

sons and estates of infants is a branch of *chancery jurisdiction* derived from the common law. If the deceased leave a will, the question of its validity is tried, as to *personal bequests*, before the *orphans court*; yet if the will contain a devise of land, its validity as to that, is not established by the judgment of the orphans court, but can only be tried by an ejectment, or an issue *devisavit vel non* sent by the chancellor to a court of law. The executor gives bond, and settles his accounts before the *orphans courts*, yet the payment of pecuniary, and the delivery of specific legacies, can only be enforced by a *bill in equity*, or by an action upon the bond of the executor.

The powers exercised by the orphans courts, and courts of equity, are regulated, both in their practice and proceedings, by principles so nearly similar, that no good reason can be given why they should not belong to the same jurisdiction. To divide between two or more tribunals the cognizance of matters which could be better administered by one, is only productive of circuitry and delay. The organization of the orphans courts was framed in all its details, upon the basis of a chancery court. Their mode of citation, of decision without the intervention of a jury, and of enforcing their decrees by attachment and sequestration, are no other than chancery proceedings. Moreover, by consolidating this jurisdiction with that of the county chancellor, the administration and disposal of both real and personal property will be placed under the eye and control of the same judge, who acting with reference to every part of the estate, will be enabled to order matters with a fitness and consistency, more suited to the advantage of the whole.

3. The salary should be sufficient to make the appointment acceptable to men of respectable legal standing and abilities. The tribunals which the law provides for the administration of justice, should be so constituted as to command the respect and confidence of the people.—Whenever it is suspected that the judgment of a court is as apt to be wrong as right, and that a decision either way is a mere matter of accident, the unfortunate party is sure to take an appeal. Both parties go to trial with a determination to appeal if the decision shall be against them, and thus, double costs and expenses necessarily follow the institution of every suit.

Although the county chancellors will thus become most important and responsible officers, yet your committee flatter themselves, that competent and even liberal salaries may be provided, without any additional disbursements from the treasury. The compensation now given to the judges of the orphans courts, will go far towards providing the amount required. And a moderate tax upon the proceedings in equity, will provide, in an easy and unobjectionable manner, for the balance. A tax upon legal proceedings, for the purpose of raising a revenue, is limited only by the necessities of government, and operates as a sale, and in some cases even a denial of justice. But a tax upon legal proceedings, for the purpose of providing salaries for the officers of the court, is paid by those only for whose benefit it is imposed, and never can exceed a known amount.

4. In giving the appeal to the chancellor, and in making his decision final between the parties, your committee design to make the county chancellors subordinate to the chancellor of Maryland, with a view to produce and maintain a uniformity in the system of equity throughout the state.

The above plan proposes a very important change in the judiciary system of Maryland. It is necessary, therefore, that it should be matured with deliberation, and its details settled with consistency and wisdom. With this view, your committee recommend the adoption of the following resolutions:

Resolved, That John Johnson, Esquire, chancellor of Maryland, be requested to frame and prepare, for the consideration of the legislature at their next session, a system of equity for the several counties of this state, upon the basis of the foregoing plan, with liberty to deviate therefrom in such points as in his judgment he may deem expedient, to be completed by the first Monday of December next, and laid before the general assembly at the beginning of the session.

Resolved, That the chancellor shall receive from the state a liberal and competent allowance for his time, talents and labor, devoted to carrying into effect the foregoing resolution. Which report was read and ordered to be printed.

The senate adjourned until 5 o'clock, P. M.

SATURDAY, 5 o'clock, P. M.

The senate met. Present the same members as in the morning.

The clerk of the house of delegates delivered the following message; which was read.

BY THE HOUSE OF DELEGATES, January 11, 1823.

*Gentlemen of the Senate*—We have received your message of this day, and have appointed Messrs. Henry Kemp and Duvall, to join the gentlemen named by your honorable body, to invite his excellency the governor to sign and seal the laws in the senate chamber.

By order,

J. BREWER, Clk.

Also a bill entitled, An act to incorporate the Asbury Sunday School Society; which was read the first time and laid on the table. And returns the bill to incorporate a company in Baltimore county by the name of the Avalon Company, endorsed, "will not pass."

The president laid before the senate the following letter:

Baltimore, January 11, 1823.

SIR—I have just had the pleasure to receive your letter announcing my election to a seat in the senate of Maryland. I accept, with very high gratification, this mark of confidence from the honorable body over which you preside. I shall repair to Annapolis, at the earliest practicable moment, to take my seat.

Accept the assurances of my very high respect and regard,

WM. H. WINDER.

Hon. Wm. R. Stuart, President of the Senate, Annapolis.