

GEORGIA'S RULING

A Tale of De Soto's American Land Law



Livelihoods in Literature **- Number 1 -**

The Sustainable Livelihoods Approach uses the modern language of sociology and economics to understand how poor people live in the 21st Century. Livelihoods in Literature draws attention to the diversity of stories which describe how the poor lived in earlier times. The language is very different. So are the attitudes. Yet these stories still have a lot to teach about what it means to be poor. And, because they are stories, they often say more about what it feels like to be poor.

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O. Henry wrote *Georgia's Ruling* in 1900, while he was in gaol for embezzlement. He went on to become one of the greatest short story writers ever: "the American answer to Guy de Maupassant". Best known for his stories about New York, he also drew from his own adventurous early life: ranchhand, bank clerk, pharmacist, journalist and convict. From 1887, after the ranch and before the disastrous job in the bank, Henry spent three years as draftsman in the Texas General Land Office. *Georgia's Ruling* is based on that time.

Henry's concern was for ordinary people. Ranch hands or shop girls, con-men or cowboys, german immigrants or half-breed indians, they were all part of 'The Four Million': the ordinary new yorkers of his most famous book. He writes with the sentimentality of his era and most of the stories are comedies. Yet his description of the grinding work, tuberculosis and dishonesty that were the daily lot of the Four Million is as cold and unsentimental as can be. *Georgia's Ruling* has all of Henry's light, optimistic, and yet wholly truthful way with the hard realities of late 19th century America.

In *The Mystery of Capital*, Hernando De Soto describes a revolution in American property law: "*through occupancy, pre-emption, homesteading, miners' laws and so on, Americans built a new concept of property, 'one that emphasized its dynamic aspects, associating it with economic growth ...'*" When O. Henry worked in the Texas General Land Office that revolution was largely complete.

Yet *Georgia's Ruling* describes how the struggle for land was far from over. In just 16 pages, the story brings land rights to life: How more accurate surveys created tenure "*vacancies*"; How new laws to promote development allowed Land-sharks to evict the farmers whose grandparents had settled on those vacancies; How inside knowledge of railroad plans told them which vacancies would make them rich. It describes how:

'Mr. Land-shark seldom showed his face on "locations" from which he should have to eject the unfortunate victims of a monstrously tangled land system, but let his emissaries do the work. There was lead in every cabin, moulded into balls for him; many of his brothers had enriched the grass with their blood.'

Above all the story tells how land laws, surveys and maps do not solve anything. It is the way they are applied that matters, and the good intentions of those who do it. It reminds us that land is not just another livelihoods asset; that land rights are not just about about property's dynamic association with economic growth: De Soto's *Mystery of Capital*. First and foremost, they are about justice and equity. Without that, the rest does not really matter.



GEORGIA'S RULING

IF you should chance to visit the General Land Office, step into the draughtsmen's room and ask to be shown the map of Salado County. A leisurely German—possibly old Kampffer himself—will bring it to you. It will be four feet square, on heavy drawing-cloth. The lettering and the figures will be beautifully clear and distinct. The title will be in splendid, undecipherable German text, ornamented with classic Teutonic designs very likely Ceres or Pomona leaning against the initial letters with cornucopias venting grapes and wieners. You must tell him that this is not the map you wish to see; that he will kindly bring you its official predecessor. He will then say, “Ach, so!” and bring out a map half the size of the first, dirty, old, tattered, and faded.

By looking carefully near its north-west corner you will presently come upon the worn contours of Chiquito River, and, maybe, if your eyes are good, discern the silent witness to this story.

The Commissioner of the Land Office was of the old style; his antique courtesy was too formal for his day. He dressed in fine black, and there was a suggestion of Roman drapery in his long coat-skirts. His collars were “undetached” (blame haberdashery for the word); his tie was a narrow, funereal strip, tied in the same knot as were his shoe-strings. His grey hair was a trifle too long behind, but he kept it smooth and orderly. His face was cleanshaven, like the old statesmen's. Most people thought it a stern face, but when its official expression was off, a few had seen altogether a different countenance. Especially tender and gentle it had



appeared to those who were about him during the last illness of his only child.

