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THE SURROGATES' COURT AND THE NEW LAW.

Notwithstanding my uniform rule, faithfully observed for the five years of my Surrogateship, not to say anything about the Surrogates' Courts for publication, I have accepted the invitation of the young editors of this periodical published in a great Catholic university. There is, at this time, so much interest among lawyers and law students concerning the operation of the new Surrogates' Law of 1914 that even my own poor views about it are desired. I hope that they will not be regarded as a breach of propriety, or a violation of that proper reticence which I conceive to be due, at all times, from an officer of justice charged with the administration of a public law of the State. With this in mind, I shall be as frank as possible. There are, perhaps, times when, as the great dramatist puts it, "Sparing justice feeds iniquity".

I shall speak first of the general body of the probate law administered in the Surrogates' Court. The Probate Law of England and New York has a very long history. Much that lies at its base was formulated by ecclesiastics in the closes and the quiet cloisters of the great Cathedrals where the Bishops held their courts before the era of the English secession from the primacy of Rome. Probate law, therefore, possesses, as I think to its great advantage, certain fundamental doctrines of what is known as the Scholastic philosophy, or that Aristotelian system developed and modified by the genius of that very great and good man, St. Thomas of Aquin. Every scientific system of law, as is the case with every great religious system, has its correlated philosophy. The development of the classical law of Rome is often said to owe much to the Stoic philosophy. Certainly the law of the Canonists in England and even the English common law and the law once administered in Chancery contain doctrines which harmonize with no other philosophy than the Scholastic. That the Canon law should so harmonize is not strange, for the old Courts Christian

of England were long administered by ecclesiastics of the old faith.

The Probate Law of England transferred to the Province of New York, so long subject to the English Crown, was founded on the classical Civil Law of Rome, as adapted by the Canonists, with the help of Scholastic philosophy and the logic of the schools. At the present day the primary sources of probate law are generally sought in the reports of the Ecclesiastical Courts, established after the reign of the Eighth Henry of England. Most of the modern doctrines of probate law are mere réiterations of principles found in these early reports. But when these reports of the Ecclesiastical Courts were first published, the Civilians of Doctors Commons had long succeeded to the Catholic Ecclesiastics of former ages, but for a considerable space both derived their inspiration from the same sources, the *Corpus juris*, and the *Corpus juris Canonici*. In many opinions of the Ecclesiastical Courts, still cited in our courts of to-day, we find, consequently, references to such books as Lyndwood's "Provinciale", "*cui adjiciuntur Constitutiones Legatinae Othonis et Othoboni, Cardinalium et sedis apostolicae in Anglia Legatorum*".

After Lyndwood's day came such works as Ayliffe's "*Parergon Juris Canonici*" better adapted to the new regime in England. These and other works of the same kind are by no means obsolete, if the probate lawyer would resort to the *fons et origo juris*. I always keep such books by me for occasional reference. One of them I notice bears the book plate of a great modern probate judge in England, unfortunately now deceased. Evidently its former owner regarded these old books as a still authentic and inspiring source of the modern law he administered so skillfully and satisfactorily in the England of our own times. It is in Lyndwood that we find the origin of such common distinctions made in English and American probate law as that between a testament, "*testamentum*" and a last will, "*ultima voluntas*". The history of the debt due by the whole body of English law to the early Catholic ecclesiastics has never been fully told. It would take a person of no ordinary calibre to tell it properly.

In addition to probate law there is now administered in the Surrogates' Courts of New York an immense body of chancery law. It is applied in accounting proceedings, in guardianship matters and in the course of the distributions of estates. There is also a mass of statutory law partly derived from the redaction of ancient statutes, but more generally from modern innovatory

statutes. On this important part of the law administered in the Surrogates' Courts it is not now necessary to dwell. It is generally more or less familiar to all lawyers who practice in the Courts of the Surrogates.

