

all and singular the powers, authorities and jurisdiction of the said court; and from any final order, judgment or decree of the Register of Wills, there shall be a right of appeal, under such regulations as may be provided by law, to the judge of the orphans' court; and the said judge shall have the matter of said appeal *de novo*, and decide according to the equity and right of the matter. From any final order, judgment or decree of the said circuit judge, sitting as a judge of the orphans' court, there shall be a right of appeal to the court of appeals, as now or hereafter may be provided by law."

The PRESIDENT said that, under the 22d rule, as it had been amended, it was not in order to move a reconsideration a second time.

Mr. SPENCER. The first proposition is that in chancery testimony shall hereafter be taken *ora tenus*. The 2d is that the legislature shall make provision for the sale of estates by decree through the sheriff of the county. The third is that in all matters of set off or account in bar, the jury shall not stop half way, but shall consider the whole merits of the case. I understand that it has been objected to by certain gentlemen in this Convention, that these are matters which should be left to the legislature. It has been the great object of the reformers not to leave these matters to the legislature. When such matters have been presented to the legislature, it has been said that the legislature could not be trusted with them, and that they should be left for a Convention. They have been left for a long time to the legislature, but they have never remedied the evil. Now that we have a Convention, we are told that the Convention must not remedy the evil, but must leave it to the legislature. I leave the argument to go for what it is worth. I want to know if it is not one of the crying sins of this State that such an enormous expense is incident to its chancery business. Every commissioner must be paid \$4 per diem, and every clerk \$4 per diem; besides which, the Chancellor does not see the witnesses confronted with the parties. This I endeavor to remedy by my first proposition.

The next proposition looks to the breaking down of the enormous expense incident to sales by private trusteeships. I understand that it has been argued here that it will prevent men from appointing their own trustees. Any man can see at a glance that this is mere opposition. The proposition looks to nothing of the kind. It looks exclusively to cases where men have died without appointing trustees, whenever the interposition of the Chancellor becomes necessary to direct the sale of the estate. The effect will be, that it will not cost half as much to settle estates, in the first place; and in the next place, that lawyers will have the interests of their clients in view to prevent their estates from being sold where it is not necessary. Now the interest of the lawyer is to get a decree for the sale of the whole estate, when perhaps the sale of a small portion of it would be all that was necessary. If you adopt the proposition, where hundreds of acres have been sold heretofore, fifty acres will not be sold hereafter.

It is said also that a sheriff cannot give bonds. The Treasurer of the State gives bonds for all the finances of the State which come into his hands; and cannot the sheriff of a county who is fit for the duty, give bonds for the faithful performance of his duty as a sheriff?

The next proposition is, that in the trial of cases of set off and account in bar, men shall not be driven to cross action, and multiplication of suits, as is now the case. I cannot understand why, if a jury, as is now the law, can entertain a question of set off, or account in bar, they should not have the whole case before them, and render justice between the parties, according to the truth and merits of the case.

But besides, there are other great evils connected with this subject, which this remedy will correct. I will not enumerate them now.

The amendment was then read, as follows:

Sec. 11. No testimony on the equity side of the county courts, shall be taken under a commission, when it is within the reach of the process of said courts, but the same proceedings shall in all respects be had in taking testimony as is now had on the law side of said courts.

Mr. SPENCER demanded the yeas and nays, which were ordered, and being taken, resulted ayes 41, nays 26; as follows:

*Affirmative*—Messrs. Ricaud, Lee, Buchanan, Dickinson, Miller, McLane, Bowie, Sprigg, McCubbin, Spencer, George, Wright, McMaster, Hearn, Fooks, Jacobs, Johnson, Sappington, McHenry, Magraw, Nelson, Thawley, Stewart, of Baltimore city, Brent, of Baltimore city, Sherwood, of Baltimore city, Ware, Schley, Fiery, Michael Newcomer, Kilgour, Brewer, Waters, Anderson, Weber, Holliday, Slicer, Fitzpatrick, Smith, Parke, Cockey, and Brown—41.

*Negative*—Messrs. Chapman, Pres't, Morgan, Blakistone, Dent, Hopewell, Donaldson, Dorsey, Wells, Randall, Sellman, Lloyd, James U. Dennis, Crisfield, Williams, Hicks, Hodson, Goldsborough, Eccleston, Tuck, Thomas, Gaiter, Biser, Gwinn, John Newcomer, Harbine, and Davis—26.

So the amendment was adopted as the 11th section of the report.

The amendment offered by Mr. Spencer, as the 12th section of the report, was then read, as follows:

Sec. 12. Provision shall be made by the legislature to require the sheriffs of the respective counties in this State, to sell and dispose of all estates directed to be sold under all decrees passed on the equity side of the said courts, and to execute all and every process in the said courts, whether at law or equity, save and excepting the duties of auditor and clerk of said courts, for which no greater commission or percentage shall be allowed than is now allowed him for sales at law.

Mr. SAPPINGTON demanded the yeas and nays, which were ordered, and being taken, resulted ayes 16, noes 53; as follows:

*Affirmative*—Messrs. Chapman, Pres't, Lee, Hicks, Spencer, George, Wright, McMaster,