

Mr. STIRLING. The two courts are to have concurrent jurisdiction.

Mr. PUGH. I understand that I do not pretend to understand this matter thoroughly, but so far as I know anything about it, this provision is for the purpose of avoiding expense—it is for the purpose of avoiding the entailing upon the heirs of deceased persons the heavy expenses of equity courts. If they choose to submit to the decision of the orphans' court, by the provision as it now stands, they will have the privilege of doing so, and not be subjected to all that expense. And without the amendment of the gentleman from Baltimore city (Mr. Thomas,) they have the privilege of taking their chances in a court of equity, if they see fit to do so. The whole object of this section can be secured in no other way than by leaving it optional with persons having charge of estates, to select either the orphans' court or the equity court.

Mr. STIRLING. I think my friend from Cecil (Mr. Pugh,) and I am afraid some other members of the convention have not contemplated the extent to which this section goes. I have no objection in the world to giving the orphans' court concurrent jurisdiction to some extent. But this section was framed upon the idea that the circuit judge should have the jurisdiction of the orphans' court. As the section now stands it amounts to giving the orphans' court absolute concurrent jurisdiction over the estates of deceased persons. So that if a man owns real estate of the value of \$100,000, and it is mortgaged for \$50,000, the mortgagers can force the heirs to go into the orphans' court to settle up the estate. It takes away from them the privilege of going into the equity court. For although it says "concurrent jurisdiction," the principle of law is plain that the court that first gets jurisdiction must have the entire jurisdiction of the case. And all that is necessary to be done is for anybody interested to make the slightest motion towards the orphans' court, and that takes away the right to go into the court of equity. And all these complicated questions of equity must be taken into a court which, in the counties, does not sit two days in the week. It will not be so bad in the city of Baltimore where the court is in session all the time, but in the counties they do not sit more than two days in the week.

The interests of other people are involved in the estates of deceased parties, and not only that, but questions of real estate law are very eminently technical. And judges of the orphans' court, with all their ability to discharge their ordinary duties, must necessarily be ignorant how to decide upon these technical questions. So far as the mere power of appointing guardians to sell or lease real estate, I have no objection to vesting that in the orphans' court. That is all that has ever been asked for them before, and the legislature has not been willing to give that. Yet

after the legislature has absolutely refused to allow the orphans' court to authorize guardians to lease real estate, it is now proposed by this section to give them concurrent jurisdiction to administer the whole estate of deceased parties.

I hope the convention will re-consider what it has adopted. I do not think members understood it properly; doubtless thinking it only gave the power which was asked in an order introduced into this body some time ago. This section was framed upon a different principle from the one which has been adopted by the convention. There should at least be some amendment made, limiting the jurisdiction of the orphans' court to a particular amount.

Mr. MILLER. In addition to what has been said by the gentleman from Baltimore city (Mr. Stirling,) I would say that this is a very important question. I ask gentlemen to reflect that in our State we have always had a system of equity jurisprudence distinct from common law jurisdiction. If you adopt this section as it now stands it will amount almost to striking down those several jurisdictions. I know that in a great many of the northern States their probate courts have jurisdiction to distribute the real estate of deceased parties. But they have there an entirely different system from that which has prevailed in the State of Maryland, and which it is proposed to continue under this new constitution. They have no separate equity jurisdiction whatever. And in the New England States the probate courts administer all the estates of deceased parties.

And there is another consideration. In this State the title to real estate is a very important matter. Now, if this section is adopted, we shall have to go into the orphans' court, where the records are probably loosely kept, to find out where the title is; and we shall also go into the equity court—the circuit court, and the court of appeals—to find out the title to land. And there will be a complication of views upon that subject.

Now in reference to the cost of the matter. This section does not diminish the expense at all. And I should like to know how under this provision a man is going to close up and distribute the estate of deceased parties. It is to be concurrent jurisdiction. And he must file a bill in the orphans' court the same as in the equity court. The same costs will necessarily attend the distribution of an estate in the orphans' court as in the other. Lawyers must be employed to attend to it, and a decree must be passed by the orphans' court, as in the equity court, to direct the sale. I rather think the actual costs will be increased by this system.

There seems to be an idea abroad in the community that if you give the orphans' court this power, you will get rid of the necessity of employing lawyers. But that is