The Commissioner had been a widower for years, and his life, outside his official duties, had been so devoted to little Georgia that people spoke of it as a touching and admirable thing. He was a reserved man, and dignified almost to austerity, but the child had come below it all and rested upon his very heart, so that she scarcely missed the mother's love that had been taken away. There was a wonderful companionship between them, for she had many of his own ways, being thoughtful and serious beyond her years.

One day, while she was lying with the fever burning brightly in her cheeks, she said suddenly:

"Papa, I wish I could do something good for a whole lot of children!"

"What would you like to do, dear?" asked the Commissioner. "Give them a party?"

"Oh, I don't mean those kind. I mean poor children who haven't homes, and aren't loved and cared for as I am. I tell you what, papa?"

"What, my own child?"

"If I shouldn't get well, I'll leave them you not give you, but just lend you, for you must come to mamma and me when you die too. If you can find time, wouldn't you do something to help them, if I ask you, papa?"

"Hush, hush, dear, dear child," said the Commissioner, holding her hot little hand against his cheek; "you'll get well real soon, and you and I will see what we can do for them together."

But in whatsoever paths of benevolence, thus vaguely premeditated, the Commissioner might tread, he was not to



have the company of his beloved. That night the little frail body grew suddenly too tired to struggle further, and Georgia's exit was made from the great stage when she had scarcely begun to speak her little piece before the footlights. But there must be a stage manager who understands. She had given the cue to the one who was to speak after her.

A week after she was laid away, the Commissioner reappeared at the office, a little more courteous, a little paler and sterner, with the black frock-coat hanging a little more loosely from his tall figure.

His desk was piled with work that had accumulated during the four heartbreaking weeks of his absence. His chief clerk had done what he could, but there were questions of law, of fine judicial decisions to be made concerning the issue of patents, the marketing and leasing of school lands, the classification into grazing, agricultural, watered, and timbered, of new tracts to be opened to settlers.

The Commissioner went to work silently and obstinately, putting back his grief as far as possible, forcing his mind to attack the complicated and important business of his office. On the second day after his return he called the porter, pointed to a leather-covered chair that stood near his own, and ordered it removed to a lumber-room at the top of the building. In that chair Georgia would always sit when she came to the office for him of afternoons.

As time passed, the Commissioner seemed to grow more silent, solitary, and reserved. A new phase of mind developed in him. He could not endure the presence of a child. Often when a clattering youngster belonging to one of the clerks would come chattering into the big business—room adjoining his little apartment, the Commissioner would steal softly and close the door. He would always cross the street



to avoid meeting the schoolchildren when they came dancing along in happy groups upon the sidewalk, and his firm mouth would close into a mere line.

It was nearly three months after the rains had washed the last dead flower-petals from the mound above little Georgia when the “land-shark” firm of Hamlin and Avery filed papers upon what they considered the “fattest” vacancy of the year.

It should not be supposed that all who were termed “land-sharks” deserved the name. Many of them were reputable men of good business character. Some of them could walk into the most august councils of the state and say: “Gentlemen, we would like to have this, and that, and matters go thus.” But, next to a three years’ drought and the boll-worm, the Actual Settler hated the Land-shark. The Land-shark haunted the Land Office, where all the land records were kept and hunted “vacancies”—that is tracts of unappropriated public domain, generally invisible upon the official maps, but actually existing “upon the ground.” The law entitled anyone possessing certain state scrip to file by virtue of same upon any land not previously legally appropriated. Most of the scrip was now in the hands of the land-sharks. Thus, at the cost of a few hundred dollars, they often secured lands worth as many thousands. Naturally, the search for “vacancies” was lively.

But often—very often—the land they thus secured, though legally “unappropriated,” would be occupied by happy and contented settlers, who had laboured for years to build up their homes, only to discover that their titles were worthless, and to receive peremptory notice to quit. Thus came about the bitter and not unjustifiable hatred felt by the toiling settlers toward the shrewd and seldom merciful



speculators who so often turned them forth destitute and homeless from their fruitless labours. The history of the state teems with their antagonism. Mr. Land-shark seldom showed his face on “locations” from which he should have to eject the unfortunate victims of a monstrously tangled land system, but let his emissaries do the work. There was lead in every cabin, moulded into balls for him; many of his brothers had enriched the grass with their blood. The fault of it all lay far back.

