail now is were put on

the market and sold for a good price; and as we cannot find that the city has ever given these lots to the county, we do not think that they can be sold without the approbation of the Mayor and Aldermen of the city of Savannah.

In view of the present money pressure and the high rate of taxation, we do not feel willing to recommend an additional tax for the purpose of building a new jail.<sup>[237]</sup> Whether the fund already in hand, to-wit, the \$10,620, the remnant of the sum which was raised by a special tax levied under a special law, to build a new jail, can be used for the purpose of adding to or repairing the old jail, is extremely doubtful. If the fund can be so used it will be better to do so than to resort to additional taxation. And when times get better, and when we have less taxes to pay—if that desirable day shall ever dawn upon our people—we can then build a new jail, with modern improvements and in a new place. This generation has had its burdens and they have been very heavy and are still so: let the next have its share to carry.

Your committee respectfully call attention to the matter of dieting prisoners and the cost to the county of the same. By the act approved August 23, 1872, the Mayor and Aldermen of the city of Savannah have the right to fix and regulate the fee for dieting county prisoners in the jail of Chatham county, and the Mayor and Aldermen have assessed a fee of fifty cents per day for dieting county prisoners, and this is paid into the city treasury. We are of the opinion that twenty cents per day to each county prisoner would be adequate pay.

It is the opinion of your committee that it will require at least the sum of seventy thousand dollars to build a proper jail for Chatham county, and that this sum can only be raised by an additional very heavy percent on the State tax, which additional percent, we do not feel willing to recommend.

As long as criminals cost the county of Chatham such heavy sums as the County Commissioners are compelled by laws both general and special to pay, so long will it be impossible to build a new jail, and other public buildings greatly needed, without large additional tax on a people already afflicted by an overburden of taxation.<sup>238</sup>

This article shows the effect the American Civil War had on the jail fund, dwindling the fund from \$30,000 to \$10,620. The article also implies that the county is unable to raise and save funds for the new jail

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<sup>237</sup> There appears to be a split in the community on whether a new jail is worth an additional or higher tax. See text accompanying *supra* notes 231–33 (“Taxes are levied, and can be collected, and if collected there should be no difficulty in properly maintaining her public institutions.”).

<sup>238</sup> *Chatham County's Jail*, *supra* note 235.

because of its obligation to pay heavy sums for housing criminals at the current jail. It is implied that this “heavy sum” is related to unnecessarily high fees for dieting prisoners.

Four years passed before the Chatham County jail appeared in the newspaper again.<sup>239</sup>

We, the undersigned, have examined into the condition of the public buildings of Chatham county, namely, the court house and the jail, both located within the city of Savannah.

Presentments on the unsatisfactory condition of these buildings have been made repeatedly, and, as far as we know, by every Grand Jury of the Superior Court for many years past, and it becomes almost useless to reiterate these statements, unless there be some prospect of having the recommendations of the Grand Jury carried out.

. . . .

The jail, at least that part of it containing the prisoners’ cells, we consider entirely unworthy of the civilization of this progressive city and county. It is to be taken into consideration that these cells have to shut out from the outside world for more or less time, not only convicted criminals, thieves, and murderers, but very often individuals who are not criminal, but only unfortunate, friendless strangers, paupers and the insane, or those who are awaiting their trial, have not been convicted yet and may be innocent.

On entering these premises for the first time, they remind one more of a conglomeration of cages for wild animals than an abode for sentient beings who, though many of them may be justly deprived of their liberty, still have a claim to be treated with humanity. We were informed that there were at present over eighty prisoners in those forty-five cells, and that sometimes two hundred and more have to be crowded together in them; the interior of each cell containing not over 200 cubic feet of air space, and it being well understood by sanitarians that at least 100 cubic feet are necessary for one grown person to live in and keep his health, it may be imagined what an effect a longer confinement in such an overcrowded space will have on a man’s constitution; because there is little or no provision made for direct or thorough ventilation. The cells receive the air from the passage ways and these from very small openings in the outside walls, diseases may be communicated from one prisoner to the other with great facility. Little or no sunlight can reach the interior of the cells to eradicate germs of disease, and it is probably only owing to the constant watchfulness, the strict discipline of and the enforcement of

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<sup>239</sup> *Grand Jury, General Presentments for the Term: Public Buildings*, SAVANNAH MORNING NEWS, Feb. 20, 1880.

cleanliness by the worthy keeper of the jail, that prevents this institution from becoming a pest house or a second "Black Hole of Calcutta."

We find many parts of the walls of this building in a decaying condition, some of the floors out of repair, the iron guards and doors rusting away and becoming unsafe, but still think any money spent on extensive repairs or alterations of the present structure as thrown away, unless it be entirely beyond the means or power of Chatham county to erect a new, better arranged and better constructed jail in a more secluded locality.<sup>240</sup>

There seemed to be little hope for approval of expending money on a new jail. Grand juries swayed between discussing how horrible the conditions of the jail were and how unwilling they were to approve a higher tax. Yet, despite this, grand juries were hesitant to even expend money on the current jail because it was seen as a waste of money and beyond repair. Something needed to change. In 1881, that change began.

#### *L. Consolidation*

After years of condemnation of the jail and no apparent solution, a conversation began in 1881 that divided the community. It dealt with the consolidation of the offices of jailer and sheriff. On July 21, 1881, the following article<sup>241</sup> appeared in the *Savannah Morning News*:

It is well known that there has long been a feeling favorable in this community to the consolidation of the offices of Jailer and Sheriff of Chatham county, and the placing of the jail under the management of the latter. This change was advocated on the ground that it would be more economical, and that in many other places the Sheriff was the jailer. A recent grand jury of the City Court passed a resolution indorsing the change, and urging upon the Representatives from Chatham to give support to a bill consolidating the offices, which was to be presented.

It seems, however, that there are others who do not regard the change as desirable, and the proposed bill meets with decided opposition from the Board of Aldermen of the city and the Board of County Commissioners. The latter, under the proposed bill, would, we understand, have jurisdiction of the jail building, which is now vested in the city. The objections of some of the County Commissioners, and also some of the Aldermen, to the bill was known, and the views of

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<sup>240</sup> *Id.*

<sup>241</sup> *Opposed to Consolidation*, SAVANNAH MORNING NEWS, July 21, 1881.

those bodies were asked by one of Chatham's Representatives on the subject.

These views have been expressed in emphatic terms, the ground being taken that it is for the public good there should be no change.

At a special meeting of the Board of County Commissioners held yesterday morning, the following preamble and resolution were adopted, and the Clerk instructed to send copies of the same to the Representatives from this county. The Commissioners thus express themselves:

Whereas, By an act of the General Assembly, passed in the year 1791, the Mayor and Aldermen of the city of Savannah were appointed Commissioners of the jail of Chatham county, and have, with the exception of an interval between the years 1822 and 1834, always continued to be such Commissioners:

And whereas, The change which was made by the act of 1822, giving the direction of said jail to the county authorities, proved to be unsatisfactory in its operation, and was repealed by the act of December 8, 1834, and the direction, management and control of said jail again vested in the said Mayor and Aldermen;

And whereas, It is not the wish of the County Commissioners of Chatham County to have the direction of said jail, they being satisfied that it is for the public good that the long established existing system should not be changed—

*Resolved*, That the said County Commissioners respectfully request the General Assembly not to pass any law which will deprive the Mayor and Aldermen of the city of Savannah of the direction, management and control of the said jail, as now vested in them.

