

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 6: The Civil War and Reconstruction—Criminal Justice/Juries and Lawyers

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**Jackson v. Clark, 52 Ga. 53 (1874)**

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*Henry Jackson was indicted and tried for murder. During his trial, the prosecutor introduced the trial record of Martin, Jackson's alleged accomplice, who had previously been convicted of murder. After Jackson was convicted, Martin's conviction was reversed and he was found not guilty on retrial. Jackson then moved for a new trial on the ground that the evidence at his trial was tainted. Shortly thereafter, Jackson's appointed counsel withdrew that motion and abandoned his case. When new counsel attempted to renew the motion, the trial judge claimed that the claim had been voluntarily abandoned. Jackson appealed this decision to the Supreme Court of Georgia.*

*The Supreme Court of Georgia overturned Jackson's conviction. Chief Justice Warner ruled that Jackson had a state constitutional right to have appointed counsel pursue his claim that he had been convicted on the basis of tainted evidence. Jackson v. Clark may be the first case in which a court ruled that the right to counsel included the right to a certain quality of representation as well as representation per se. What is that quality of representation? How does Chief Justice Warner deduce a right to zealous representation from the constitutional right of representation?*

CHIEF JUSTICE WARNER

... When the constitution of the state declares that "every person charged with an offense against the laws shall have the privilege and benefit of counsel," it means that he shall have counsel who are able and willing to defend him, and protect his legal rights when put upon his trial for the offense with which he is charged. It was the duty of the counsel appointed by the court to defend this defendant, to have pressed his motion for a new trial before the court, and obtained the decision of the court thereon. If they had done so they might have obtained a new trial for him. In view of the general conduct of the profession in defending this class of our pauper population, without fee or reward, with the same zeal and ability as if amply compensated for their services, and which is so creditable to them, the abandonment of the defendant's motion for a new trial without obtaining the judgment of the court thereon, presents such an *extraordinary* case in the courts of this state as required the court below, when it overruled the defendant's motion for a new trial, to have signed and certified his bill of exceptions. The defendant may or may not be guilty of the offense with which he is charged, but if he is guilty he is entitled to a fair and impartial trial, and is entitled to the privilege and benefit of counsel who will see to it that he has such a trial, and if he shall be found guilty according to the laws of the land, then let him suffer the penalty thereof. ...

JUSTICE TRIPPE concurring

Where counsel have been appointed by the court to represent a defendant in a criminal case, and after conviction a motion is regularly made for a new trial and submitted to the judge, founded on grounds of grave and serious importance, and whilst the court is considering such motion, the same is withdrawn without the knowledge or consent of the defendant, such facts are sufficient to give a right to the party ... to be heard. ...

The rule, in my opinion, should be, that when counsel thus appointed, propose to withdraw or abandon any legal proceeding of so grave importance to the defendant thus situated, a motion for a new trial containing grounds that at once arrest the attention of the judge, as in this case, the court should either require the counsel already appointed, to have the right of the defendant under the motion adjudicated or should appoint other counsel for that purpose. No person situated as this defendant, should, without his knowledge or consent. . . , be thus summarily deprived of his right to a motion for a new trial which has already been made, and which, as certified in substance by the judge, had challenged his grave and serious consideration. Whilst I could not approve of any ruling that would break down the barriers against negligence. . . , or weaken the provisions of the law requiring proper diligence from parties, I do not think such a rule as is now indicated would have that effect. It would give defendants, who are themselves helpless to secure such aid as they might, of their own volition, select for the defense of their legal rights, a full and fair opportunity of having all such rights legally passed upon, and at the same time leave ample and complete power in the courts so to have the law administered that justice need not be delayed in her demands.

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