When the state was young, she felt the need of attracting new-comers, and of rewarding those pioneers already within her borders. Year after year she issued land scrip—Headrights, Bounties, Veteran Donations, Confederates; and to railroads, irrigation companies, colonies, and tillers of the soil galore. All required of the grantee was that he or it should have the scrip properly surveyed upon the public domain by the county or district surveyor, and the land thus appropriated became the property of him or it, or his or its heirs and assigns, for ever.

In those days—and here is where the trouble began—the state’s domain was practically inexhaustible, and the old surveyors, with princely—yea even Western American—liberality, gave good measure and overflowing. Often the jovial man of metes and bounds would dispense altogether with the tripod and chain. Mounted on a pony that could cover something near a “vara” at a step, with a pocket compass to direct his course, he would trot out a survey by counting the beat of his pony’s hoofs, mark his corners, and write out his field notes with the complacency produced by an act of duty well performed. Sometimes—and who could blame the surveyor?—when the pony was “feeling his oats,” he might step a little way higher and farther, and in that



case the beneficiary of the scrip might get a thousand or two more acres in his survey than the scrip called for. But look at the boundless leagues the state had to spare! However, no one ever had to complain of the pony under-stepping. Nearly every old survey in the state contained an excess of land.

In later years, when the state became more populous, and land values increased, this careless work entailed incalculable trouble, endless litigation, a period of riotous land-grabbing, and no little bloodshed. The land-sharks voraciously attacked these excesses in the old surveys, and filed upon such portions with new scrip as unappropriated public domain. Wherever the identifications of the old tracts were vague, and the corners were not to be clearly established, the Land Office would recognize the newer locations as valid, and issue title to the locators. Here was the greatest hardship to be found. These old surveys, taken from the pick of the land, were already nearly all occupied by unsuspecting and peaceful settlers, and thus their titles were demolished, and the choice was placed before them either to buy their land over at a double price or to vacate it, with their families and personal belongings, immediately. Land locators sprang up by hundreds. The country was held up and searched for “vacancies” at the point of a compass. Hundreds of thousands of dollars’ worth of splendid acres were wrested from their innocent purchasers and holders. There began a vast hegira of evicted settlers in tattered wagons; going nowhere, cursing injustice, stunned, purposeless, homeless, hopeless. Their children began to look up to them for bread, and cry.

It was in consequence of these conditions. that Hamilton and Avery had filed upon a strip of land about a mile wide and three miles long, comprising about two thousand acres,



it being the excess over complement of the Elias Denny three-league survey on Chiquito River, in one of the middle-western counties. This two-thousand-acre body of land was asserted by them to be vacant land, and improperly considered a part of the Denny survey. They based this assertion and their claim upon the land upon the demonstrated facts that the beginning corner of the Denny survey was plainly identified; that its field notes called to run west 5,760 varas, and then called for Chiquito River; thence it ran south, with the meanders—and so on—and that the Chiquito River was, on the ground, fully a mile farther west from the point reached by course and distance. To sum up: there were two thousand acres of vacant land between the Denny survey proper and Chiquito River.

One sweltering day in July the Commissioner called for the papers in connection with this new location. They were brought, and heaped, a foot deep, upon his desk—field notes, statements, sketches, affidavits, connecting lines—documents of every description that shrewdness and money could call to the aid of Hamlin and Avery.

The firm was pressing the Commissioner to issue a patent upon their location. They possessed inside information concerning a new railroad that would probably pass somewhere near this land.

The General Land Office was very still while the Commissioner was delving into the heart of the mass of evidence. The pigeons could be heard on the roof of the old, castle-like building, cooing and fretting. The clerks were droning everywhere, scarcely pretending to earn their salaries. Each little sound echoed hollow and loud from the bare, stone-flagged floors, the plastered walls, and the iron-joisted ceiling. The impalpable, perpetual limestone dust, that



never settled, whitened a long streamer of sunlight that pierced the tattered window-awning.

