

properly come before the legislative department of the Government. The adoption of orders of this character will have the effect, although I would not object to it merely upon that ground, to increase the expense of printing the Journal; but there are other reasons why the entering of such orders, unless pertinent to the deliberations of this Convention, ought to be stopped. It seems to be an order relating not so much to the matters before the committees of this Convention as to the details of legislative action after we shall have formed a new Constitution. It is a question whether it is necessary to incorporate it in the Constitution we are about to form. I only throw out the suggestion that unless I can see a strong reason why it should go upon our Journal, I should object to it. If the policy is adopted of passing such orders and entering them upon the Journal, we shall have a Journal as large as the ordinary acts of Congress. I merely throw out the suggestion to the other side. I do not know from what source the order comes.

Mr. MARKEY. I offered that order, for the purpose, if possible, of correcting what I conceive to be an evil in our part of the State. In the event of a party dying, and leaving a will appointing an executor, if that executor should happen to die before he has settled up that estate, real or personal, the only way to dispose of the real estate is that the administrator upon his personal effects must go into the Chancery Court and obtain a decree to sell that property. I want, if possible, to give to the Orphans' Court the same power in relation to real estate that they possess under the law in the case of personal estate. I do not care what committee the order goes to, if it can be brought before some committee which will act upon it.

Mr. JONES of Somerset. It merely proposes to change the jurisdiction of a court and give it equity jurisdiction. It is merely the ordinary case of the failure of a trust, where the Court of Equity must appoint trustees. In the case referred to, the death of an executor, there is a failure of the execution of a trust, from the death of the executor before the sale; and it necessarily goes before the Court of Equity, as the ordinary and usual remedy. The proposition is that that jurisdiction be given to the Orphans' Court, which I presume is not the practice in this particular case. The Judiciary Committee have under consideration the distribution of the judicial power of the State among the several courts, and will no doubt report upon a system in which the equity powers may possibly be given to a judge of probate, or a county judge, and the object of the gentleman from Frederick (Mr. Markey) may be in that respect answered. It is only one instance, as I understand it, of the failure of a trust, which may occur under a deed just as well as under a will. Wherever the appointment of a trustee

fails, under our system, and there is no other authority, the Court of Equity has jurisdiction to supply it.

Mr. BRISCOE. My suggestion is whether that would not be a measure more directly coming under the legislative department of the Government. Would it not be perfectly competent for the Legislature to accomplish this when the courts are organized?

Mr. JONES of Somerset. Unquestionably.

Mr. BRISCOE. We are not here to perform legislative duty, in the strict acceptance of the term. Not being a member of the Judiciary Committee it may be impertinent in me to object to this. It is a question for the chairman of the Judiciary Committee to consider, whether that committee ought to be burdened with propositions of this character; and it is for the Convention to say whether our Journal shall be filled, day by day, with propositions like this, offered for the consideration of committees or of the Convention. I know that it is an ordinary courtesy and rule upon the part of committees, when an order is submitted to them, to make a report upon it of some kind or other, and I simply suggest whether we should burden them with orders of this kind.

Mr. JONES of Somerset. I think, upon the views entertained by the gentleman from Calvert (Mr. Briscoe) it is entirely unnecessary to cumber our Journal with orders of this character. It is a mere matter of legislative control. Yet in the organization of the Judiciary no doubt provision will be made for the proper distribution of the equity and common law jurisdiction of the courts.

Mr. SCHLEY. I think the reference is correct. The organization of the Orphans' Court will properly form a part of the article on the Judiciary. Perhaps it may encumber the Journal of Proceedings to introduce a multiplicity of orders from day to day; but all these orders are suggestive and I think that every committee will receive suggestions, from whatever source they emanate, gratefully and perhaps with advantage. This order has no doubt some legislative features in it; but still it involves a question of the powers and jurisdiction of the Orphans' Court, and may very properly be considered by the Committee on the Judiciary; and I am sure that committee, in so considering, will judge for themselves whether it be expedient to incorporate any legislative action in the Constitution or refer it to the legislative department. They may incorporate the principle, and I hope sincerely that they will. But I do not propose to discuss the merits of the proposition at all, but merely to state why I shall support the order of inquiry, that I think it comes properly before the Committee on the Judiciary.

Mr. BRISCOE. I do not raise any issue at all upon it, I merely threw out the suggestion that it was such an order as did not