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The Birth of the Court of Appeals of Georgia

By ARTHUR G. POWELL

SOME forty years ago there occurred in the State of Georgia a significant episode in the history of its judicial system—the creation of the Court of Appeals. Some of the details attendant upon the establishment of this court may be found in the yearbooks of the Georgia Bar Association; others, such as the constitutional amendment providing for the court, may be found in the official records; others, in the minutes of the court and in the first volume of the Georgia Appeals Reports; and a few others in the newspapers. But nowhere is there to be found any factual account of many of the incidents, some of them of lasting human interest, which attended the genesis of this now well-established branch of our judicial system. As I look around me I find no other living person to tell the story; no one who can say, "I myself saw and knew of these things." I find myself left, like St. John on Patmos Isle, as the only surviving eyewitness to the greater part of these incidents; and, as I blow upon the ashes of the past to kindle the sparks of recollection that are not yet burned out, I wish vainly that some one else had collected and preserved this history. The task seems, then, to be mine, even though, from some standpoints, others might have done it better.

If some parts of this article seem immodest or too personal, it must be remembered that to an old man the person who in the days gone by bore his name, wore his clothes, ate his food and played his part on the stage of life is no longer himself at all. The old man is not conscious of immodesty in speaking of his past self and of his past activities. All of that is alien. Unless the sole surviving eyewitness speaks in the first person his account of things loses, for historical purposes, much of the authenticity such a statement should convey.

My opportunities to know the facts of which I write were good. From 1901 to 1906, the period during which the Georgia Bar Association, in collaboration with members of the Supreme Court, was studying the topic of "the relief of the Supreme Court," I served on the committees. I was also a member of the "steering committee" of the

bar association to get the constitutional amendment creating the court through the General Assembly of 1906; I was active in the campaign to get the amendment ratified; and, having been elected a member of the court when it was created, I served as one of the judges for the first five years of the new court's existence.

"Relief of the Supreme Court" was not a new movement at the time I became connected with it. The Supreme Court of Georgia was created in 1845. Less than a decade thereafter that court in the case of Thornton *versus* Lane, 11 Ga. 459, decided July term, 1852, was inveighing against the "constitutional haste" with which it was compelled to decide cases, and saying that there was imposed upon its justices "an amount of labor, bodily and mental, without a parallel in any other tribunal in the world." At that time less than a hundred cases a year were coming before the court for decision.

~~The court was about fifty years old before its cry for relief eventuated in the adoption in 1896 of a constitutional amendment increasing the number of the justices from three to six.~~ At that time, nearly a thousand cases a year were coming up. The reorganized court was allowed to sit in two divisions—a very unsatisfactory solution because the word "Supreme" as applied to a court, connotes, or should connote, the final say-so as to the law, and in this sense, there cannot be what is in effect two Supreme Courts functioning at the same time, in the same jurisdiction, deciding the same points of law. On the other hand, experience has shown that unless a court sits in divisions, an increase in the number of judges decreases the efficiency of the court—three minds can agree more quickly and more decisively than six. In juridic matters, certainty is more requisite than mere abstract correctness.

The bar of Georgia has always been sympathetic to the cries of the courts for help; so, as early as 1901, when I joined the Georgia Bar Association, I found the question of relief of the Supreme Court being discussed among the lawyers, and at the next year's meeting there was considerable discussion of the subject from the floor. Mr. Justice Cobb of the Supreme Court was present. The President, seeing him, announced, "We are glad to have with us today that eminent and

1. The phrase "constitutional haste" was coined to express the notion that the provisions of the Constitution of Georgia, which required the Supreme Court to dispose of every case at the first or second term after the writ of error was filed in that court, did not give the justices time enough (usually from 8 to 12 months) to consider the cases fully.

beloved member of the Supreme Court, Mr. Justice Andrew J. Cobb, and we would be glad to have him give us his views."

