

properly belong to us to consider, as a reason for my vote upon it.

Mr. DANIEL. Agreeing with the gentleman that this is strictly within the power of the Legislature, the law-making power, and not so much in our province, it seems to me that a reference is unnecessary. I do not think the Judiciary Committee need act upon all these individual cases. If we were disposed to fill up our Constitution with provisions to meet particular cases, this order, as suggested by the gentleman from Somerset (Mr. Jones) would not meet the case. To show that it is strictly within the power of the Legislature, I will say, that the Legislature has already acted upon this very subject; and it is only to provide for an omission in the law as it now exists, for its not going quite far enough, that the order is proposed. There is now upon our statute book a law covering this. You can vest the power to sell real estate in an executor by will; and if the executor dies without having executed the power, then it is considered, I believe, that the power dies with him; and then the Court of Chancery must appoint. The Legislature having already acted upon that, it is very easy for the Legislature to say just what this gentleman wants us to say that in case the executor dies without having executed the trust, the administrator *de bonis non* shall execute the power. It seems to me therefore simply a question for the Legislature. I think we detract from the dignity of this body if we attempt to take into consideration every individual matter which would properly come before the Legislature, the law-making power. I think it would rather show that we do not understand our business.

Mr. BERRY of Prince George's. I do not at all agree with the gentleman from Baltimore city (Mr. Daniel) that this comes within the purview of general legislation. When a testator makes a will and directs by that will the executor appointed therein to make a sale of real estate, if he dies the power to sell dies with him, and the only possible means by which a sale of that real estate can be made is through the interposition of a Court of Equity. Now the Committee on the Judiciary System, will, as a matter of course, in arranging the jurisdiction of the different courts, set forth what their peculiar jurisdiction is to be. The Orphans' Court of our State has no chancery jurisdiction except that specially given to it by law. I think by reference to the present Constitution, that the particular duties and jurisdiction of each of the courts of the State will be found to be there defined; but you will not find that duty enumerated in our present Constitution as a duty of the Orphans' Court. The courts, therefore, being limited in their jurisdiction, they can exercise no other jurisdiction than that expressly given them by the Constitution. I think therefore that this is a proper subject

to go to the committee for their consideration, whether the Orphans' Court of the State shall be vested with a jurisdiction of that sort, to enable them to appoint an administrator *de bonis non* clothed with the same powers the executor was clothed with under the will of the deceased party. For these reasons I shall vote for the reference to the Judiciary Committee.

Mr. SANDS. I do not propose to discuss the merits of the order at all but only to make a suggestion. It has hitherto been our practice, as a matter of courtesy, when an order is offered simply to be referred to a committee, to allow that reference. I agree entirely with the view of the gentleman from Prince George's (Mr. Berry) upon the merits; but I really think, as a matter of mere expense, that the time we shall consume in discussing the merits—for we must either adopt the general rule of refusing all orders of this sort or admitting all, or else we must discuss the merits of every individual order that comes up, and decide upon its merits—will cost far more than the printing, paper and ink, in putting them upon the Journal, outside of the question of courtesy to the member offering a mere order of reference. While therefore I entirely concur with the views of the gentleman from Prince George's upon this order, I think we shall save much time and expense in simply referring all orders of inquiry irrespective of their individual merits.

Mr. BRISCOE. I do not undertake to object at all to the adoption of the order as a matter of courtesy; for upon that ground I should prefer that this should go to the committee. I only want to reply to my friend from Prince George's in his statement that the Constitution says what shall be the jurisdiction of the Orphans' Court, or the Equity Court, or any civil court. The Constitution of Maryland does not say what the jurisdiction of the Orphans' Court shall be, or describe the extent of its jurisdiction at all. I will read that clause of the Constitution in reply to my friend:

"They shall have all the powers now vested in the Orphans' Court of this State, subject to such changes therein as the Legislature may prescribe."

As I at first intimated, it is simply and exclusively, so far as their powers are concerned, a question for the exercise of the discretion of the legislative department of the government. This Constitution has, by its own words, given the Legislature the right to prescribe the jurisdiction of that court. The question covered by the order before us is simply a question of enlarging, or circumscribing the jurisdiction of that court; and it is competent for the Legislature hereafter to do that. I am not arguing upon the question of expense, or of economy, for I do not raise issues of that kind before a body like this; but if because a gentleman desires a