

equity judges gone; and I have frequently been under the necessity of sending to Saratoga or Bedford Springs in the summer time, for the purpose of getting an injunction, and the same way as to writs of *habeas corpus* or similar papers. Human nature is the same in three judges as it is in one. The mere fact of electing one judge from each county will not keep the judge in that county if he does not choose to stay there. And you cannot make him hold more terms of his court than are provided for by the constitution or the law, and whenever a judge chooses to adjourn his court he can do it.

These are my views of this subject. I do hope the convention will take a step back from the one they have just taken, and go over to our present system.

Mr. BERRY, of Prince George's. I am sorry to see evinced by our friend from Baltimore city (Mr. Thomas) an evidence of opposition to a measure which we regard as a matter of justice to the people in the several counties of the State. More particularly am I sorry for it as we are perfectly willing that Baltimore city shall fix her own system, and we are willing to vote for any system they may think the most advantageous to their people. I have had a great deal of practical experience since I have been at the bar, as to the inconvenience of the present system. I know of two cases that have arisen within the last two years in my county, in one of which the party was committed to jail for a very small offence against the criminal law, for which if convicted he could not have been sent to the penitentiary, but for which he was committed by a justice of the peace; and the means of getting that man out of jail was by *habeas corpus*; and he had to stay there six months because we could not get a judge there to try the *habeas corpus* in order to deliver him. In the other case a man was committed for an offence for which he would not have been sent to the penitentiary if found guilty, and when the case was tried he was acquitted. The judge rode thirty-seven miles in the inclemency of the weather of the winter season to try the case, and the man was acquitted after he had been kept in jail six months.

Mr. STIRLING. I admit all that; but I ask the gentleman from Prince George's if it would not be remedied by dividing the circuit in which Prince George's county is contained into two parts.

Mr. BERRY, of Prince George's. I answer it would for Charles and St. Mary's, the two lower counties, where the judge now lives. Unless you give us in Prince George's a circuit, the judge lives as near as—

Mr. STIRLING. Suppose you make Prince George's one circuit, and put Charles and St. Mary's together.

Mr. BERRY, of Prince George's. It would remedy it so far as we are concerned; but would not for Charles and St. Mary's; for

Charles and St. Mary's are two quite large counties.

There is another reason I will assign for this system. It is proposed by this system that the judge elected from the county shall preside as the chief justice of the orphans' court. I do think if there is any court known to the law where a lawyer should preside, it is the orphans' court. I have known most important cases arise in the orphans' courts; more so than in the circuit court of the county. I have known cases of this sort. I was counsel in a case where we presented the will of a party. It was in few words—I want A. B. to administer my estate. The judge said it was not a testamentary appointment; and I had to bring it to the court of appeals. The court of appeals declared it was a testamentary appointment. I carried it back; and they raised another objection, and decided against me on that. I carried that up to the court of appeals and they reversed that. The result was that before the letters testamentary were taken out, nearly the whole estate was wasted. In very many cases there are questions of law alone; and therefore there is a necessity of having at the head of the court a judge who knows something about the law.

Mr. STIRLING. Is it not perfectly possible with some indifferent judge, that you might have had the same decisions?

Mr. BERRY, of Prince George's. I do not think he could if he had read the hornbooks of the law. Any treatise on that branch of the law would have determined that that was a will.

Mr. SMITH, of Carroll. The proposition before the convention, as I understand it, is a simple one, standing entirely by itself. Every gentleman who has addressed the convention has confused it, it seems to me, by associating it with other provisions which do not necessarily attach to it. The simple proposition is whether there shall be or shall not be a judge in each county. Most of the gentlemen have connected with it that the duties of chief judge of the orphans' court are to be discharged by the judge of the circuit court in the county; and they have connected with it also the fact, assuming it as a necessary consequence of this vote, that there must be three counties in a circuit. I am, for one, entirely opposed to interfering in the slightest degree with the orphans' court as it now exists; and I cannot and shall not vote for it. This proposition is an isolated substantive proposition with no sort of connection with anything else. I have listened attentively to the statements made here; and in my mind they are conclusive as to the necessity of having a judge resident in each county in the State.

I am not so fortunate as the gentleman from Baltimore city (Mr. Thomas,) in understanding my constituents upon this or other subjects. I believe they have done very well