Last night at the regular meeting of the City Council the following, on the same subject, introduced by the Jail Committee, was unanimously passed:

Whereas, The jail of Chatham county has been under the control of the Mayor and Aldermen of the city of Savannah, as Commissioners of said jail, continuously since the year 1791, except during the period between the years 1822 to 1834, at which time the control of the same was vested in the Justices of the Inferior Court;

And whereas, In the year 1834 the control of said jail was re-vested in the Mayor and Aldermen as a wise public measure;

And whereas, By publication of a notice that an act would be applied for at the present session of the Legislature, the Mayor and Aldermen

are informed that an effort is being made to take away the control of said jail from the city of Savannah;

And whereas, The jail and grounds upon which it is erected are the property of the said the Mayor and Aldermen of the city of Savannah; be it therefore

*Resolved, by the Mayor and Aldermen of the city of Savannah, in Council assembled, That we earnestly protest against said contemplated change as unwise, inexpedient and unwarranted by the present economical management of said jail, and as a measure not calculated to promote the public welfare; that certified copies of this resolution be forwarded to our immediate Representatives and Senator, with a request that they vigorously oppose said bill and bills of similar import.*<sup>242</sup>

The most intriguing aspect of this resolution is the reason cited for not wanting change: the shift in control mandated by the 1822 Act “proved to be unsatisfactory in its operation.” There is no evidence to support this alleged unsatisfactory operation. In fact, there is little insight as to the reason behind the change in 1834, other than a brief correspondence from the legislature published in the local newspaper and a letter from a citizen writing under the pen name “WATCH” who points out the lack of transparency leading to the change, which the citizen refers to as a “scheme.”<sup>243</sup> Additionally, this resolution was passed in 1881. It had been forty-seven years since the 1834 Act. If it was so memorably unsatisfactory, surely there would have been documentation to that effect.

One week later, on July 27, 1881, another article<sup>244</sup> was published, which read as follows:

The announcement that a bill would be introduced at the present session of the Legislature to consolidate the offices of Sheriff and Jailer, and to place the jail under the charge of the Sheriff, resulted in an expression of opinion on the subject from the Board of County Commissioners and the Board of Aldermen. Both bodies passed resolutions deprecating any change, and urging upon the representatives of Chatham to oppose such proposed bill. It seems, however, that there are a large number of persons who entertain a different view in regard to the matter, and do not approve of the action of either the Commissioners or Council. Hence a petition very numerously signed by many of the most influential and prominent citizens of Savannah is to be forwarded to the representatives from

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<sup>242</sup> *Id.*

<sup>243</sup> See text accompanying *supra* note 134.

<sup>244</sup> *Shall the Offices be Consolidated*, SAVANNAH MORNING NEWS, July 27, 1881.

this county, cordially approving the bill, and urgently asking its passage. It is stated that a counter petition is being circulated for signatures of those who do approve the action of the Council and city authorities, and who are opposed to the consolidation of the offices, which will also be sent to the Legislature.<sup>245</sup>

Three days later, someone under the signature “H” published their opinion<sup>246</sup> in the newspaper arguing for consolidation:

Salary of Jailer .....	\$2,500.00
Salary of Deputy Jailer .....	900.00
Pay of four guards, \$60 per month .....	2,880.00
Pay of cook, which is generally attended to by the prisoners .....	<u>180.00</u>
Total .....	\$6,460.00

Is there any sane man who does not think that if the jail was under the charge of the County Sheriff, who must necessarily have deputies, that a great reduction could be made in these expenses?

Now, on the other hand, if the jail is the property of the city—which I must emphatically deny—could not a great saving be made by putting it under charge of the police force, with its one Chief, two Lieutenants, four Sergeants and two turnkeys? Our city is not large enough nor our population great enough, nor do our finances warrant the numerous establishments and officers now under pay, and I can see none that could be so readily spared as the Jailer, and no department where so much money could be saved.<sup>247</sup>

This publication makes a good point: why pay four guards nearly \$3,000 a year to provide a service that could be provided at no extra cost by the sheriff and the guards already under his employ? The divide created by the proposed consolidation resulted in a high-spirited public dialogue between two members of the community with intriguing pen names.

*M. A Looker-on in Venice v. Reform*

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<sup>245</sup> *Id.*

<sup>246</sup> *Figures for Taxpayers*, SAVANNAH MORNING NEWS, July 30, 1881.

<sup>247</sup> *Id.*

What follows is a dialogue between two (presumably) members of the community on each side of the jail-consolidation debate, as published in the *Savannah Morning News*. The dialogue presents each side of the controversy's point of view.

1. "A Looker-on in Venice"—August 6, 1881<sup>248</sup>

*Editor Morning News:* I beg space for a word in reference to the change of the Jail from Waring Russell to the Sheriff of Chatham county. It is thought by many that the bill for that purpose now before the Legislature will pass, notwithstanding the County Commissioners of Chatham County, as well as the City Council of Savannah, have recommended that no change be made. Why this warfare against Waring Russell? Has he not made a good Jailer? Mr. Russell may have enemies (who hasn't?), but has Chatham county ever had a better Jailer? If he is a good man in that position, why put him out? It is said that Mr. Ronan, the Sheriff, does not desire the change made on his behalf: and for a good reason, doubtless—he would not be able to give his personal attention to the jail, if his time were fully occupied with the work of his office, as it should be. The Sheriff of Chatham county has about all he can do, generally, if he takes care of the Superior Court.

And if this be a personal warfare against Waring Russell (as is said to be the case by some), this community should not be in sympathy with it. Waring Russell, in his way, has done much good in this community. He and his whole family have ever been firm and faithful to the Democratic party. They have wielded an element in the interest of, and for the good of that party, which no other man, or set of men, could have controlled, and much, very much, of the present prosperity of Savannah, politically and otherwise, is due to that peculiar genius on the part of those men which has carried their name far beyond the limits of Savannah.

I have no more interest in the contest than any other reader of the News, but I do not like to see *prejudice control reason*.<sup>249</sup>

2. "Reform"—August 9, 1881<sup>250</sup>

*Editor Morning News:* In your last issue "A Looker-on in Venice" calls attention to the pending bill to transfer the management of the jail from the city to the county authorities, and by an error which a mere "Looker-on" could easily have fallen into, he refers to it as a

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<sup>248</sup> *The Proposed Consolidation of the Offices of Jailer and Sheriff*, SAVANNAH MORNING NEWS, Aug. 6, 1881.

<sup>249</sup> *Id.*

<sup>250</sup> *The Disposition of the Jail*, SAVANNAH MORNING NEWS, Aug. 9, 1881.