Justice Cobb arose and began, "Mr. President, I am like a good old Baptist friend of mine who attended a prayer meeting. When he was asked to lead the meeting in prayer, he replied, 'Brother, that's just what I came here to do.'"

In the course of this discussion it was stated that the court was then deciding more than 700 cases per year, and that it would probably soon be deciding as many as 1200. Justice Cobb verified this, and suggested the appointment of a committee to consider the whole question and to make recommendations as to the form the relief should take. A large and distinguished committee was appointed.³

This committee held several sessions in the courtroom of the Supreme Court, in the Capitol. The court designated Mr. Justice Samuel Lumpkin to sit with us. We discussed at length many suggestions as to how the relief might be obtained. I recall that at one of those meetings Mr. Justice Lumpkin suggested a change in the rules by which the plaintiff in error would be allowed to assign as error and argue only a limited number of points, say two or three. In the juvenile overconfidence of a country youth from the piney woods, I took issue with him, saying that in my experience the points I thought the most of in my arguments had been usually put aside by the Court, and, when I won a case it had usually been won on a point I did not think much of but had thrown it in for good measure. With a loud burst of laughter, Mr. Justice Lumpkin replied, "He is right. I practiced law before I was a judge, and my experience was the same as his."

The committee with some slight changes of personnel was continued from year to year. By the time the Bar Association met in the summer of 1906, the consensus of the committeemen was that what we needed was another court, with three judges, to be called the Court of Appeals, and to be like the Supreme Court except that it was to deal with cases of less importance. It was not to be an intermediate court, but one giving final decisions, with no review except by the Supreme Court

2. From the state at large, Washington Dessau of Macon and J. Hansell Merrill of Thomasville; from the first district, Samuel B. Adams of Savannah; the second, Arthur G. Powell of Blakely; the third, Eugene A. Hawkins of Americus; the fourth, Thomas J. Chappell of Columbus; the fifth, Hoke Smith of Atlanta; the sixth, Marcus W. Beck of Jackson; the seventh, John W. Akin of Cartersville; the eighth, James B. Park of Greensboro; the ninth, William A. Charters of Gainesville; the tenth, William K. Miller of Augusta; the eleventh, John W. Bennett of Brunswick.

of the United States, and then only in cases involving the Federal Constitution.

When the Georgia Bar Association met in the summer of 1906, a bill had already been introduced in the General Assembly to propose a constitutional amendment creating the new court, and a new committee was constituted to assist in its passage.³

The Amendment as originally drawn provided for the appointment of the new judges by the Governor and, at a conference called by Governor Terrell and attended by representatives of the Georgia Bar Association and the Justices of the Supreme Court, the Governor had agreed to appoint Henry C. Peeples of Atlanta, Henry H. Perry of Gainesville, and Arthur G. Powell of Blakely. However, as finally passed by the General Assembly, it provided that the judges should be elected by the people at the congressional election in November, with their terms beginning January 1, 1907.

The "steering committee" of the Bar Association came to those of us whom the Governor agreed to name and asked us to let our names be used in the election. Mr. Peeples and Mr. Perry declined. I pleaded my political inexperience as a reason why I should not allow my name to be used; but when the committee promised me not only their active support but also the assistance of a committee, headed by Judge John S. Candler of Atlanta, to handle my campaign for me, I consented for my name to be used.

Following the enactment of the constitutional proposal in late July, though it could not go into effect until ratified by the people at the October general election, a host of would-be candidates for the judgeships began to announce themselves, more or less tentatively in some cases, as intending to be in the race if the amendment was ratified. At one time, the number of these prospects, according to informal counts, rose to twenty-six.