The jurisdiction of the Surrogates' Courts of this State has rarely received just or complete consideration. It is well known that the jurisdiction of the Surrogates and its mode of exercise have been a constant source of contention in our Courts for over a century past. The history of the jurisdiction is fairly familiar. I have had occasion to review it in many cases (*In re Martin's Will*, 141 N. Y. Supp. 784, 788; 80 Misc. 4; *Matter of Hermann*, 145 N. Y. Supp. 291; 83 Misc. 283, and in prior cases there cited). I have not, however, before this had occasion to remark that the contentions over the jurisdiction of the Surrogates present a most curious parallel with the long contentions in England over the jurisdiction of the Ecclesiastical Courts on which the original Surrogates' jurisdiction in New York was closely modeled. In both countries the ecclesiastical jurisdictions were abstracted by other courts and never favored by hostile jurisdictions. The real reason for this in this State is not familiar and has never been told.

It is common knowledge, that in all the colonial possessions, the tendency of the framers of the colonial governments was to transplant the old established jurisdictions, familiar at home to the original colonists. The substantive and the adjective laws of the old countries were so combined as to make it difficult, by a stroke, to separate them when transferred to the European colonies of America. Thus it was that New York received that part of the jurisdiction of the old Ecclesiastical Courts of England, which related to a succession to the estates of the dead. The sixteenth and seventeenth centuries of our era were not ripe for innovations on the established legal order, and consequently few changes were made when an old jurisdiction was transferred to a new and subordinate transatlantic government. Naturally the simpler needs and the less elaborated social structure of the colonies demanded some modifications and a less complex form of law. But such modifications were rarely radical, and never hostile to fundamental principles of the old law.

New York, being a Crown province, imitated, after the year 1683, the institutions and laws of England more closely than any other European colony or plantation in America. New Jersey as part of the original royal grant shared in this similarity. In

Crown provinces this reproduction of old institutions and laws was due to several political and constitutional causes which I need not now stop to consider. It is not doubtful that the entire common law of New York, and even its early Statute law, present a singular conformity to like law of the old country until about the time of the Revised Statutes of this State, enacted in 1830. It was pursuant to the mode of development already indicated that the Prerogative Court of the Province of New York came ultimately to be invested with much of the jurisdiction of the old Ecclesiastical Courts of England. The Surrogates of New York were, at first, only delegates of the Prerogative Court. That the ecclesiastical jurisdiction was, in competent hands, influential and in some respects superior to the jurisdictions of the common law courts, a more enquiring and critical age is beginning to realize in England, and possibly here. That in the hands of a competent judge the jurisdiction in question was a delicate instrument of great public usefulness, the history of the Ecclesiastical Courts of England in particular now demonstrates. But unfortunately we rarely comprehend the ingenuity of a mechanism until it has been taken to pieces, and perhaps irretrievably spoiled.

Before the Revolution, the Royal Governor of New York nominated and delegated the Surrogates for the Prerogative Court in the various counties of the Province of New York. The original jurisdiction of the Prerogative Court and its Surrogates was confined to matters cognizable in the Ecclesiastical Courts in England. These matters were mainly probates, administrations and inventories. The jurisdiction thus transferred to New York was limited by precedent and authority. Its limitations are to be found in the decisions rendered in the old Court of Chancery and in the Common law Courts known to the common law. It is important at this point to notice only that all such limitations tended to circumscribe the jurisdiction of Courts properly vested with a jurisdiction over successions by wills and from intestates. The principles of these decisions were always regarded as a part of the common law in force in New York.

It is unfortunate that soon after the State government was inaugurated, the higher courts began to ignore the fact, that in the colonial epoch the intention of the law officers of the crown had been to transfer to New York the trichotomous jurisdictions, Chancery, Common law and Ecclesiastical, known in England, and also that the framers of the State government had deliberately adopted this plan.

The act to organize the Government of the State of New York, Chapter 12 laws of 1778, continued the former ecclesiastical jurisdiction exercised under the Crown, and recognized the Surrogates as continuing officers to be employed in the exercise of that jurisdiction. It also regulated their future appointment. Chapter 38, Laws of 1787 confirmed and continued the Act of 1778 in principle. Chapter 38, Laws of 1787 first placed the jurisdiction of the Surrogates on a statutory basis; but that act especially provided that the courts of the Surrogates, in the matters submitted to their cognizance by that act, should proceed according to the course of the courts having, by the common law, jurisdiction of the like matters, "provided that the same should not extend to the inflicting any ecclesiastical pains and penalties whatever". Thus it will be perceived, that the old Ecclesiastical Courts were expressly made the exemplar for all proceedings and practice in the Courts of the Surrogates in the State of New York by the Act of 1787. The Act of 1801, however, omitted this last unnecessary provision of the Act of 1787 as it was implied by the Constitution and by the first section of the Act of 1801 (Chap. 77, Laws of 1801; 1 K. & R. 317). The next revision of the laws of the State made no substantial change in the foundation of the Courts of Probate (1 R. L. of 1813, p. 444). It was, I think, not first implied by Chancellor Kent in 1820, that the powers and jurisdiction of Surrogates flowed from the Statutes of the State (*Goodrich v. Pendleton*, 1 John Ch. 549), but since then, the decisions on this point have been uniformly to that effect. The real meaning of this, I attempted to explain in *Matter of Carter* (74 Misc. 1). Ever since 1837 the tendency of legislation has been to enlarge the statutory jurisdiction of the Surrogates (*Isham v. Gibbons*, 1 Bradf. at p. 78).