It seemed that Hamlin and Avery had builded well. The Denny survey was carelessly made, even for a careless period. Its beginning corner was identical with that of a well-defined old Spanish grant, but its other calls were sinfully vague. The field notes contained no other object that survived—no tree, no natural object save Chiquito River, and it was a mile wrong there. According to precedent, the Office would be justified in giving it its complement by course and distance, and considering the remainder vacant instead of a mere excess.

The Actual Settler was besieging the office with wild protests *in re*. Having the nose of a pointer and the eye of a hawk for the land-shark, he had observed his myrmidons running the lines upon his ground. Making inquiries, he learned that the spoiler had attacked his home, and he left the plough in the furrow and took his pen in hand.

One of the protests the Commissioner read twice. It was from a woman, a widow, the granddaughter of Elias Denny himself. She told how her grandfather had sold most of the survey years before at a trivial price—land that was now a principality in extent and value. Her mother had also sold a part, and she herself had succeeded to this western portion, along Chiquito River. Much of it she had been forced to part with in order to live, and now she owned only about three hundred acres, on which she had her home. Her letter wound up rather pathetically:

“I’ve got eight children, the oldest fifteen years. I work all day and half the night to till what little land I can and keep us in clothes and books. I teach my children too. My neighbours is all poor and has big families. The drought



kills the crops every two or three years and then we has hard times to get enough to eat. There is ten families on this land what the land-sharks is trying to rob us of, and all of them got titles from me. I sold to them cheap, and they ain't paid out yet, but part of them is, and if their land should be took from them I would die. My grandfather was an honest man, and he helped to build up this state, and he taught his children to be honest, and how could I make it up to them who bought from me? Mr. Commissioner, if you let them land-sharks take the roof from over my children and the little from them as they has to live on, whoever again calls this state great or its government just will have a lie in their mouths."

The Commissioner laid this letter aside with a sigh. Many, many such letters he had received. He had never been hurt by them, nor had he ever felt that they appealed to him personally. He was but the state's servant, and must follow its laws. And yet, somehow, this reflection did not always eliminate a certain responsible feeling that hung upon him. Of all the state's officers he was supremest in his department, not even excepting the Governor. Broad, general land laws he followed, it was true, but he had a wide latitude in particular ramifications. Rather than law, what he followed was Rulings: Office Rulings and precedents. In the complicated and new questions that were being engendered by the state's development the Commissioner's ruling was rarely appealed from. Even the courts sustained it when its equity was apparent.

The Commissioner stepped to the door and spoke to a clerk in the other room—spoke as he always did, as if he were addressing a prince of the blood:



“Mr. Weldon, will you be kind enough to ask Mr. Ashe, the state school-land appraiser, to please come to my office as soon as convenient?”

Ashe came quickly from the big table where he was arranging his reports.

“Mr. Ashe,” said the Commissioner, “you worked along the Chiquito River, in Salado County, during your last trip, I believe. Do you remember anything of the Elias Denny three-league survey?”

“Yes, sir, I do,” the blunt, breezy surveyor answered. “I crossed it on my way to Block H, on the north side of it. The road runs with the Chiquito River, along the valley. The Denny survey fronts three miles on the Chiquito.”

“It is claimed,” continued the Commissioner, “that it fails to reach the river by as much as a mile.”

The appraiser shrugged his shoulder. He was by birth and instinct an Actual Settler, and the natural foe of the land-shark.

“It has always been considered to extend to the river,” he said dryly.

“But that is not the point I desired to discuss,” said the Commissioner. “What kind of country is this valley portion of (let us say, then) the Denny tract?”

The spirit of the Actual Settler beamed in Ashe’s face.

“Beautiful “ he said, with enthusiasm. “Valley as level as this floor, with just a little swell on, like the sea and rich as cream. Just enough brakes to shelter the cattle in winter. Black loamy soil for six feet, and then clay. Holds water. A dozen nice little houses on it, with windmills and gardens. People pretty poor, I guess—too far from market—but comfortable. Never saw so many kids in my life.”