“change of the jail from Waring Russell to the Sheriff.” He then asserts that “it is said that Mr. Ronan, the Sheriff, does not desire the change made on his behalf,” the reason as furnished by the writer being that “if his time were fully occupied, as it should be, he would not be able to give his personal attention to the jail, and this is coupled with the positive statement that “the Sheriff has about all he can do generally if he takes care of the Superior Court.” In his last proposition “Looker-on” has again erred. The Superior Court adjourned about one month since and does not meet again for four months. During all this time the Sheriff has comparatively nothing to do, and his duties while the court is in session are not more onerous than those of the Sheriff of New York, who manages the jail there, or the Sheriffs of the other counties in this State, who are required to perform these duties. In regard to the alleged remarks of Mr. Ronan, we<sup>251</sup> doubt his having said anything of the kind, and, if he did, we would only say that laws looking to reform and [sic] economy in the administration of public affairs are generally framed with a view to the benefits to accrue to the people, and not to meet the wishes of those officials whose duty it is to administer them. In the second paragraph of his article, “Looker-on” displays an intuitive knowledge of the past history of the city, and the causes of “its present prosperity politically (?) and otherwise” that does him great credit, but the facts stated and the touching allusions so delicately made hardly furnish a fair argument for the continuation of any unnecessary taxation. The exquisite pathos of his appeal, the charming and graceful tribute to “that peculiar genius” so fragrant that its odor has been wafted far beyond the narrow limits of our little town, may gratify the heart, but should not influence the sober judgment of our law makers upon a measure of public economy conceived in prejudice to no one and advocated in justice to all. In conclusion, allow me, while drawing our friend’s attention to the error in his adopted signature, to publish the context in which it appears, that he may realize how inopportune his selection was:

“My business in this State Made me a looker on here in Vienna,  
Where I have seen corruption boil and bubble, Till it o’erun the stew;  
laws for all faults; But faults so countenanc’d that the strong statutes  
Stand like a forfeit in a barber’s shop, As much in mock as mark.”<sup>252</sup>

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<sup>251</sup> Note Reform’s use of “we” and “us” throughout his writings. It seems he speaks for the majority, which is probably why the consolidation bill eventually passed.

<sup>252</sup> *The Disposition of the Jail*, *supra* note 250. Reform attributes Looker-on’s signature to a line from a William Shakespeare play. See WILLIAM SHAKESPEARE, MEASURE FOR MEASURE act 5, sc. 1. But the Author is not convinced of the accuracy of Reform’s assignment. The literature quoted references Vienna, Austria, not Venice, Italy. The “Looker-on in Venice” signature was very popular in the Nineteenth century. It can be found as a pen name in numerous newspaper articles from the early 1800s until the late 1800s. The phrase even appears in Congressional debates from that era. The Author has not been able to find the origin of this phrase, but it no doubt indicates the writer presumes to be no

### 3. "A Looker-on in Venice"—August 12, 1881<sup>253</sup>

*Editor Morning News:* In your issue of the 9th appeared what was intended, I suppose, as an answer to a little squib from "Looker on in Venice," but which, unfortunately, failed of accomplishing anything whatever, if furnishing light to the public as to whether the jail should be taken from the city of Savannah and placed in the keeping of the Sheriff of Chatham county was its object. I confess to some feeling of disappointment that "Reform" does not give us a few *facts* upon which to base his claim to the change as being "a measure of public economy, conceived in prejudice to no one, and advocated in justice to all." As the lawyers would say, we would like to see some *authorities* upon this point. If "Reform" will furnish the public with *facts* and *figures* to sustain his position, then we will say let not only the "sober judgment of our law-makers be influenced," but let this community, also, be convinced and act accordingly. The case of the jail, in behalf of its present status is *prima facie*. The matter has been investigated by the Board of County Commissioners and the City Council of Savannah, and both have declared in favor of allowing matters to stand as they are. Would "Reform" make application *here* of the whole context in which my "adopted" and "inopportune" signature is to be found! It would be hard for him to find excuse for its application to the conduct of the jail. The issue, narrowed down, invalues the jail, nothing more, at least so far as I am concerned.

As to Mr. Ronan's wishes in this connection, I have to say that I do not know of my own knowledge what the views of that gentleman are. All I know of them is hearsay, and I so stated. I have never conversed with him on the subject. And I may here add that I have never spoken a word to Mr. Waring Russell, or even one of the name, on the subject. My conclusions have been formed from observations as an *outside* "Looker on," if not "in Venice"—since "Reform's" application of the "context" may, as a citizen, affect his digestion—at least in Savannah.

As such looker-on, I have found the Superior Court of Chatham county groaning under the weight of unfinished business—business that would take the Judge, the Clerk, the Sheriff and all his deputies years to work off, and leave no time for the latter in which to play the part of jailer.

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more than a mere bystander making lay observations looking in from the outside. The popularity of this phrase in the 1800s might also be attributed to Venice's political and economic decline at the time. Given that context, it is likely that a "Looker-on in Venice" represents a bystander making lay observations as they watch the world around them change for the worse (as is used in the literature Reform cites).

<sup>253</sup> *The Consolidation of Sheriff and Jailer*, SAVANNAH MORNING NEWS, Aug. 12, 1881.

I have found, on the other hand, that the jail is the poorest field for a *reformer* to direct his efforts to in the whole city perhaps. I have seen grand jury after grand jury, for years and years past, proclaiming in their general presentments a jail well kept and clean,<sup>[254]</sup> prisoners well cared for, and *never an escape*; I have heard rumors of political rings, so called, for the purpose of retaining hold upon office,<sup>[255]</sup> but always worked, so far as the Russells were concerned, in the interest of the Democratic party *first*, themselves *next*. I doubt if “Reform’s” reformation (?) would be any better. The danger is that while it might be abundantly “fragrant with odor”—the worse kind—it would be sadly lacking in Russell’s “peculiar genius.”<sup>[256]</sup>

This is all I have to say as a mere looker on. “Reform,” however, is a big sounding name, and it is possible that he may know things that I don’t. If he does, and will come out with his *facts* and air them in the light, I may see a reason to apply that context, which seems to have tickled him so much, to Waring Russell and the present management of the jail. But with the light before me I shall, without the context, subscribe myself “A Looker on in Venice.”<sup>257</sup>

#### 4. “Reform”—August 13, 1881<sup>258</sup>

*Editor Morning News*: Your correspondent in yesterday’s paper evidently desires what he terms “facts.” I will, therefore, endeavor briefly to satisfy his apparent craving for this species of material, and inasmuch as he seems to attach some importance to the action of the city and county authorities in favor of allowing matters to stand where they are, we think we can fairly call his attention to the reason of the city, “that the jail belongs to it,” in connection with the facts. The minutes of Council February 20th, 1845, show that the present site of the jail was donated to the county. The records of the Inferior Court in the court house confirm this, and show conclusively that the jail was erected by and belongs to the county. See records Superior Court 1841 to 1847. If any other fact is needed, the charter of the city furnishes it. We are not familiar with the reasons of the County Commissioners, but we presume that they are hardly based upon the fact that in 1878 the city fed the prisoners in the jail at *less than twelve cents a piece*

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<sup>254</sup> While it may be true that past grand jury presentments have not pointed concern at the jailer’s efforts, it is certainly inaccurate to view previous grand jury presentments as flattering to the condition of the jail itself.

<sup>255</sup> This is most likely a reference to Waring Russell’s election misconduct as seen in the text accompanying *infra* notes 270–76.

<sup>256</sup> It does not help Looker-on’s credibility in the Author’s opinion to be so overtly devoted to Waring Russell. Looker-on seems to share an allegiance, and perhaps chose the wrong pen name.

<sup>257</sup> *The Consolidation of Sheriff and Jailer*, *supra* note 253.

<sup>258</sup> *The Jail Question*, SAVANNAH MORNING NEWS, Aug. 13, 1881.

per day, and charged the county *fifty*. Mayor Wheaton, in his report for 1880, pages 14, and 15 calls attention to the fact that the convicts have been maintained by the county in the Cuyler swamp, “reducing the number of the prisoners at the jail about forty on an average, while the expenses for salaries, guards, fuel, etc., remain without change.” If “Looker On’s” appetite remains unsatisfied after he has digested these “facts,” we will kindly undertake to furnish him with a few more which we happen to have quite handy.<sup>259</sup>

**5. “A Looker-on in Venice”—August 17, 1881<sup>260</sup>**

*Editor Morning News:* Since “Reform’s” last article appeared in your paper, I have given some consideration to the jail matter, and have tried to look at it from an impartial standpoint. I have been informed that “Reform” states but the truth when he says that he has other “facts” in reserve with which to supply me in case they should be called for. Indeed, I have been shown a whole pamphlet of these so-called facts—a pamphlet entitled “Facts and Figures, in connection with Chatham County Jail, etc.,” fifty-two pages in length, gotten up with a view, it is said, of presenting an argument before the legislative committee having the matter of the jail bill in charge, to show the wonderful advantages to accrue to the county of Chatham from the contemplated change. What pains touching a matter of only a few thousand dollars!