The epoch of legal reform and the more radical recast of the jurisdictions of the old Courts of Justice of New York begin in this State with the Revised Statutes of 1830. It was the framers of that wonderful Revision who first undertook to new model and restate the entire jurisdiction of the Surrogates' Court of this State, and their "Notes" are extremely illuminating on their attitude toward a historical jurisdiction of inherent excellence. The revisers of the Revised Statutes are known to have been most accomplished lawyers, and their work of revision is the most notable reform in the common law up to that time made in any common law country. It is no disparagement to remark that they were not however especially familiar with the law and the practice

of the old Ecclesiastical Courts, which they regarded as "hidden mysteries" (see Revisers' Notes). But in this particular the revisers shared only the prejudices and the dislike of the common law and the Chancery Bars of England. The education and art of the Ecclesiastical Bar in the old country were fundamentally different from that of common law lawyers. The technical education of the Ecclesiastical lawyers began even at the universities, and their technic was largely founded on the Civil and the Canon laws, in so far as they were received in England. Thus the Ecclesiastical lawyers had the advantage not only of a wider culture, but of an old scholastic legal philosophy, not always apparent, although it is implicit in the old law. The accomplished Revisers of 1830 knew the separateness of the Ecclesiastical Courts in England, and as individuals most of them disapproved of the Court, its *corpus juris*, its procedure and its traditional philosophy. They proposed consequently to annihilate the ancient jurisdiction and procedure of the Surrogates' Courts and restate them on a very different basis in the Revised Statutes. It was a large proposal to blot out and restate the law of two thousand years; and as stated by a Surrogate of more than a century ago the attempt created unnecessary confusion (Kirtland's Sur. Pr. 1). This time, however, the Revisers overshot the mark, and in 1837 (Chapter 460) their attempt was in a few lines undone, and the ancient principles of the Ecclesiastical Courts were *in posse* substantially restored to the Surrogates. Then it was that the Surrogates of this State had their opportunity to equal or surpass the work of the Ecclesiastical judges in England. That they availed of the opportunity is nowhere apparent. I have perhaps indicated some of the reasons in my decision on Gedney's will (142 N. Y. Supp. 157, 167).

It is a great misfortune for the Surrogates' Courts of this State that the golden opportunity, so skillfully availed of by the judges of the Ecclesiastical Courts in England, was lost. Had it been availed of, the permanent future of the Surrogates' Courts would be less uncertain than it is at present. In England the influence of the Ecclesiastical Courts was great enough to affect the entire jurisprudence of England, and this during a time when the Surrogates' Courts in New York were without influence by reason of a sterility and a commonplaceness, almost unparalleled in the history of jurisprudence.

It is often, with some disdain, emphasized that our Surrogates' Courts are statutory courts. But in this State there are no common law courts, or in other words there are no courts which owe

their existence to the common law alone. All the judicial powers in this State, at the present time, are either constitutional or statutory foundations, *i. e.*, they are due primarily either to the Constitution of the State or to some statute of the Legislature. The real extent of the jurisdiction of the Surrogates' Courts, and of all our other courts, is due to a variety of ancient causes and historical accidents. There is no prescriptive jurisdiction in this State like that of the Chancellor and the common law courts in England, or that of the Praetors in the Civil Law system.

