of course I will admit what the lawyers say—I do not admit that it might not happen that the executor might have something to do with the real estate in a case where he acts as guardian for the heirs during the time he is executor or administrator.

Mr. MILLER. The executor does not act as guardian.

Mr. PUGH. Is not the executor the guardian of the heirs?

Mr. MILLER. No, sir; he administers the estate. The business of the executor is to realize as much out of the estate as possible.

Mr. PUGH. The executor during the time he is executor, and until a guardian is appointed and qualified acts in the capacity of executor and guardian.

Mr. STIRLING. Not at all. It is an ordinary principle of law that where a man dies his real estate goes to his heirs. And if his executor is appointed trustee of the real estate, then as trustee, but not as executor, he can go into a court of equity.

Mr. PUGH. I will admit, as I said before, that when an estate is complicated in this way there may be some difficulty about it. But in that case the parties interested in the estate can select the better jurisdiction. Now I claim, in order to avoid entailing upon the estate all the expenses which necessarily accrue from going into an equity court, that executors should have the right to settle up the real estate as well as the personal property of the parties whose estates they have control of. Much has been said here about getting rid of the lawyers. I do not intend to state that it is our object to get rid of lawyers where they are necessary. But where lawyers are altogether unnecessary, I claim that persons who are settling up the estates committed to their care, shall have the privilege of doing so without incurring the expense of lawyers, for the mere formalities which have been made necessary by the present system for the settling up of real estate in connection with the personal estate. That is all that has ever been claimed by those who are in favor of adopting this section as it stands; simply that those having charge of estates, shall have the choice of selecting the least expensive mode of settling up the estates committed to their care.

It is notorious that now no question at all can be raised in regard to real estate of a party deceased, without making it necessary to go into an equity court. And what is the result? First you make up a case for the circuit court—I do not know the legal terms, but I know the result. The first thing you know somebody is appointed trustee—I do not say he is always a lawyer, but that has always been my experience—who is not at all interested in the estate; having no interest whatever in it in any possible way. The result is the estate loses to that extent; the fees of the trustee are taken out; that slice is lost to these orphans, for the protection of whom the orphans' court was instituted. I know the practical result from my own experience; I have seen it worked out. And I know there is no possible way to avoid it under the present system, even when all the parties interested in the estate are united as to what is best to be done. The heirs, if they are old enough to know what is best, and everybody else interested in the estate, may come forward and say—"It is a perfectly plain matter, and we want it settled so and so." But that cannot now be done without going into an equity court, and in going into an equity court you must entail all these expenses upon the estate.

Mr. MILLER. If the heirs are of age they can settle it without going into court.

Mr. PUGH. I say if they are old enough to know for themselves what is best, and to come forward and say that they are willing to have the estate settled in this manner. There are plenty of heirs who are under age, and yet who are old enough to know very well it is better for them to submit to a certain settlement suggested to them, and to which they agree. It is to such heirs that I referred; to a case where all the parties interested in the estate are satisfied with a certain plan of settlement, and who if permitted could settle the whole matter in a quarter of an hour.

Mr. STIRLING. How can they do that without giving some notice to creditors? The heirs do not own the whole estate.

Mr. PUGH. I refer to cases where there are no creditors.

Mr. STIRLING. The court cannot take it for granted that there are no creditors.

Mr. PUGH. The orphans' court has knowledge of all the circumstances of the estate, and can give notice to the creditors, if there are any, to file their accounts.

Mr. THRUSTON. If the heirs are under age, can the orphans' court make a different settlement from a court of equity?

Mr. PUGH. I do not say that.

Mr. THRUSTON. Can it release the executor?

Mr. PUGH. I do not say that.

Mr. THRUSTON. Then what will it amount to?

Mr. PUGH. It will not amount to anything as the law now stands. But it will amount to something if the orphans' court had the power to do what we wish them to do.

Mr. THRUSTON. They will have no power to do so; they must do the same as now.

Mr. PUGH. As I stated in the outset, all I want in this matter is, if possible, to avoid expense to persons interested in an estate. I know that all the lawyers think differently about this matter, and favor the present system of filing a bill, having a trustee appointed, and that trustee one of the craft, who will come in and get his share of the estate.