

not the case. You must employ your lawyers in the orphans' court as well as in any other court. You must have a bill regularly filed; all the parties having interest in the estate, whether as heirs, mortgagees, or anything else, will have to file their responses, as now in an equity court, and the distribution will have to be made by a decree of partition or of sale. As to the matter of expense, it will not be diminished one cent. But as a matter of convenience in reference to the fixing a place where the titles are to be searched for, it will be a great inconvenience to both sides, to have the system proposed in this section adopted.

And besides all that, you will find that these lay judges upon the orphans' court bench will make such decisions in regard to matters of equity jurisprudence, that it will compel appeals to be taken to the court of appeals in almost every case, because those judges will not be acquainted with equity jurisdiction. In reference to the personal estate it is very important that laymen should appoint appraisers to see to its value and distribution, because in reference to personal estate the title goes with the possession. There is not that great difficulty in regard to a pure and perfect title in reference to personal estate, that there is in regard to real estate. If any such system as this is adopted you will hereafter have your real estate titles in this State in the utmost confusion.

Mr. ABBOTT. I do not understand that there is anything in the constitution or any disposition to put anything in the constitution to prevent the people selecting such men as they see proper to act as judges of the orphans' court. Gentlemen speak here about "laymen." If the people want a lawyer to act as judge of the orphans' court, they will put him there. But we do not want to make a provision here to compel them to put a lawyer, or anybody else there, unless they want him. Let them put in whom they please.

Mr. DAVIS, of Washington. I move to amend the amendment of the gentleman from Baltimore city (Mr. Thomas) by striking out the words "one thousand," and inserting the words "three thousand."

The question was on the amendment to the amendment.

Mr. PUGH. I only want to act advisedly in regard to this matter. And I wish to ask the gentlemen from Baltimore city (Messrs. Thomas and Stirling,) and others here who are lawyers, some few questions in order to enable me to act advisedly. I am opposed to the amendment of the gentleman from Washington (Mr. Davis) for the same reason that I am opposed to the amendment of the gentleman from Baltimore city (Mr. Thomas.) The gentleman from Baltimore city (Mr. Stirling) referred to the case of real estate to the amount of \$50,000 or \$100,000. Now I

would ask whether a party interested in that estate in its distribution, administration, or interested in it in any other way, has not the privilege of selecting which court he may prefer?

Mr. THOMAS. Certainly they have; that is exactly the difficulty. Some one party interested in that enormous estate might select the orphans' court, and then when the orphans' court once got jurisdiction, the court of equity could never obtain jurisdiction over it. The practice is different in the two courts. A man dies owing thirty or forty thousand dollars. You go into a court of equity to obtain a decree to sell the real estate, the personal estate not being sufficient. According to the principles of equity the mortgagees have the right to come in and claim their portion of the estate. And you must go through a regular routine for the purpose of having the accounts audited; taking testimony before commissioners, proving claims, etc. If this section is adopted, you must establish an entirely new system of procedure for the orphans' court.

Mr. PUGH. If the estate is of the peculiar character the gentleman mentions, insolvent as far as the personal estate is concerned, that not being sufficient to pay the debts of the estate, and thus necessitating the falling back upon the real estate, which is encumbered with mortgages, and about the title of which there may be difficulty; would not the executor or administrator, being responsible and having given bonds for the proper administration of that estate, select the proper course to let him out of the difficulty? In the case of a complicated estate, any executor or administrator, being responsible for the full value of the estate upon which he is administering, will protect himself; and in order to protect himself he will select that course of proceeding which will be most likely to secure his protection. If the gentleman or myself were the administrator of an estate, we would certainly secure our safety by selecting that court which would probably lead us most safely through all these difficulties.

Mr. THOMAS. Under the provisions of this section, it will not always be in the power of the executor or administrator to select which jurisdiction he will have. If the gentleman from Cecil (Mr. Pugh) is the executor of a large estate, and I am one of the creditors, I can take time by the forelock and go into the orphans' court before he knows anything about it, and acquire jurisdiction there. There is the great difficulty by giving the orphans' court this jurisdiction.

Mr. PUGH. I do not admit the statement of the gentleman that he as a creditor can obtain jurisdiction before I can do so as executor or administrator. But these objections do not reach the ground which I intend to take in this matter. I admit the difficulty in regard to complicated estates. But I do not admit—