“They raise flocks?” inquired the Commissioner.



“Ho, ho! I mean two-legged kids,” laughed the surveyor; “two-legged, and bare-legged, and tow-headed.”

“Children! oh, children!” mused the Commissioner, as though a new view had opened to him; “they raise children!”

“It’s a lonesome country, Commissioner,” said the surveyor. “Can you blame ‘em?”

“I suppose,” continued the Commissioner slowly, as one carefully pursues deductions from a new, stupendous theory, “not all of them are tow-headed. It would not be unreasonable, Mr. Ashe, I conjecture, to believe that a portion of them have brown, or even black, hair.”

“Brown and black, sure,” said Ashe; “also red.”

“No doubt,” said the Commissioner. “Well, I thank you for your courtesy in informing me, Mr. Ashe. I will not detain you any longer from your duties.”

Later, in the afternoon, came Hamlin and Avery, big, handsome, genial, sauntering men, clothed in white duck and low-cut shoes. They permeated the whole office with an aura of debonair prosperity. They passed among the clerks and left a wake of abbreviated given names and fat brown cigars.

These were the aristocracy of the land-sharks, who went in for big things. Full of serene confidence in themselves, there was no corporation, no syndicate, no railroad company or attorney general too big for them to tackle. The peculiar smoke of their rare, fat brown cigars was to be perceived in the sanctum of every department of state, in every committee-room of the Legislature, in every bank parlour and every private caucus-room in the state Capital. Always pleasant, never in a hurry, in seeming to possess unlimited leisure, people wondered when they gave their attention to the many



audacious enterprises in which they were known to be engaged.

By and by the two dropped carelessly into the Commissioner's room and reclined lazily in the big, leather upholstered arm-chairs. They drawled a good-natured complaint of the weather, and Hamlin told the Commissioner an excellent story he had amassed that morning from the Secretary of State.

But the Commissioner knew why they were there. He had half promised to render a decision that day upon their location.

The chief clerk now brought in a batch of duplicate certificates for the Commissioner to sign. As he traced his sprawling signature, "Hollis Summerfield, Comr. Genl. Land Office," on each one, the chief clerk stood, deftly removing them and applying the blotter.

"I notice," said the chief clerk, "you've been going through that Salado County location. Kampfer is making a new map of Salado, and I believe is platting in that section of the county now."

"I will see it," said the Commissioner. A few moments later he went to the draughtsmen's room.

As he entered he saw five or six of the draughtsmen grouped about Kampfer's desk, gargling away at each other in pectoral German, and gazing at something thereupon. At the Commissioner's approach they scattered to their several places. Kampfer, a wizened little German, with long, frizzled ringlets and a watery eye, began to stammer forth some sort of an apology, the Commissioner thought, for the congregation of his fellows about his desk.

"Never mind," said the Commissioner, "I wish to see the map you are making"; and passing around the old German,



seated himself upon the high draughtsman's stool. Kampfer continued to break English in trying to explain.

"Herr Gommissioner, I assure you blenty sat I haf not it bremeditated—sat it wass—sat it itself make. Look you! from se field notes wass it blatted—blease to observe se calls: South, 10 degrees west 1,050 varas; south, 10 degrees east 300 varas; south, 100; south, 9 west, 200; south, 40 degrees west 400—and so on Herr Gommissioner, nefer would I have—"

The Commissioner raised one white hand, silently. Kampfer dropped his pipe and fled.

With a hand at each side of his face, and his elbows resting upon the desk, the Commissioner sat staring at the map which was spread and fastened there—staring at the sweet and living profile of little Georgia drawn thereupon—at her face, pensive, delicate, and infantile, outlined in a perfect likeness.

When his mind at length came to inquire into the reason of it, he saw that it must have been, as Kampfer had said, unpremeditated. The old draughtsman had been platting in the Elias Denny survey, and Georgia's likeness, striking though it was, was formed by nothing more than the meanders of Chiquito River. Indeed, Kampfer's blotter, whereon his preliminary work was done, showed the laborious tracings of the calls and the countless pricks of the compasses. Then, over his faint pencilling, Kampfer had drawn in India ink with a full, firm pen the similitude of Chiquito River, and forth had blossomed mysteriously the dainty, pathetic profile of the child.