The reader must remember that the history of a court is a history of its jurisdiction, not of the temporary and fleeting shadows who hold the court for the time being. The history of a jurisdiction may extend back indefinitely; it may involve the most momentous facts in the history of a nation or a race. No other American court besides the Supreme Court of the United States has a jurisdiction which can be divorced from the long history of English-speaking people. The Supreme Court of the nation alone possesses individuality; it is *sui generis* and its jurisdiction is inseparably connected with this nation, and with this nation alone. When the final history of the Federal Supreme Court comes to be written it will furnish the history of this nation and this nation only. Not so with the courts of this State; they are mere extensions of jurisdictions as old as the race. All our Courts in this State enjoy the borrowed or transmitted jurisdictions known to the common law. These have been enlarged, restated, or diminished, by statute, but the jurisdictions themselves are historically dependent, not independent, of old sources. Although the Surrogate in 1895 was at last formally recognized by the Constitution of the State as a part of the permanent State judicial system, his jurisdiction is not so recognized and it is held to continue to depend on statutes (*Matter of Carter*, 74 Misc. 1; *Matter of Cornell*, 75 Misc. 574). But we should note when considering the statutory jurisdiction of the Surrogates of this State that we encounter a singular anomaly. The Supreme Court, which reviews it, has no inherent jurisdiction over matters of which the Surrogate has cognizance, and irrespective of statute no strictly appellate jurisdiction over Surrogates. It is, of course, familiar that the Supreme Court has an independent superintending jurisdiction over all inferior tribunals by means of the old prerogative writs, so as to prevent excesses. But the present jurisdiction of the Supreme Court, in so far as it concerns matters of which the Surrogate has original cognizance, is also wholly

statutory. Without the Statute the Supreme Court would have no power over testamentary or intestate succession. In the same way the jurisdiction of the Court of Appeals to review Surrogates' matters is not inherent. Thus it offers no solution of difficulties to assert that the Surrogates' jurisdiction is statutory when all the other courts dealing with such jurisdiction are equally on a statutory basis. It is obvious that the contention over the nature and extent of the peculiar jurisdiction of the Surrogates, in matters relating to succession to estates of the dead, has not always been discriminating and it has been often referred to too narrow or mistaken principles. There are larger principles equally applicable in the instance of the jurisdiction of the Surrogates; for example, that the powers and jurisdiction conferred on the Surrogates should be given effect according to the original intent to transmit to the Surrogates a peculiar jurisdiction, long exercised in the territory of New York. Again when a borrowed jurisdiction is conferred on a constitutional officer, the extent of the jurisdiction and the mode of its exercise are of a very different nature from a new jurisdiction, conferred on a non-constitutional judicial officer by a statute particularly enumerating the powers and duties of the officer and his mode of exercising them. I alluded to a distinction of this character in *Matter of Mayer* (72 Misc. at p. 570). In some cases the undefined power of a Surrogate is to be determined by precedent and in others by a literal construction of the statute (*Matter of Work*, 76 Misc. 403, 405). It was certainly, I venture to think, open to the Courts of this State to have viewed the jurisdiction conferred on the Surrogates with more indulgence than is often apparent from the law reports. That great man, Surrogate Bradford, who first placed the probate law of this country on rational and scientific grounds, often pleaded unsuccessfully for the collateral powers which precedent naturally annexed to this jurisdiction of the Surrogate. Had his contention been heeded, the Surrogates' Courts would have been much benefited.

While there is common law precedent for the hostility of both the Courts and the legislature of this State toward the old and honored jurisdiction, vested so reluctantly in the Surrogates of this State, the action, or rather the inaction, of the Surrogates themselves in executing and in sustaining their jurisdiction, with one or two notable exceptions in the more populous parts of the State, is less easily justified. We must remember that during the same period of time in which the Surrogates' Courts have existed

