

charge of equity business. When engaged in business in a different part of the circuit, if an injunction were needed, or any equity business, it was an impossibility to procure a judge. Men have ridden fifty, sixty or one hundred miles, in an inclement season, over roads which were almost impassable, then to find that the judge had gone to another part of his circuit. It has been a denial of justice in many of the counties of the State. I appeal to the experience of gentlemen on all sides of the convention, if this has not been the case, to a greater or less extent, in all the counties. In most of them the ordinary civil business has greatly accumulated. I hardly think I should exaggerate if I should say that in all of them the equity business has greatly accumulated, and is undone.

Another difficulty which has been experienced has been that under the system which has prevailed, worthy, and excellent, and well-meaning men have been elected to fill the judgeship in the various orphans' courts, in utter ignorance of the testamentary law of the State and of the general principles of common law as applicable to them. What has been the result? They have administered the law, as they have said, upon the plain principles of common sense; but although the unwritten law and the statute law are of course consonant with common sense, yet in the imperfection of human reason, it has sometimes unfortunately happened, that the common sense of the judges has not accorded with the common sense of the law.

Again, as under that system the real estate of deceased persons could not be interfered with by orphans' courts, estates have remained unsettled. When there was a small amount of real estate; from the trouble of bringing an action in equity, the judge being off in a distant part of his circuit, and coming then but once or twice a year, it has been almost impossible to procure a settlement.

I need not speak of the delays in the discharge of persons arrested for crime. In some instances it has occurred that persons have been confined awaiting trial, longer than would have been the punishment if they had been convicted of the crime for which they were arrested and charged with having committed.

In digesting and preparing a system, the committee strove to remedy, so far as possible, all these defects. For this purpose they decided upon a system of circuits, three counties in each circuit, and three judges, to compose a bench. This enabled them to obviate another difficulty which has been at times very serious. When a judge has been disqualified from sitting in a pending case, or unable to sit on account of his health, or for any other reason, it was provided that one of the judges should be resident in each county, so that while the judges should sit in the discharge of ordinary *vis prius* duties as

a bench in all the counties, yet during the greater part of the year, one judge would always be at or near the county seat of every county, accessible for the discharge of equity business; and there would be no unnecessary delay on that account.

Then, yielding to what seemed to be the desire on all sides, that the entire real estate as well as the personal property might be administered in the orphans' court, this report proposes to add to the jurisdiction of that court concurrent jurisdiction so far as the real estate of deceased persons is concerned with the equity courts; providing that the circuit judge resident in the county should sit as chief judge in the orphans' court, thus securing at all times one judge, upon that bench who from education and habits may be presumed to know something of the law of the State. Some of them perhaps would not know as much as they should; but they would be more likely to know something about it than those who had never paid any attention to it at all.

As to the system proposed by the amendment of the gentleman from Allegany, I do not know that I should call it a system, but the plan proposed—it is of course a sufficient deviation to render it an impossibility that the county judge can act as chief judge of the orphans' court; because, in some instances he has to sit as judge, and alone at all times, in three or four different counties. With that plan it will be impossible to secure the other end at which the committee aimed, to provide that there shall be a judge for the transaction of equity business accessible in each county; because he can at all times be accessible only in his own county for the discharge of important business.

It is of course for the convention to select between these plans. So far as the compensation of the judges is concerned, the amount which the State will pay for salaries upon the plan or project of the gentleman from Allegany has an advantage over that of the committee. I think if this State is not already surfeited with cheap justice, they have but to adopt this plan, and in a little while they will become so. I thought they had become satisfied that cheap justice, like cheap law, and cheap medicine, was in the end a very dear article. I know that by dispensing cheap justice, suitors have lost more in a single suit, than the entire difference of expense between these two plans for a single year. That is for gentlemen to consider. I am satisfied that under the system as proposed by the committee, justice can be administered with a promptness, a certainty, and an accuracy, such as it never can do under the other system. Of course the convention will decide whether the expense is too much to pay for it. I do not think it is.

Mr. STIRLING. My colleague has very well explained the principles of this report. There