The summer of 1906 was a time of great political activity and excitement in Georgia. In the gubernatorial primary, Hoke Smith, Richard B. Russell, Clark Howell, and others were the candidates. At the pri-

3. The new committee consisted of Judge John L. Hopkins, who was a noted jurist and law writer of Atlanta; Judge Joseph R. Lamar of Augusta, who had in the year before resigned from the Supreme Court bench, and who a few years later became a Justice of the United States Supreme Court; Judge Samuel B. Adams of Savannah, who had a few years before been a member of the Supreme Court and who had universal recognition as one of the State's great lawyers; Judge Spencer R. Atkinson, who had had experience as a Judge of the Superior Courts of the Brunswick Circuit and as a Justice of the Supreme Court, and who then had a large law practice in Atlanta; and Arthur G. Powell of Blakely.

mary election, which was held on August 22, Hoke Smith swept the state, with the result that he took his place as a new giant in state politics.

Since about the first of August, I had been busy sending out "literature" and letters. My campaign headquarters were nominally in Blakely, but were for all practical purposes in the Candler Building in Atlanta. Judge Candler had procured for me as manager of my Atlanta offices Charles B. Shelton of Valdosta, then a law student at Columbia, now a prominent attorney of Atlanta. The real captain of my hosts was the deputy clerk of the Supreme Court, Logan Bleckley, son of the beloved Chief Justice Bleckley. All his political maneuvers were executed *sub rosa*, but no other man ever had as great a hold upon the bench and bar of Georgia as he did.

A few days after Hoke Smith's nomination, a bombshell fell into our camp. It affected not only my chances of being elected but also the chances of the amendment's being ratified. I had taken no interest in the gubernatorial race, though I had voted for Clark Howell because of a promise I had made to his mother long before the campaign opened. ~~The news came to us that Hoke Smith had announced to his friends that I must not be elected to one of the new judgeships, and that the judges would be nominated at the state convention.~~ Friends of mine from South Georgia, all of them active for Hoke Smith, swarmed to Atlanta and practically demanded of him that he keep his hands off, so far as my campaign was concerned, and he agreed to do so.

At first blush, it might seem that the obstacle was overcome. Practically it was not. The rumor had gone out, all over Georgia, that Hoke Smith was opposed to my election, and that was harmful. Besides, the State Convention in Macon was only a few days off, and there was a danger that if it undertook to nominate candidates for the judgeships, the amendment to create the new court would go before the people at the general election with three nominated candidates favoring its creation, and with the friends of more than twenty disappointed candidates indifferent to its ratification or actively opposing it.

Henry C. Peeples, Hoke Smith's law partner, was in Europe. He was a close friend of Logan Bleckley's and of mine. "Stung by the splendor of a sudden thought," Logan sent him a message by cable asking him to return at once, that he and I needed him. He took the next ship home, and arrived in Atlanta just before the State Convention met in Macon.

No man in Georgia was more eminently qualified for any judgeship than Henry Peeples, but no man more heartily eschewed politics than he did, and no man was more loyal to his friends than he was. When Logan mentioned to him what he had in mind, distasteful as it might have been to him, he did not demur; he merely said, "Go ahead." Logan had reserved a whole floor in one of the hotels in Macon. As the delegates began to arrive, they saw running all the way across the floor reserved for us in the hotel a streamer bearing the words, "Joint Headquarters of Henry C. Peeples and Arthur G. Powell, for Judgeships of the Court of Appeals." It was effective; the rumor that Hoke Smith was opposed to me was immediately squelched. Wasn't his beloved law partner campaigning jointly with me?

Following custom, the delegates from the respective congressional districts met in caucuses on the night before the convention assembled. The delegates from my district met early and voted that, ~~if nominations for the judgeship came before the convention, Judge W. N. Spence should cast the solid vote of all the delegates from that district for Henry Peeples and me,~~ and one other of our selection. In the ninth district, diagonally across the state, H. A. Dean of Gainesville, a great political leader, saw a chance to help his friend H. H. Perry and had his caucus to instruct him to cast the vote of that entire district for Peeples, Perry, and Powell. Before the night was over, informal consolidations showed that there were pledged to Peeples and Powell at least two-thirds of the entire vote.

