

ed by the people without restricting them to the legal profession. Let the people select for themselves the best men to answer the purpose. Economy, efficiency and the general welfare would be looked to doubtless by the people in this particular.

Mr. BROWN. I am in favor of keeping up the present system of orphans' courts, with the single exception that I want the judges to be elected by the people of the county, and not appointed by the Governor, as they now are; and in a very few words I will give my reasons. I am in favor of three judges, taken from different sections of the county, so as to divide them out, as much as possible, among the people. In that case, some one of the judges must always have a personal knowledge of the condition of the estate. They know whether the orphan's property is being wasted or not, of their own knowledge, and they can convey this information to one another. Again, many of those having dealings with the orphans' court would be living a considerable distance from the court house, and as many of them would be women, they would be saved much trouble and fatigue in going back and forth, if they were personally acquainted with one of the judges. All questions of law with regard to wills, &c., will be carried to the county court. There are fewer appeals from the orphans' court than from the county courts, and what is still more remarkable, there are still fewer reversals. Why change a court that suits the people so well? The expense of going to the court house is to be added to the loss of time occasioned by the other system. If you have a single judge located at the court house, this trouble and expense of going to the court house will be great. I hope the Convention will see the propriety of retaining three judges, to be elected by the people. It will save them a great deal of labor, and the orphans' court will be as well administered as under any system that we can devise.

Mr. JOHNSON. I was one of those members upon this floor who formed the general plan and philosophy of the report of the Judiciary committee, and therefore I would have been in favor of transporting the orphans' court business to a judge in the vicinage. But as it is evident that the plan of separate judges will not be carried out, being against the sense of the Convention, I must now vote to retain the present orphans' court system; because, in districting the counties, it will be impossible for a judge to attend to the regular routine of the orphans' court business. I am therefore in favor of the present orphans' court system, excepting that, like the gentleman from Dorchester, (Mr. Hicks,) I wish the judges to be elected by the people.

Mr. TUCK. The gentleman from Dorchester (Mr. Hicks) has alluded to the fact that the orphans' court have no defined powers. True; but they have an immense volume of testamentary laws to search through, and from which to ascertain what those powers are. We know that time and again, when they have exercised powers under the impression that they were

within the express grant of power to them, the Court of Appeals has been called upon to say whether they had acted within their power or not. The Court of Appeals has given its judgments that in no case of any importance is their decision final. Cases have occurred within my own experience, where it was the impression of all that an estate had been finally settled, and could never again be heard, they have been called up and re-examined. In one case particularly, after the guardian himself had been dead twelve or fifteen years, and when all the witnesses were dead, or moved away, the minor came into court with his claim, and his claim was sustained. That would not have happened if there had been a lawyer upon the bench. I do not say that the judges neglected their duty; but I say that, for the most part, not being lawyers, they do not and cannot understand them. As members of society, I accord to them all respect for their intelligence and worth, but it is idle to tell me that the moment you make a man a judge, he becomes a lawyer competent to decide these questions of law.

I may be allowed to speak of my own county. I have tried questions of law before our own orphans' court, and after the matter has been solemnly argued by counsel on both sides before these three lawyers, the case has been postponed for further consideration. We all know very well that consideration is an application to a certain gentleman there, as to the law of the case to be decided by the judges. That lawyer had better be put upon the bench, for at last we are obliged to go to him for his decision of these points. I do not blame the judges for it. It is the necessary consequence of their own ignorance of the law. They are compelled to resort to the opinion of reliable legal men upon the subject. If you put a lawyer upon the bench, all the estates will pass through the hands of lawyers; and it is said that the executors and administrators will be compelled to appoint lawyers. Do they not do it now? There is scarcely an estate of any consequence in our country where a lawyer is not employed. Why do the people employ lawyers? It is not the want of confidence in the judges, taken from the classes to which they themselves belong—mechanics, farmers or merchants; but they know that those men are not lawyers, and they know, further, that their decision is not final, but only *prima facie*. They wish for a lawyer to see that every thing is correctly settled, so that it cannot be overturned. If you had a competent lawyer upon the bench there would be no necessity for this, and they would not do it. They would say, Why employ a lawyer when there is a lawyer upon the bench who has the whole before him? The judge could be elected so as to enable the people to confide in him. I know very well that gentlemen who come from the vicinity of the counties are better qualified, where they have nothing to do but to cast up a matter of account, to correct the addition and subtraction. But every body knows that there is a great deal more than that to do. Very often they decide upon cases of *devisavit vel nar*,