But the question arises, who is to be benefited by this wonderful change! While all of us are citizens of Chatham county, it so happens that, for the most part, we are also citizens of Savannah. How are we to be benefited by taking money out of one pocket and putting it into another? Perhaps “Reform’s” ingenious mind may be able to enlighten us, and, if so, we would be extremely obliged to have him “let the cat out of the bag.” But is it not possible, nay, probable that the citizens of Chatham county, who happen to have their “little all” within the circumscribed limits of this town, may suffer by this patriotic measure? If property be returned to the county for taxation at one price, and assessed by the City Assessors at a higher price, it will be seen that what we put into our *county* pocket from the profits of the jail would not enable us to meet the increased draft upon our *city* pocket; and, as it must be remembered that all our Representatives in the Legislature, as well as those who are advocating this measure here, so far as I have been able to learn, are residents of the city of Savannah, the fact announced by “Reform” that “it cost less than

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<sup>259</sup> *Id.*

<sup>260</sup> *Proposed Consolidation of Sheriff and Jailer*, SAVANNAH MORNING NEWS, Aug. 17, 1881.

twelve cents per day to feed the jail prisoners, when the city charged the county fifty cents," cannot very materially affect them.

The quotation furnished by "Reform" from the Mayor's report for 1880 needs but a passing notice. The expenses for "salaries, guards, fuel, etc.," have remained unchanged, he says, notwithstanding the prisoners at the jail have been reduced to about forty on an average, in consequence of the county having maintained the convicts at Cuyler Swamp. I ask, is it possible that this should affect the expenses of ["salaries, guards, fuel, etc.," with an institution that must be kept organized for the accommodation of an uncertain number of occupants?

As to the title to the jail property, I can only say that that is a question in dispute between the county and city. I have no opinion to express on that subject; but how it is to be settled by a bill in the Legislature consolidating the offices of Sheriff and Jailer, "Reform" does not say, nor can I imagine.

I need only trouble the readers of the News with one more suggestion, and that is this: In all that has been written by the projectors of this consolidation measure not one word has been said as to the incompetency, mismanagement or dishonesty of Waring Russell as Jailer. It is advocated as a great patriotic measure to *lessen the load of over burdened tax payers*, and yet what is the argument, so full of significance, you hear upon the street! "Turn him out, kick him out." We ask, in Heaven's name, why!<sup>261</sup>

#### 6. "Reform"—August 18, 1881<sup>262</sup>

*Editor Morning News:* I had supposed that "Looker On" would have been ravenous for more "facts" by this time, but he has evidently restrained his appetite in this respect in order that he might give full play to his noble sympathy for us, while laboring under such distressing "pains, touching a matter of only a few thousand dollars." Doubtless, to "Looker On," "a few thousands," more or less, are an insignificant matter, but to the great mass of our people, who are less fortunate than he is, every dollar of their taxes represents so much of their labor, and should be expended only for value received. "Looker On" asks "how are we to be benefited by taking money out of one pocket and putting it into another?" We confess we cannot answer this question.<sup>[263]</sup> We had supposed this to be the argument of the city

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<sup>261</sup> *Id.*

<sup>262</sup> *The Jail Consolidation Bill*, SAVANNAH MORNING NEWS, Aug. 18, 1881.

<sup>263</sup> The city and the county are two separate entities. If the county saves money through this measure then the benefit is to the county and, ultimately, its citizens. The county had

fathers, to wit: that the city make money out of the jail by overcharging the county; and yet these assertions are made in the face of the fact that with all its extravagant charges against the county the city treasury shows a clear deficit of forty thousand dollars in the last ten years.<sup>[264]</sup> My friend needs some more facts here. The money is not taken out of one pocket to be put in the other, but it is taken out of *both* pockets to be returned to *neither*.

In regard to his “passing notice” of the matter alluded to in the Mayor’s report for 1880, I would only ask “Looker On” to state whether if his vast business should by any untoward event shrink to half its present proportions, whether he would maintain the same expensive establishment or make a relative reduction in his disbursements? As to the title, he says he has no opinion to express. He should not dodge the issue thus. The public are looking to him for information, and he should not hesitate to say where the record shows the title to be. Concluding, he alludes to the jailer, his competency, etc., and the remarks made upon the street. *These are not the issues*. The personal qualifications of no man can have any bearing upon a system which it is sought to change in the interest of economy. Anything which touches *this question* is legitimate matter for the public to consider. Nothing else can or should concern them.<sup>265</sup>

#### 7. “A Looker-on in Venice”—August 19, 1881<sup>266</sup>

*Editor Morning News*: I do not wish to tire your readers with a correspondence which has already reached a length far beyond my intention or expectation at the first, and will, therefore, end this one, so far as I am concerned, with the remark that, as “Reform” has doubtless had quite as good, if not a better, opportunity than I have for ascertaining under what particular *set* of “city fathers” that “deficit” occurred, which he claims “the City Treasury shows in the last ten years,” I refrain from offering any suggestions or remarks touching that portion of his last communication, except to say that if his statement be true, the *City Treasury*, rather than the city *jail*, needs the attention of a reformer.

I would again venture to remark that if the object of consolidating the offices of Sheriff and Jailer be to punish the city of Savannah for the mismanagement of its treasury, it is possible that, in a few years, it will be sought to chastise the county of Chatham by putting the jail

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its own expenses, such as paying for a drainage project to help reduce the spread of yellow fever, as seen in the text accompanying *infra* notes 278–83.

<sup>264</sup> See text accompanying *supra* note 204 for a recap on the city treasury’s taxation struggles in the 1870s.

<sup>265</sup> *The Jail Consolidation Bill*, *supra* note 262.

<sup>266</sup> *The Jail Consolidation Bill*, SAVANNAH MORNING NEWS, Aug. 19, 1881.

back into the hands of the city for the same reason, the wisdom of which proceeding, to most minds, must be extremely refreshing to contemplate.

But should the wonderful change be made it will be quite interesting to all of us to see this matter of “forty thousand dollars,” or any other “deficit,” kept straight by the bobbing up and down of the “expenses of salaries, guards, fuel, etc.,” to meet the daily changes in the number of guests at this county hotel. It is a consolation to have that much to look forward to.

And if the thing works well in every way; if we find the flag of Chatham county a better one to sail under than the flag of Savannah; if we find the county of Chatham all right, and the city of Savannah a fraud; if we find the people of Savannah to be of one kind, and the people of Chatham county to be of another and a better kind, then I say not only the jail, but let us move the whole infernal city over into the county of Chatham, and place ourselves under her kind protecting wing. Adieu.<sup>267</sup>

This exchange is both highly informative and highly entertaining. Looker-on argues control of the jail should remain with the city of Savannah and Reform argues for a change. Ultimately, the legislature would take Reform’s position. But before this Article turns to this looming change, the reader should know about two things: (1) what may have led to the public’s distrust of Waring Russell and (2) what was the Cuyler Swamp project?