Then, as Logan Bleckley had planned it all along, ~~Henry Peeples went to Hoke Smith and told him that the caucuses had demonstrated that he, I, and one other, probably Henry Perry, would be nominated if the convention undertook to nominate, but that if this action were taken, the constitutional amendment creating the court would almost surely fail of ratification. Upon that, Mr. Smith took the entire matter of these nominations off the agenda of the convention.~~

Thus the life of the Court of Appeals was saved before it was born. ~~The only action on the court taken by the convention was to refer to the new executive committee the question of a primary to nominate the judges. The executive committee called a primary for the nomination of the judges to be held on the same date as the general election.~~ Instead of calling it on a county-unit basis, under which primaries were generally called, the committee provided that the three candidates receiving the highest popular vote on a state-wide basis should be the nominees.

Sixteen candidates qualified: Thomas J. Chappell of Columbus, Fred Foster of Madison, Thomas F. Green of Athens, William R. Hammond of Atlanta, Frank Harwell of LaGrange, William M. Henry of Rome, Benjamin H. Hill of Atlanta, Charles C. Jones of Cedar-town, George S. Jones of Macon, Henry C. Peeples of Atlanta, Arthur G. Powell of Blakely, P. P. Proffit of Elberton, David M. Roberts of Eastman, Richard B. Russell of Winder, Howard Van Epps of Atlanta, and B. S. Willingham of Forsyth.

Judge Russell had not announced his own candidacy, but, at the last moment, just before the entries for the primary closed, his friend Walter Brown of Atlanta had paid the fee and entered his name. It was recognized from the start that he would probably be nominated for one of the places. He had served for several years as a judge of the superior court; he had just made a strong, but unsuccessful, campaign for the gubernatorial nomination; and, a short while before, he had come very near defeating Judge Thomas J. Simmons for the chief-justiceship of the state. Naturally, he was well and favorably known throughout the entire state, and he had active friends in every county.

On the basis of early returns, the press of the state announced as the probable nominees, Judge Russell, Arthur G. Powell, and Henry C. Peeples, in the order named. But on the final count, Benjamin H. Hill nosed Peeples out by a small margin. The amendment creating the court was strongly opposed in some sections, but it was ratified by a safe majority, and a few days later it was proclaimed by the Governor as adopted.

Soon after the election, the three judges-elect had an informal conference in Atlanta, and the other two delegated to me the task of presenting to the judges, when they should meet in January to qualify and organize the court, a tentative draft of the rules of court and other matters of that kind.

That Logan Bleckley would be the clerk of the court was assumed by the membership of the bar as a matter of course, but in November and December it developed that his election was in doubt. Logan's support was the most potent factor in my election; of course, I was for him. In December he called me to Atlanta and told me that Judge Hill felt obligated to vote for one of his friends as clerk and that Judge Russell had another man in mind. He had proposed to Judge Hill that, if Hill, released from his obligation to his friend, would vote with me

to elect Logan, I then would vote to make Judge Hill the Chief Judge.⁴ I went to see Judge Hill. He told me that he was anxious to be the first Chief Judge of the court, but did not wish to commit the indelicacy of voting for himself. I told him that I could avoid that embarrassment for him; that the constitutional amendment had made no provision for the selection of a Chief Judge. I reminded him that the same situation had confronted the Supreme Court when it was organized in 1845, and that an act had then been passed providing that the oldest justice in commission or (if there were more than one whose commissions were of the same date) the one who was oldest in point of years should be Chief Justice. I told him that in the present plans of organization I had been delegated to draw, I could with propriety embody such a provision, and that with his vote and mine it would be adopted, and that he would so automatically become the Chief Judge. Judge Hill was 57 years old; Judge Russell was 45, and I was 33; and our commissions would all be of equal date.

On January 1, 1907, the three new judges met in the Governor's office. In order that the six-year terms of office might be staggered, the Constitutional Amendment provided that at the beginning, there should be a two-year term, a four-year term, and a six-year term, and the judges-elect should draw for these by lot. Judge Russell drew the six-year term, I the four-year term, and Judge Hill the two-year term; and we were sworn in and commissioned accordingly.

