

our system, which so much required alteration and amendment. One prominent reason why complaint is not so loud upon this subject, as upon some others is, that the injuries felt are not occasioned, by those who are members of the court, at the time the loss is felt. The authors of the mischief have passed away and then escape censure. An erroneous proceeding of the Orphan's Court generally affects the interests of minors. It often does not become the subject of investigation in a court of law, until some ten to twenty years have elapsed, when these persons have become adult, and when frequently, the original debtors have died, or ceased to be responsible, leaving innocent sureties to pay the forfeit of a misplaced confidence in the accuracy and intelligence of the tribunal. Those whose conduct has produced the mischief are no longer before the community. They have been succeeded by others, who have now the same confidence which their predecessors in their day were supposed entitled to, though perhaps, some ten to twenty years hence, the same errors will be found to have been committed by them, and the same ruinous consequences found to result from them. It is said, that a smaller number of cases taken from the Orphan's Courts to the Court of Appeals have been reversed, in proportion to the whole number, than of cases taken from the law courts. I have never made an estimate or known one to be made. But it is easily accounted for, by a very slight attention to the mode of proceeding in two cases. In a court of law, exceptions are taken, at all stages of the trial, and on each particular point as it arises. In some cases there are twenty different points presented, upon the character of the pleas, the admissibility of evidence, and its effect; upon each of which, the Court of Appeals is to pass judgment. The court below, may have decided nineteen of these points correctly, and the Court of Appeals may affirm their decision on these nineteen questions; yet if they differ from the inferior court, in one single point, the judgment is reversed, and thus twenty of these cases would be charged, simply as reversed cases, and as such produced to prove the frequent errors of the law courts, when in fact, to consider the matter according to the truth of it these reversed cases alone would prove the court below to be right nineteen times in twenty. The courts of law are thus very unfairly dealt by, from the want of accurate information. Persons form their opinions merely from seeing, in the published proceedings of the Court of Appeals, that a judgment was reversed, and have no other idea but that it is owing to unmingled error in the inferior Court.

Now, in the Orphans court a totally different mode of proceeding is observed. A case is made by libel and answer, in which no technical preliminary is requisite, depositions are taken in writing, and a general judgment is rendered, and made the subject of appeal. It more resembles the case of a general verdict of the jury. If the general conclusion meets the approval of the Court of Appeals, they affirm the judgment, although that conclusion may be reached by a pro-

cess quite unlike that pursued by the Orphans Court, and whether reversed or affirmed, it is generally by a direct action upon the conclusions of the court, and not upon the particular items occurring in the progress of the cause. But it is worthy of the strictest notice, that it is not by direct appeals from the Orphans Court to the Court of Appeals, that these errors are detected and exposed. As I before stated, after the lapse of many years, and the change of persons who are responsible and liable, when minors have become adults, investigations are pursued. This is done by suits on testamentary bonds, administration bonds, and guardians' bonds, in the progress of which, the transactions of the Orphans Courts are brought into review, and errors detected which had escaped observation for many years, and the late discovery of which, frequently involves the sudden and unexpected ruin of estates of deceased sureties, and the consequent impoverishment of their children.

My plan is, to make the Register the Judge, in all the formal and less intricate or difficult matters, reserving such portion of the business of these courts as require high legal attainment for the action of the circuit judge. The register is, or ought to be, an intelligent man, and by exclusively devoting himself to the duties of his office, will soon acquire a competent knowledge of them to qualify him for all the current and ordinary business now acted upon by the court. The difficulty which seems to some gentlemen so very formidable, will by this means be avoided. There will be no necessity to employ a lawyer for matters of common occurrence. The register of wills is the same sort of man as the present judge of the Orphans Court, quite as acceptable and as little likely to create alarm amongst suitors.

Of course, according to the temper of the times, he is to be elected by the people, and being a people's man, any of the people having business to transact with him, can appear without the necessity of taking a member of the bar to aid them. It is to be expected, when a controversy exists, and the law judge has to act, there will generally be a propriety in employing counsel. But that is the case now, and will be under any system, so long as men continue to consult their personal and pecuniary interests, rather than gratify a very expensive prejudice. It will also be the least costly system we can adopt. It dispenses with the present judges of the Orphans Courts. The register of wills is an officer that does now, and must continue to exist, and your judge of the court of law is to have no additional compensation, so that the economy of the plan is obvious. If the Convention shall approve the scheme in its general features, it will of course be proper to provide in detail for the respective duties of the register and the judge.

The PRESIDENT was of the opinion that the amendment was not pertinent to the proposition under consideration.

Mr. CHAMBERS. I understand the proposition now is, that there shall be one judge of the Orphans court. I propose to say that that judge shall be the circuit judge for that district.