First, the reader will notice Waring Russell was thought to be a central reason for wanting to consolidate the offices of sheriff and jailer. Recall Waring Russell’s prior removal from office (and eventual reinstatement) for challenging a local judge to a duel in 1859. Also recall his feud with Mr. Sims, the editor of a local newspaper, for publishing inaccurate information. Mr. Russell was not afraid of an altercation. And perhaps that rubbed some people the wrong way. But if it is true that the desire for consolidation was the result of the community’s lack of faith in Waring Russell, it is probably due to the events leading up to the local election of 1881.

A December 7, 1880 newspaper article presents testimony given by the clerk of council during an examination by a special committee of council regarding matters connected to the registration of voters in the impending local election.<sup>268</sup> The end result of the questioning was the

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<sup>267</sup> *Id.*

<sup>268</sup> *City Government: Official Proceedings of Council*, SAVANNAH MORNING NEWS, Dec. 7, 1880.

committee's recommendation of a change in existing election law.<sup>269</sup> It seems Waring Russell held an unofficial meeting between various city officers at the jail for the purpose of ensuring the election of a mayor and aldermen who would further his own interests (being re-elected as jailer).<sup>270</sup>

An article<sup>271</sup> published on December 11, 1880, gives a better description of the meeting called by Waring Russell at the jail. The article contains several affidavits discussing unscrupulous conduct by Waring Russell. What follows are excerpts from these published affidavits.

That the said Waring Russell stated to the said meeting that its object was to raise money for the expenses of the coming city election (which said election is to take place in January [1881]), and particularly to buy registration tickets; that his intention was to see to it that a Board of Aldermen was elected favorable to the re-election of the city officers then in office; and to this end it was important that they control through him—the said Waring Russell a sufficient number of registration tickets.

. . . .

. . . Deponent says that the said Waring Russell continued to state in substance and effect that he had concluded to assess the city officers four per cent. of a year's salary as earnings for these expenses; that this assessment had to be paid or the officers refusing must expect to lose their heads.<sup>272</sup>

Other affidavits from city officials in attendance at the meeting affirmed the above statement. Still others had additional remarks. One affiant stated that when he informed Waring Russell he could not afford to pay four percent of his salary, Mr. Russell told him to borrow the money "or make way for somebody that could [afford it]."<sup>273</sup> When one affiant told Mr. Russell that he was not opposed to the democratic nominee, Mr. Russell stated that "he did not care a d-n for the nomination of the party, that Jack Wheaton would be the next Mayor."<sup>274</sup> Another affiant said he heard Waring Russell say that "no one could be elected Mayor of Savannah unless he, Waring Russell, said so."<sup>275</sup> Still another

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<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *The Registration Injunction: The Affidavits of City Officers and Citizens*, SAVANNAH MORNING NEWS, December 11, 1880.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

affiant, a former clerk in the office of clerk of council who was in charge of the voter registration books, stated in his affidavit as follows:

[A] large number of registry tickets (to the best of deponent's knowledge and belief not less than nine hundred) was [sic] issued to parties who brought with them a due bill or memorandum signed W. R. (meaning Waring Russell) in lieu of the cash. That this was done by direction of the City Treasurer and by the Clerk of Council, deponent being a clerk in the office. Deponent says that it was understood in the said office that the tickets given to parties bringing the said memoranda or due bills signed W. R. were controlled and voted by the said Waring Russell.

Deponent says that to the best of his knowledge and belief, a large portion of the money due the city for the registration of the said nine hundred voters has never been paid into the City Treasury, but about such payment deponent can not be positive[.]<sup>276</sup>

That said, perhaps this is why the public wanted Waring Russell out of office. And yes, John (Jack) Wheaton won the mayoral election in 1881 and Waring Russell remained jailer.<sup>277</sup> It seems Mr. Russell's tenure as jailer could also be attributed to his knack for behaving like a politician. Could it also be that the sheriff's and the county's rejection of the proposed jail consolidation bill was the result of political influence or fear of negative political consequences should they upset the aptly named Waring Russell?

Next, the discussion between Looker-on and Reform includes references to the Cuyler Swamp project, which many believed should have resulted in a savings in the operation of the jail because of the number of prisoners diverted from the prison to the chain gang. A further look at the Cuyler Swamp project reveals the struggles facing Chatham County at the time, and a potential incentive for having ownership of the jail. According to a local newspaper article,<sup>278</sup> the first portion of the Cuyler Swamp project was completed in 1885. The article stated,

The work of digging the Cuyler swamp canal is completed. The lowlands around the Catholic Cemetery have been thoroughly ditched and drained, and a number of old drains and ditches north of the cemetery have been opened. The chain-gang will be now put to work in digging lateral canals or ditches so as to carry off the water from the

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<sup>276</sup> *Id.*

<sup>277</sup> *The Municipal Election*, SAVANNAH MORNING NEWS, Jan. 20, 1881.

<sup>278</sup> *Improving the Lowland: Developing New and Fertile Fields*, SAVANNAH MORNING NEWS, Mar. 31, 1885.

lowlands and swamps adjacent to the canal, and also in securing the banks of the main work.<sup>279</sup>

The newspaper article indicated there were 126 convicts working on the chain gang in 1885 (many more than the forty prisoners on average mentioned in Reform's 1881 letter).<sup>280</sup>

The Cuyler Swamp project was the result of an 1877 Act entitled "An Act to Provide for the Drainage of Chatham County."<sup>281</sup> The Act stated,

Whereas, The city of Savannah has recently been visited by an epidemic of yellow fever, that has not only resulted in a great loss of life, but has materially damaged the business interests of said city, and decreased the value of the taxable property therein; and whereas, in order to protect this State from liability to similar epidemics, it is necessary that a thorough system of drainage for said county of Chatham be provided[.]<sup>282</sup>

It also appears Cuyler Swamp was the key to draining the entirety of Chatham County because of its location. A report stated that

[t]he obstacle to [Chatham County's] complete drainage lies in the Cuyler swamp. The Commissioners have recently directed their active attention to the drainage of the latter, as the fundamental basis of the drainage and reclamation not only of all the Teynac swamp, but of the whole district lying southeast of, and in the path of the prevailing summer and early autumn winds toward the city.

The drainage of Cuyler swamp will involve an appropriate canal, sufficient in capacity to receive and carry off the water shed from about five thousand acres of land.<sup>283</sup>

The Act also required the tax collector of Chatham County to pay one third of Chatham County's state tax of 1877 for the purpose of draining the county.<sup>284</sup> The one-third tax amounted to \$27,633.73.<sup>285</sup> Of those funds, \$75.31 was paid towards the chain gang, revealing that there was another benefit to the chain gang aside from free labor—a source of

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<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> 1877 Ga. Laws 308.

<sup>282</sup> *Id.*

<sup>283</sup> *The Drainage of Chatham County: The Report of the Commissioners to the Governor—An Interesting Document*, SAVANNAH MORNING NEWS, July 17, 1879.

<sup>284</sup> 1877 Ga. Laws 308 § 1.

<sup>285</sup> *The Drainage of Chatham County*, *supra* note 283.

revenue (likely paid to the jail, and therefore, the city).<sup>286</sup> Seventy-five dollars might not seem like much, but this accounting comes from 1879. In 1881, according to Reform's letter, the jail only had forty prisoners on average working at Cuyler Swamp.<sup>287</sup> In 1885, as seen above, there were 126 members of the chain gang. If the jail received payment for the work of its prisoners on the chain gang, this would have been a steady source of revenue. Particularly since the idea of giving prisoners an occupation was suggested as early as 1848.<sup>288</sup>

Between Waring Russell's unsavory actions and the county's drainage project, there were needs and concerns that required addressing. And the opinions expressed by Looker-on and Reform would soon convince local representatives to act.