The next day we met in the room adjoining the office of the Clerk of the Supreme Court to organize the Court. The draft I submitted for the organization of the Court was quite satisfactory until I got to the provision as to the Chief Judgeship. This provision read as follows:

It is ordered that the established order of precedence in this Court shall be the same as obtained in the Supreme Court prior to the creation of the separate office of Chief Justice of that Court, that is to say that the President or Chief Judge of the Court shall be the oldest Judge in commission, and as between two or more Judges whose terms of service with this Court begin on the same day, the oldest man shall, for the purposes of this rule, be regarded as the oldest in commission. In the absence of the Chief Judge, the next oldest shall preside.

4. It was necessary that a member of the Court should be designated by law or by the Court as Chief or Presiding Judge, to comply with the rules as to allowance of writs of error to the Supreme Court of the United States, and for some other reasons.

Reading of this precipitated an explosion. Judge Russell denounced it. He argued that age was merely accidental as applied to such an office, that superiority of judicial experience was the prime factor to be considered, and beyond that, he argued that the man with the lowest popular vote in the primary, which was the equivalent of election, should not be given preference over another with the highest vote. In all this and in other remarks he was most plausible, but Judge Hill and I outvoted him and adopted the age provision along with all the rest of the draft. We then adopted the draft of the Rules of Court which I had prepared, after advising with some members of the Supreme Court, especially Mr. Justice Andrew J. Cobb, and with the great assistance of Logan Bleckley.

Logan Bleckley was elected clerk by the vote of Judge Hill and me. When the election of a sheriff came up, Judge Russell proposed a friend of his from Northeast Georgia—an old ex-sheriff; Judge Hill proposed James H. Pitman, an Atlanta attorney; I stated that I did not know either of the gentlemen, but that many of my friends were urging me to vote for Peter Wesley Derrick, who then lived at Hampton and was only casually known to me. It turned out that Pitman and Derrick were both of them friends of both Judge Hill and Judge Russell. Judge Hill stated that Pitman was eager to be the first sheriff, but did not care to hold the place for more than a year. In the plan of organization, we had set the terms of the offices of clerk and sheriff at four years, but there was no reason why we could not make either of these terms begin on any day in the year we fixed upon. I suggested that we make the term of the sheriff begin on October 1, with an interim term for the first nine months between January 1, 1907, and October 1 of that year, and that we elect Pitman to the interim term and Derrick to the full term. We called in Pitman and Derrick and this plan was satisfactory to both of them; and it was so voted. We sent down the certificates of election to Governor Terrell, and he immediately swore in the newly elected officers, and handed them commissions for their respective terms. Neither Logan Bleckley nor "Wes" Derrick ever had opposition again; both were re-elected, from time to time as long as they lived. Both of them were ideal officers.

Derrick with his newly issued commission went from the Capitol stepping high. He had started to catch the afternoon train to his home in Hampton when a friend coming by in an automobile hailed him: "Where are you going?" "To Hampton," Derrick replied. "Get in and I will take you there; I am going to Griffin." This was forty years

ago when automobiles were novelties and were not the swift machines we are now accustomed to. Derrick and his friend were speeding along at about twenty-five miles an hour when they came to Hapeville, with a posted speed limit of fifteen miles an hour. Two policemen suddenly appeared, dragging across the roadway a long contraption like a saw-horse, completely blocking it. The automobile ground its brakes to an emergency stop. One policeman grabbed the driver by the collar; the other grabbed Derrick.

Derrick pulled from his overcoat pocket his newly issued commission, bearing the State's seal and the Governor's signature. "You can't arrest me," he said to the officer who had him by the collar, "I am the sheriff of the Court of Appeals of Georgia." With that he spread out before him the commission with all its size and glory and the ribbons on the seal floating in the breeze. This bluff did not work at all. The officer retorted, "I don't give a damn if you are the angel Gabriel; you can't speed through Hapeville, Georgia, and not get arrested."