The Commissioner sat for half an hour with his face in his hands, gazing downward, and none dared approach him. Then he arose and walked out. In the business office he



paused long enough to ask that the Denny file be brought to his desk.

He found Hamlin and Avery still reclining in their chairs, apparently oblivious of business. They were lazily discussing summer opera, it being their habit—perhaps their pride also—to appear supernaturally indifferent whenever they stood with large interests imperilled. And they stood to win more on this stake than most people knew. They possessed inside information to the effect that a new railroad would, within a year, split this very Chiquito River valley and send land values ballooning all along its route. A dollar under thirty thousand profit on this location, if it should hold good, would be a loss to their expectations. So, while they chatted lightly and waited for the Commissioner to open the subject, there was a quick, sidelong sparkle in their eyes, evincing a desire to read their title clear to those fair acres on the Chiquito.

A clerk brought in the file. The Commissioner seated himself and wrote upon it in red ink. Then he rose to his feet and stood for a while looking straight out of the window. The Land Office capped the summit of a bold hill. The eyes of the Commissioner passed over the roofs of many houses set in a packing of deep green, the whole checkered by strips of blinding white streets. The horizon, where his gaze was focused, swelled to a fair wooded eminence flecked with faint dots of shining white. There was the cemetery, where lay many who were forgotten, and a few who had not lived in vain. And one lay there occupying very small space, whose childish heart had been large enough to desire, while near its last beats, good to others. The Commissioner's lips moved slightly as he whispered to himself: "It was her last will and testament, and I have neglected it so long!"



The big brown cigars of Hamlin and Avery were fireless, but they still gripped them between their teeth and waited, while they marvelled at the absent expression upon the Commissioner's face.

By and by he spoke suddenly and promptly.

"Gentlemen, I have just endorsed the Elias Denny survey for patenting. This office will not regard your location upon a part of it as legal." He paused a moment, and then, extending his hand as those dear old-time ones used to do in debate, he enunciated the spirit of that Ruling that subsequently drove the land-sharks to the wall, and placed the seal of peace and security over the doors of ten thousand homes.

"And furthermore," he continued, with a clear, soft light upon his face, "it may interest you to know that from this time on this office will consider that when a survey of land made by virtue of a certificate granted by this state to the men who wrested it from the wilderness and the savage—made in good faith, settled in good faith, and left in good faith to their children or innocent purchasers—when such a survey, although overrunning its complement, shall call for any natural object visible to the eye of man, to that object it shall hold, and be good and valid. And the children of this state shall lie down to sleep at night, and rumours of disturbers of title shall not disquiet them. For, concluded the Commissioner, "of such is the Kingdom of Heaven."

In the silence that followed, a laugh floated up from the patent-room below. The man who carried down the Denny file was exhibiting it among the clerks.

"Look here," he said delightedly, "the old man has forgotten his name; He's written 'Patent to original grantee,' and signed it 'Georgia Summerfield, Comr.' "



The speech of the Commissioner rebounded lightly from the impregnable Hamlin and Avery. They smiled, rose gracefully, spoke of the baseball team, and argued feelingly that quite a perceptible breeze had arisen from the east. They lit fresh fat brown cigars, and drifted courteously away. But later they made another tiger-spring for their quarry in the courts. But the courts, according to reports in the papers, “coolly roasted them” (a remarkable performance, suggestive of liquid-air didoes), and sustained the Commissioner’s Ruling.

And this Ruling itself grew to be a Precedent, and the Actual Settler framed it, and taught his children to spell from it, and there was sound sleep o’ nights from the pines to the sage-brush, and from the chaparral to the great brown river of the north.

But I think, and I am sure the Commissioner never thought otherwise, that whether Kampfer was a snuffy old instrument of destiny, or whether the meanders of the Chiquito accidentally platted themselves into that memorable sweet profile or not, that was brought about “something good for a whole lot of children,” and the result ought to be called “Georgia’s Ruling.”