#### *N. A Time for Change*

On August 24, 1881, the mayor of Savannah wrote a letter to a local representative in the legislature expressing his disagreement with the representative's position on transferring control over the jail from the mayor and aldermen of Savannah to the sheriff and commissioners of Chatham County, stating, "I regret to differ with yourself and your colleagues as to the necessity or advisability of the proposed change. The claim that it will result in a saving to the county and city cannot, in my opinion, be sustained."<sup>289</sup>

There was obviously a prior exchange between the two, but the mayor's previous letter contains only remnants of ink too faded to read. Regardless, the above letter shows that, despite the mayor's objection, those in the legislature agreed with those who desired a change in the management of the Chatham County jail. Up to this point, shifts in control seemed to be at the whim of the city. That was no longer the case. One month later, an Act<sup>290</sup> was passed vesting control over the Chatham County jail in the sheriff of Chatham County and the county commissioners.<sup>291</sup>

The Act repealed all previous laws vesting control over the jail in the mayor and aldermen of Savannah and any law giving the mayor and aldermen authority to act on behalf of the jail, including the ability to

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<sup>286</sup> *Id.* Coincidentally, if its name is any indication of its owner, there was an alderman with the last name Cuyler who served on the jail committee in 1839, and William Cuyler served as the mayor of Savannah in 1836.

<sup>287</sup> See text accompanying *supra* notes 258–59.

<sup>288</sup> See text accompanying *supra* note 160.

<sup>289</sup> Letter from John Wheaton, Mayor of Savannah, to Representative in the Legislature (August 24, 1881), in *Mayor's Letter Book of Savannah, Georgia, 1880–1881*, at 270 (1881).

<sup>290</sup> 1881 Ga. Laws 393.

<sup>291</sup> *Id.*

regulate fees.<sup>292</sup> The Act also stated that, by virtue of his office, the sheriff would be the new jailer under the supervision of the county commissioners, and the Act set a salary for the jailer that was to take place of fees previously allowed by law, such as fees for dieting prisoners.<sup>293</sup> Recall that the fees for dieting prisoners was a point of contention for Reform and others because of the discrepancy between the actual price to feed prisoners (twelve cents a day) and the charged price to feed prisoners (fifty cents a day).

Two years later, an Act<sup>294</sup> was passed giving the commissioners of Chatham County the authority to issue bonds, stating as follows:

WHEREAS, the taxes levied for county purposes in the county of Chatham have been hitherto sufficient to pay the current expenses of said county and prevent the accumulation of any indebtedness, but unless imposed to an unreasonable or excessive amount will not be sufficient for the building of a jail, which buildings are imperatively needed; and whereas, the burden of erecting this public building can be equalized among the tax-payers by the issue of bonds: therefore

SECTION I. *Be it enacted by the General Assembly of the State of Georgia*, That the commissioners of Chatham county and *ex-officio* judges be, and they are hereby authorized and empowered to issue coupon bonds of the county of Chatham in the name of Chatham county, an amount not exceeding forty thousand dollars[.]<sup>295</sup>

The Act also required that, before the Act take effect, an election be held where voters cast a vote either in favor of bonds or against bonds.<sup>296</sup> A two-thirds vote was required.<sup>297</sup>

### *O. The New Jail*

The Act must have been approved by voters because four years later an invitation to the public for inspection of the “new jail” was published in the newspapers.<sup>298</sup> It must be mentioned, though, that an olive branch from the city helped the county fund the new jail. In 1883, the city council agreed to donate the land on which the old jail sat to the county so the county could sell that property to help pay for the new jail.<sup>299</sup> The city qualified the donation by setting a timeframe for the work on the new jail

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<sup>292</sup> *Id.* at 394–95.

<sup>293</sup> *Id.* at 395.

<sup>294</sup> 1883 Ga. Laws 671.

<sup>295</sup> *Id.* at 671.

<sup>296</sup> *Id.* at 673.

<sup>297</sup> *Id.*

<sup>298</sup> *The New Jail*, MORNING NEWS, Dec. 8, 1887.

<sup>299</sup> GAMBLE, *supra* note 67, at 416.

to begin.<sup>300</sup> On January 11, 1888, title for the old jail site was officially conferred to the county.<sup>301</sup> The city's donation was quite admirable given prior tensions related to control of the jail, although the county's outspoken disagreement with the jail consolidation bill surely earned it some favor in the city's eyes. Remember though, the county suggested the idea of the city donating land for the purpose of a new jail as early as 1859 at a city council meeting.<sup>302</sup> Perhaps, if the city had cooperated earlier, the new jail would have been built much sooner.

Despite widespread public want for a new jail, the jail's completion was received with little fanfare. A newspaper article<sup>303</sup> published on December 15, 1887, demonstrates this lack of enthusiasm, stating simply, "The new jail muddle was brought to a sudden ending yesterday," and, "This settles the jail matter as far as the building is in question."<sup>304</sup> The very next day, the contractor turned the new jail over and Sheriff Ronan took possession.<sup>305</sup>

In summary, a jail was built in Savannah in 1801 with mostly city funds.<sup>306</sup> A new jail was erected in 1846.<sup>307</sup> A mere two years later, a grand jury presentment referred to that new jail as a "living grave."<sup>308</sup> In 1854, the first mention of the need for another new jail was seen in a city ordinance,<sup>309</sup> and thirty-three years later, that new jail was finally completed. The transitions in control and management over the Chatham County jail were likely the result of politics and greed. Politicians made strategic moves to position themselves such that they could collect revenue as a result of their control of the jail. Yet tragedy also affected this story: two great fires, a civil war, a taxation issue, and an epidemic of yellow fever. The Eighteenth-century saga of the Chatham County jail, however, was complete by 1887. But poor jail conditions and controversy surrounding the jail's control made another appearance in the Twentieth century.

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<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> See text accompanying *supra* notes 180–81. In 1859, the county asked the city to donate a portion of land suitable for a new jail and to donate the lot on which the then-current jail sat. Here, the city donated just the lot on which the old jail sat.

<sup>303</sup> *The New Jail Accepted: The County Commissioners Ready to Take Possession*, MORNING NEWS, Dec. 15, 1887.

<sup>304</sup> *Id.*

<sup>305</sup> *The Sheriff in Possession*, MORNING NEWS, Dec. 16, 1887.

<sup>306</sup> See text accompanying *supra* notes 70–71.

<sup>307</sup> See text accompanying *supra* notes 152–54.

<sup>308</sup> See text accompanying *supra* notes 158–60.

<sup>309</sup> See text accompanying *supra* note 169.

## V. TWENTIETH CENTURY

The 1887 jail had a capacity of 300 inmates.<sup>310</sup> In 1978, the Chatham County jail was moved to a facility on Montgomery Street.<sup>311</sup> That facility held 381 inmates, but quickly outgrew its capacity.<sup>312</sup> Eventually, in 1988, the Chatham County Detention Center was opened to help alleviate overcrowding.<sup>313</sup> One year later, in 1989, overcrowding again became a concern, and in 1993 the Chatham County Sheriff's Complex was created and the detention center was tied in to make up the facility that stands today.<sup>314</sup> This rapidly growing inmate population set the stage for an all-too-familiar controversy.

