If there is any way to avoid all that, I want it. I say that the executor, until a guardian is appointed, is in the capacity of executory guardian to the heirs.

Mr. RIDGELY. There is a way out of the difficulty, as I will state to my honorable friend from Cecil (Mr. Pugh,) and that is by making this court a court to be presided over by one who is competent to discharge the functions of that court.

Mr. PUGH. I was in favor of that.

Mr RIDGELY. There is no other way out of it. I am very sure that the course of argument taken by the gentleman from Cecil (Mr. Pugh) is sufficient of itself to satisfy this whole body of the utter impracticability of the provision made by the committee for a very different set of circumstances—would this convention for one moment entertain the proposition to give the criminal and civil jurisdiction of the State to the orphans' court? And yet that would be no more remarkable a proposition—not so remarkable a proposition as to give the equity jurisdiction of the State to the orphans' court. Because the equity jurisdiction of the State involves questions far more profound, difficult and complex than the criminal jurisdiction; questions arising out of real estate which are the most difficult questions that arise in the practice of law. We are now called upon to submit questions to laymen—I use that expression without meaning any reflection at all, merely to discriminate between those who are educated to the profession of law, and those who are not—we are called upon to submit questions of the most difficult and complicated character, arising out of the various interests in real estate, to a tribunal which is wholly uneducated to consider them; whose discipline and training of mind is in another direction entirely. The only effect of this would be to multiply appeals.

Now these courts, ever since their formation, have been considered mere statutory courts; courts created with very limited powers, and denied all constructive or inferential powers. Every possible restriction has been imposed upon them by the law, in view of the fact that they are law courts, and not constituted with a view to consider and determine questions of law or equity. I hope the convention will not think of engrafting upon the constitution a provision which would be so very prejudicial to all the interests of every one—not of lawyers, but of heirs, creditors, and everybody else interested in the administration of real estate. It is impossible to confer such a distinction without involving common interests in confusion and difficulty.

Mr. SANDS. I would just say, in addition to what has been said in regard to this matter by the gentleman from Baltimore county (Mr. Ridgely,) that if I wanted to promote the interests of lawyers as a class, I should certainly vote for this section as it stands here. Because then where I now go to the court of appeals once, I would go a dozen times.

Now my friend from Cecil (Mr. Pugh,) not being a lawyer, but being a man of high intelligence in other respects, has in the course of a few minutes demonstrated the wrong we would commit in permittting men ignorant in the law to decide questions of law. For instance, the question would come up before him, as judge of the orphans' court, whether by virtue of the office of executor or administrator a man was guardian to the minor heirs, notwithstanding the fact that there might be a guardian appointed by last will and testament. How would he decide that question? According to his view of the law as expressed here to-day, he would decide that he was such guardian by virtue of his office as executor. Yet the law is plain, as it stands in article 93, section 151 of the code, that that was not the legal view of the case. How would that affect me as a lawyer? In addition to my fees in the orphans' court, I would make my fees here, for I would at once bring the case to the court of appeals, where they would immediately decide that that was not the law—and in section 152 of the same article of the code, it is expressly provided that after a certain time be shall not act as guardian of the minor heir, even by virtue of his office as executor, where no guardian is appointed by last will and testament. That is the law. But how shall a man ignorant of the law know it to be the law; as a lawyer I go to the proper title in the code, and in article 93, sections 151 and 152, I find the law to be as follows:

"Whenever any person shall die seized or possessed of any lands, tenements, or hereditaments lying within this State, and any of the persons entitled thereto or any part thereof, shall be under age, and without a guardian appointed by last will and testament, or by the orphans' court, the administrator of the decedent, as soon as administration shall be committed to him, and not before, shall take possession of such estate, and discharge and fulfil all the duties of guardian to such infant, and shall account with the court in like manner as guardians are required by law to account, and subject to the like control and authority of the court, in all respects whatever."

"No administrator shall be bound in any manner to discharge and fulfil the duties of guardian after the close of his administration, or after three years from the granting such administration, nor after a guardian shall be appointed by the orphans' court."

By very lapse of time, where there is no guardian appointed by last will and testament, the heirs to the estate would be without a guardian, without any one to have legal charge of their interests in this matter.

Mr. PUGH. The gentleman admits that the executor is guardian for three years.