~~Each of the Judges was entitled to a secretary.~~ In the Supreme Court each Justice selected his own secretary, but with us those "short-hand writers," as they were called in the Act providing for them, were to be appointed by the Court, not by the individual Judges. Judge Russell had selected as his secretary Miss Marian Bloodworth (afterwards Mrs. Ed Hill); a very charming and intelligent young woman. No objection to her personally could possibly be made. However, the Code of Georgia, at that time, provided that females were not entitled to hold any civil office or perform any civil functions. I raised the question of eligibility. Judge Hill, who was very much of a ladies' man, stated that though he thought I was right, he always gave the ladies the benefit of every doubt and was even willing to create doubts to give them the benefit of. So Miss Bloodworth was elected, with me dissenting.

This was not the only time the question of the privileges of the ladies came before the Court. Judge Russell, as Judge of the Superior Courts of the circuit in which Athens, the seat of the University of Georgia, is located, had admitted to the bar many of the graduates of the law school and was very popular with these young lawyers. One lazy spring afternoon, while we were hearing arguments, we had nearly finished the docket, and the only lawyer left in the courtroom was W. W. Larsen, who represented the defendant in error in the only remaining case. Larsen was one of Judge Russell's proteges. As he

arose for his argument, Judge Russell decided to see how he would stand under fire. Larsen was a brilliant young lawyer who later represented his district in Congress, but he had the appearance of being very timid. One of his friends described him as like one of those small perches colloquially called a "stumpknocker." It is the nature of that fish to dart out from under a log or from behind a stump, and going toward the bait, to take fright on his way and dart back, but always to persevere to success.

Larsen got up and, in his timid, hesitating way, said:

"I find after arriving here today that it is hardly necessary for me to argue this case. It involves a construction of an Act of 1904, and as I passed the clerk's office today, I saw the opinion just handed down by this Court in *Rome Grocery Company versus Dalton Grocery Company*; you have in that case construed the Act in accordance with my contention in this case."

"But," said Judge Russell teasingly from the bench, "that case was between two corporations, and I noticed from the sounding of the case that, while your client is a corporation, your opponent is a lady; and you know that two of the judges of this court," and he looked toward Judge Hill, "are on record as being quite partial to the ladies and as not applying to them the same rules as we do to corporations."

Under the log went Larsen, but in a moment he came back, speaking hesitatingly and as if he was frightened. "I think," he blurted out, "that when your Honors read the record in this case and see that the lady in it is a colored lady, you will not let your emotions get the better of your judgment." He won the case.

In the rules adopted by the new Court, certain significant changes were made from the practice then prevailing in the Supreme Court. One of the most important was the putting of cases on the numerical system of docketing. Cases in the Supreme Court were docketed according to judicial circuits, and the cases were called for argument in that order. Under the numerical system that we adopted, cases were consecutively numbered, as the records came in, and put upon the calendar for argument in numerical order. This worked so well that a few years later the Supreme Court adopted the same system.

As provided in the Constitutional Amendment, the Court held its first open session on Monday, January 7, 1907. It adopted rules, admitted a number of lawyers to its bar, and attended to a few matters of that kind. Then it adjourned until the next day to hear arguments in cases. We began with over 150 cases which had accumulated since

the Amendment was adopted, and new cases were coming every day. We were under the same "constitutional haste" the Justices of the Supreme Court were complaining of more than fifty years before.

Governor Terrell had arranged and equipped for us offices and a library and consultation room on what was then called the second floor, now called the third floor, of the Capitol on the west side of the building between the elevators and the State Library. Since he had not arranged for a courtroom for us, he temporarily designated the Senate Chamber for that purpose; and our first arguments were heard there. A short while later, an arrangement was made with the Supreme Court under which it would hold its sessions in its courtroom during the mornings only so that the Court of Appeals could hold sessions there during the afternoons. This is still in effect and, generally speaking, works satisfactorily.