In *Griffin v. Chatham County*,<sup>315</sup> the Supreme Court of Georgia referenced the storied past of the Chatham County jail.<sup>316</sup> The court stated, "We are informed that this is the oldest legal controversy in the history of this state."<sup>317</sup> The sheriff of Chatham County, Carl A. Griffin,<sup>318</sup> refused to accept all of the city prisoners sent to the Chatham County jail despite the existence of a contract between the city and the county entered into in July of 1976 in which the county agreed to house, maintain, and confine all city prisoners at the county jail. The sheriff argued that he had "no duty and had insufficient personnel to confine city prisoners."<sup>319</sup> Because of the sheriff's refusal, the county filed a petition for a writ of mandamus to enforce the contract. The trial court granted the county's mandamus petition and the sheriff appealed. On appeal, the sheriff argued there was no statutory authority that required him to accept the city prisoners and the county commissioners could not require him to do so.<sup>320</sup>

With little reasoning in the opinion, the Georgia Supreme Court held it was not error for the trial court to issue the writ of mandamus.<sup>321</sup> The

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<sup>310</sup> *Our History*, CHATHAM COUNTY SHERIFF'S OFF., <http://www.chathamsheriff.org/Home/Our-History> (last visited Oct. 24, 2019).

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> 244 Ga. 628, 261 S.E.2d 570 (1979).

<sup>316</sup> *Id.* at 628–29 & n.1, 261 S.E.2d at 571 & n.1.

<sup>317</sup> *Id.* at 628, 261 S.E.2d at 571.

<sup>318</sup> *Our History*, *supra* note 310. Carl A. Griffin served as sheriff for twenty-four years, from 1960–1984. *Id.* The only Sheriff to serve longer than that was John T. Ronan who served as sheriff for twenty-six years, from 1873–1899. *Id.* Sheriff Ronan was the same sheriff who took possession of the 1887 jail once construction was complete. *See* text accompanying *supra* note 305.

<sup>319</sup> *Griffin*, 244 Ga. at 629, 261 S.E.2d at 571.

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* at 630, 261 S.E.2d at 572.

court did, however, cite statutory law in footnotes that (1) empowered cities and counties to contract with each other for the use of their facilities or services, (2) designated sheriffs as jailers by virtue of their office, and (3) punished sheriffs who refused to accept prisoners.<sup>322</sup> The court also referenced in a footnote the 1881 Act that transferred control of the jail from the mayor and aldermen of the city of Savannah to the sheriff of Chatham County and the county commissioners, most likely to demonstrate that the county had authority to enter into contracts on the jail's behalf.<sup>323</sup>

There appears to have been a good reason why the sheriff refused to accept all city prisoners in the *Griffin* case. And the reason is explained in a case decided in 1990: *Mercer v. Mitchell*.<sup>324</sup> Remember that Chatham County and the city of Savannah entered into the previously mentioned contract to house prisoners in July of 1976. But two years prior to entering into that contract, the Chatham County jail was already under fire. As the Eleventh Circuit Court of Appeals noted in its opinion,

This case began in 1974, when a group of prisoners filed a section 1983 class action suit, *see* 42 U.S.C. § 1983 (1982), claiming that the Chatham County Jail was being operated in violation of the United States Constitution. According to the plaintiffs in that suit, the jail was extremely overcrowded, and the defendant (the County) essentially agreed. The county announced plans to build a new jail facility, and the litigation abated during construction of that facility.<sup>325</sup>

The plaintiffs in *Mercer* claimed the conditions of the jail were in violation of the Eighth Amendment<sup>326</sup> of the United States Constitution, which prohibits cruel and unusual punishment, and further claimed the conditions were “atrocious,” to which the defendants agreed.<sup>327</sup> When the new jail was complete in 1978, the inmates challenged the constitutionality of the conditions at the new jail too (remember, they were moved from a jail with a capacity of 300 to a jail with a capacity of 381—not that dramatic of a difference). The result was a district court order in November of 1981 placing “a temporary cap of 446 inmates on the jail and order[ing] county officials to reduce the jail population to a ‘manageable’ level.”<sup>328</sup>

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<sup>322</sup> *Id.* at 629–30 nn. 2, 3 & 9, 261 S.E.2d at 572 nn. 2, 3 & 9.

<sup>323</sup> *Id.* at 630 n.8, 261 S.E.2d at 572 n.8.

<sup>324</sup> 908 F.2d 763 (11th Cir. 1990).

<sup>325</sup> *Id.* at 765.

<sup>326</sup> U.S. CONST. amend. VIII.

<sup>327</sup> 908 F.2d at 784.

<sup>328</sup> *Id.* at 765.

Over the next two years, plaintiffs twice requested the court “to hold the County in contempt for failure to comply with the prior court orders on overcrowding.”<sup>329</sup> On each occasion, the court refused to hold the county in contempt, but did reduce the inmate cap from 446 to 381, with temporary exceptions for emergencies.<sup>330</sup> But eventually, in 1988, the court fined the county \$30,600 for violating the cap.<sup>331</sup> This decision was appealed and the Eleventh Circuit ultimately vacated the district court’s judgment, citing a lack of due process for failing to issue a show-cause order and failure to hold a hearing.<sup>332</sup>

The overcrowding that put the Chatham County jail back in the spotlight between the mid-1970s and early 1990s was likely the result of the War on Drugs, which included the Comprehensive Drug Abuse Prevention and Control Act of 1970<sup>333</sup> and the Anti-Drug Abuse Act of 1986,<sup>334</sup> both increasing the penalty for nonviolent drug offenses. The Twentieth century fix for poor jail conditions was quick though, when compared to the Nineteenth century ordeal. The Twenty-First century reappearance of this controversy, however, had nothing to do with jail conditions or overcrowding. Instead, it dealt with an excessive-use-of-force claim.

#### VI. TWENTY-FIRST CENTURY

The Chatham County Detention Center in Savannah, Georgia set the stage for an excessive force claim against Chatham County Sheriff John T. Wilcher when an inmate was found dead in his cell two hours after allegedly being placed in a restraint chair and repeatedly shocked with a taser. As is often the case, it was argued that the Eleventh Amendment barred suit against the sheriff in federal court because he was acting as an arm of the state and was therefore entitled to immunity.<sup>335</sup>

In response, the plaintiffs argued that “sheriffs in Chatham County are not entitled to the same protections as other Georgia sheriffs.”<sup>336</sup> The plaintiffs contended that the 1881 Act, which vested the management and care of the Chatham County jail in the county commissioners and sheriff of Chatham County, “[was] the key distinguishing factor that [made] Defendant Wilcher unlike any other sheriff running a jail in

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<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.* at 766.

<sup>332</sup> *Id.* at 766–67.

<sup>333</sup> Pub. L. No. 91-513, 84 Stat. 1236.

<sup>334</sup> Pub. L. No. 99-570, 100 Stat. 3207.

<sup>335</sup> *Ajibade v. Wilcher*, No. CV416-082, 2018 U.S. Dist. LEXIS 12386, at \*4 (S.D. Ga. Jan. 25, 2018).

<sup>336</sup> *Id.* at \*5.

Georgia when considering immunity.”<sup>337</sup> Thus, the plaintiffs argued, the Chatham County sheriff is a county actor, not a state actor.

After upholding the validity and effectiveness of the 1881 Act, the United States District Court for the Southern District of Georgia began its Eleventh Amendment and sovereign immunity analysis.<sup>338</sup> “The Eleventh Amendment provides immunity to the state and arms of the state from being sued in federal court without the state’s consent.”<sup>339</sup> If a plaintiff wishes to sue “the state or one of its agents,” the plaintiff must sue in the state’s own court.<sup>340</sup> In *Ajibade v. Wilcher*,<sup>341</sup> the question presented was “whether [Sheriff] Wilcher function[ed] as an arm of the state or [was] instead a local actor that [was] not entitled to the protections of the Eleventh Amendment.”<sup>342</sup> The court listed four factors for determining the nature of an entity’s status: “how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity.”<sup>343</sup> The court then stated, “In this case, the Court must consider these four factors in light of Defendant Wilcher’s role in setting the use-of-force policy at the Chatham County jail.”<sup>344</sup> Lastly, the court noted,

As an initial matter, all courts considering the four-factor test have found that sheriffs in Georgia typically function as arms of the state . . . . In this case, however, the Court must consider whether the [1881 Act] makes Defendant Wilcher’s position materially different from other sheriffs in Georgia.<sup>345</sup>

These factors will be discussed in turn.

#### A. How State Law Defines the Entity

The Georgia Supreme Court has held that sheriffs are “subject to the charge of the General Assembly and [are] not [employees] of the county commission.”<sup>346</sup> The court ultimately focused on the sheriff’s function relating to “setting the jail’s use-of-force policy,” holding that

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<sup>337</sup> *Id.* at \*7.

<sup>338</sup> *Id.* at \*6–13.

<sup>339</sup> *Id.* at \*13.

<sup>340</sup> *Id.*

<sup>341</sup> No. CV416-082, 2018 U.S. Dist. LEXIS 12386 (S.D. Ga. Jan. 25, 2018).

<sup>342</sup> *Id.* at \*13.

<sup>343</sup> *Id.* (citing *Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp.*, 208 F.3d 1308, 1311 (11th Cir. 2000)).

<sup>344</sup> *Id.* at \*14.

<sup>345</sup> *Id.* at \*14–15.

<sup>346</sup> *Id.* at \*15.

[e]ven if Chatham County has control over policies in the jail, this does not give the county control over the sheriff and his general use-of-force policy that applies both inside and outside of the jail. Because the [1881 Act] does not transfer the entirety of the sheriff's authority to the county, the Court [found] that Georgia law defines Defendant Wilcher as a state entity. Accordingly, this factor cuts in favor of finding that Defendant Wilcher functions as an arm of the state that is entitled to immunity under the Eleventh Amendment.<sup>347</sup>

#### *B. Where State Law Vests Control*

For this factor, the court looked to Georgia laws that give the state control over a sheriff's use-of-force policy, such as statutory requirements for specialized training relating to the use of force, and laws that give the governor of Georgia the authority to investigate and discipline sheriffs.<sup>348</sup>

But, the court noted, the 1881 Act granted Chatham County "considerable authority to 'make proper rules and regulations'" pertaining to its control over the jail.<sup>349</sup> The court ultimately held that the 1881 Act was "a unique grant of power to a local county over a sheriff in implementing a jail's use-of-force policy" and found that "this factor cuts in favor of finding that Defendant Wilcher [was] a local actor that is not entitled to immunity."<sup>350</sup>

#### *C. Where the Entity Derives its Funds*

Here, the court noted that all sheriff's offices derive funds from both the county and the state.<sup>351</sup> However, because Chatham County only provides financial assistance to the sheriff's office "pursuant to a state mandate, the Court [found] that this factor tips the balance in favor of finding that Defendant Wilcher acts as a state actor when setting the jail's use-of-force policy."<sup>352</sup>

#### *D. Liability for and Payment of Judgments*

Here, the court considered that any judgment in the case would likely be paid from the sheriff's own budget, which would ultimately implicate both county and state funds as the sheriff would then need to seek additional funding from both.<sup>353</sup> In what was another close consideration,

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<sup>347</sup> *Id.* at \*16.

<sup>348</sup> *Id.* at \*17 (citing O.C.G.A. §§ 15-16-3 and 15-16-26).

<sup>349</sup> *Id.* (quoting 1881 Ga. Laws 393).

<sup>350</sup> *Id.* at \*18.

<sup>351</sup> *Id.* at \*19.

<sup>352</sup> *Id.* at \*21.

<sup>353</sup> *Id.* at \*22–23.

the court held this factor did not weigh “in favor of finding that Defendant Wilcher [was] a state or county actor.”<sup>354</sup>

Subsequently, the court found the 1881 Act did “not change the typical analysis used to consider a sheriff’s status under the Eleventh Amendment in Georgia” and found the balance tipped slightly in favor of finding that Sheriff Wilcher did “function as an arm of the state when setting the use-of-force policy at the jail.”<sup>355</sup> Meaning, Sheriff Wilcher was entitled to immunity under the Eleventh Amendment and was granted partial summary judgment for that reason.

#### VII. CONCLUSION

The argument against immunity in *Ajibade v. Wilcher* was unique. But it was the unique history of the Chatham County jail that lent itself to such an argument, and counsel for the plaintiff used it to their advantage, albeit unsuccessfully. What started as a quick read of the *Ajibade* case sparked the Author’s curiosity about the 1881 Act, and subsequently its preceding legislation. After tracing the story back to 1760, this question remained: why did the city of Savannah feel so strongly about originally wanting, and then maintaining, control over the Chatham County jail?

That question has been answered. The city felt it deserved control over the jail because it emptied its own pockets to build the 1801 jail and the 1846 jail. This was not necessarily an act of kindness, as the city fully expected to be reimbursed by the county through taxes levied under the approval of the Georgia General Assembly. Curiously, the city wished to relieve itself from control over the jail in 1822. This was likely because the city’s expectations of being reimbursed by the county had grown tired and because the burden of maintaining the jail had grown heavy. The city expected the jail to be a source of revenue. It was not—at least not to the extent the city expected. When the 1822 Act was passed, which transferred control over the jail from the mayor and aldermen of Savannah to the inferior court and the sheriff of Chatham County, the city refused to deliver possession because the county still owed the city nearly fifty thousand dollars.

Eleven years later, the city again changed its mind and petitioned the General Assembly for management of the jail. There is no concrete explanation for this other than an 1825 Act which gave the city the power to levy taxes and collect fees in many different ways. Perhaps a few years of collecting these taxes and fees put the city in a position to once again take over control and management of the jail. Either way, the 1834 Act

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<sup>354</sup> *Id.* at \*23.

<sup>355</sup> *Id.*

stuck and was in place until 1881, when public outcry prevailed and the General Assembly consolidated the offices of sheriff and jailer and vested control and management of the jail with the sheriff and county commissioners. Soon thereafter, with the help of a generous donation of land by the city, a new jail was built that proved satisfactory for nearly 100 years before allegations of poor conditions and overcrowding resurfaced in the 1970s and 1990s.

The most recent addition to the list of grievances came in 2018 in the form of an excessive-use-of-force claim. In response to the sheriff's immunity argument, plaintiff's counsel drew from the Chatham County jail's storied past and presented an argument of first impression before the United States District Court for the Southern District of Georgia. The result was a finding that, despite the unique history of the Chatham County jail, which led to the 1881 Act, the sheriff of Chatham County was protected by the Eleventh Amendment.

In what is the oldest legal controversy in the State, this story of politics, greed, and tragedy unfolded over 258 years and across four centuries of Georgia history, casting a shadow longer than that of *Jarndyce and Jarndyce*<sup>356</sup> in what has proven to be one of Georgia's bleakest houses.

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<sup>356</sup> DICKENS, *supra* note 1.