On the Friday morning following the first arguments on Tuesday, those who had been accustomed to the long delays between argument and decisions, in cases in the Supreme Court, were surprised when the Court of Appeals handed down nine decisions and judgments. They were not mere memoranda decisions, but the judgments were accompanied by concise, clear-cut opinions, deciding the law and citing the authorities. Every day or so thereafter we handed down another batch. The new court was proceeding with dispatch; and it was well that we were, for that year we had to pass on about 800 cases. It was contemplated by those who shaped the amendment creating the court, and the division of jurisdiction between it and the Supreme Court, that the Supreme Court would thereafter catch about 60 per cent of the cases and the Court of Appeals would catch about 40 per cent, but the converse proved to be true.

I have never seen men confronted with a Herculean task undertake it with more determination than I saw exhibited by these three new judges. As the cases were argued or submitted, the sheriff would assign them to the judges in rotation, as though dealing cards from a pack. That did not mean that the particular judge to whom the case was assigned would alone decide it; all of the judges worked upon the record and outlined what the decision should be before the judge to whom the case was assigned wrote the opinion. During the five years I was on the court, I read the records and the briefs in every one of the whole four thousand or so cases I participated in.

It may be immodest for me to say it, and I say it merely in the capacity of one charged with the duty of stating facts, that the opinions of

the Court of Appeals in the early days of its existence have taken their place in the jurisprudence of this state as being among the soundest and the best ever given by any Georgia court whatever. They have stood the test of time. Judge Hill and Judge Russell were excellent lawyers, and I had an almost unlimited capacity for hard work. Of course, the lawyer who had lost his pet case exercised, as was his privilege and duty, his time-honored perquisite of "cursing the court for ten days" but, on the whole, the new court soon became very popular with the lawyers and the public.

The atmosphere of mutual suspicion and doubt among the members of the court which prevailed for the first few days was soon wholly dissipated and was supplanted by a most cordial spirit of friendship, fellowship, and reciprocal trust and respect. Let me set down this final word of testimony: In all the five years of my service on this bench, I never saw any judge show the slightest inclination to decide any case upon any consideration other than the law as he found it and honestly believed it to be.

Shingpoo, The Wild Man of Kiuzan

(An Adventure in the Picaresque Tradition)

By JOHN SPENCER

WHY I, Hop Lindel, go out of my way to expose myself to ridicule that time and set a new high mark for other laughingstocks to shoot at, I don't know. Up to then I'm no more than a semi-pro blockhead, just fooling around the edges, as it were, and with no thought of a change in my rating. Now, though, I court Folly herself and win to heights of stupidity hitherto unknown to man.

It starts like this. I'm putting up and tearing down Arnie Hill's Royal Pavilion circus—that's my trade—and I'm a bystander when a Texas sheriff, armed with legal papers, steps up and takes it away from Arnie. His creditors lose patience.

It's in a little town called Kertulla and is not a bolt from the blue. Paying customers and paydays have recessed lately and everybody on the show senses what's coming. It's a jolt, though. We're all about broke and how to get somewhere else without walking there is the main question when the bad news gets around.

That's how matters stand when I turn obtuse in a big way. Whitey Gray, the kid show talker, and I drop into a deadfall that sells tomato brandy by the volt to think it over. This Whitey's a dapper, fidgety, conceited little geester with a voice deep enough to drown out the bellowings of the bulls of Bashan. He poses as a gifted intellectual and takes himself so seriously he's funny. We sit down in the tonic store and face the facts. We both want to get to Cincy but don't know how, empty box cars being as scarce as amity and peace at a peace conference. We gaze into space for a time, trying to figure a way out, and then Whitey jumps as if he's been stuck with a pin.

"Hop!" he says, all excited, "I've got an idea that's a honey! We can get to Cincy and make some money on the way. We may be on the threshold of new careers!"

"Say on!" I tell him.

Well, his idea is a honey. In fatuity content it ranks along with that of the foreign person who sometime back conceives the notion of coupling onto a skyrocket and shooting himself to the moon. It's