here, the Judges of the Ecclesiastical Courts of England, vested with the same jurisdiction as our Surrogates, and laboring in the same atmosphere of prejudice, triumphantly vindicated and maintained the remnant of their jurisdiction with dignity and learning. By their marked ability, the English Ecclesiastical Judges made their jurisdiction renowned both at home and abroad. By reaction, their individual accomplishments and labours have thus benefited and even ameliorated the whole jurisprudence of England and America. Without their wise and learned judgments, even the modern testamentary common law of England and this State would be a far less consistent body of law than it now is. That the Surrogates of this State ever allowed a coordinate jurisdiction to gain such a monopoly of distinction was unnatural, for America has in other fields of legal development produced a fertile crop of eminent lawyers. During this same period Story, in America, illuminated the ancient equity jurisdiction of England as Englishmen themselves never before had done, while Wheaton restated the modern bases and scope of international law in such a way as to attract the general consideration of Europe. At the same time the immortal Kent splendidly restated for American application the entire common law in force in North America. These are only sporadic instances of the greatest technical skill in America. It is strange that the Surrogates of New York were willing to contribute so little to the jurisprudence of America. If the later reports of this State are filled with distrust of the Surrogates' jurisdiction and the mode of its exercise, as they undoubtedly are, it must be confessed that the distrust is not devoid of reason. It is possible that this default was not altogether that of the Surrogates themselves, but one which the other State Courts and the Legislature must share. But whatever the cause, it must be admitted that the influence of the Surrogates of this State has been far less than it might have been had their work been of a higher order. Whatever the Surrogates' administrative and practical usefulness may have been, and I think they have been great, their constructive and technical work, as well as their influence on the jurisprudence of America, has with the exception of Mr. Bradford's been inconsiderable. With this fact in view, we may proceed to the consideration of the new bill drafted under the auspices of the Surrogates Association and made a law on September 1, 1914.

Prior to 1914, Chapter 18 of the Code of Civil Procedure, had, for more than thirty years, regulated in the main the jurisdiction,

the practice and the procedure of the Surrogates' Court. Mr. Throop, the draftsman of this notable Chapter, or rather its rédacteur (for it was only a redaction), possessed one advantage for the work of codification: he was a thoroughly trained lawyer, coming of a family of eminent lawyers in this State. Consequently he possessed not only technical skill but the best legal traditions of the State, seeing its laws in that proper historical perspective so essential to a correct parliamentary draftsman. Concerning the qualifications of the draftsmen of the new Surrogates' law of 1914 now in force I know nothing, but I do know that the Surrogates of the great County of New York, the principal centre of the United States in wealth and population, were allowed no voice in that revision. Whether this was consistent with the rights and interests of the people of the County, I venture to doubt.

While it is highly probable that the Surrogates of the County of New York could have added little of value to the latest revision of the "Surrogates' Law", I personally much regretted their inability to participate in a revision of laws so important to the community over which their jurisdiction extends. It had been my good fortune to know well Mr. Throop, the draftsman of the prior Surrogates' Law (Chapter 18, C. C. P.) as during his work of revision we occupied the same offices and were intimate and confidential. My well known interest in theoretic legislation commended me in turn to the prior codifier, Mr. Field, who often honored me with professional employment, in connection with legal reforms he had very much at heart during his notable and distinguished career, better recognized abroad than at home. The Commissioners of Statutory revision who drafted the latest revision, the "Consolidated Laws" of this State now in force had, in their turn, without any suggestion on my part, employed me professionally to prepare the first drafts of the Real Property Law and the Personal Property Law for the present Consolidated Laws of this State. Thus it happened that I was enabled to be somewhat familiar with all the revisions of the laws of this State, made during my own professional life, with the single exception of the new Surrogates' Law of 1914, in which, by reason of my official responsibilities as Surrogate, I was more interested than in any of the others.

It was not, however, because of any such omission that I strenuously opposed the enactment of the Surrogates' Law of 1914, but because after careful consideration of its content and

tendencies I believed that it was not a genuine reform of the law, or one in the right direction for the best interests of the good people of this State. The new law *inter alia* increased the powers and patronage of the Surrogates in ways which I believed fatal to the improvement of the Surrogates' Court at least in the great centre of population, and it perpetuated some features of the old laws which I believed were not in the interests of an improved judicial administration of the weighty interests committed to the Surrogates of the County of New York. Moreover I objected to the proposal to make two Supreme Courts in this State, one charged with a jurisdiction over the affairs of the living and the other charged with a jurisdiction over the affairs of the dead. This novel division of jurisdictions seemed to me faulty and unscientific. It is what the scientific lawyers call a false dichotomy. Whether or not I was in error in my conclusions time alone can demonstrate.

Some of the ways in my judgment to reform and improve the administration of the Surrogates' Court, in the great county of New York, I stated to the recent Constitutional Convention when invited to attend their Committee sitting in the City of Albany. It seemed to me that if the Surrogates' Courts were to be retained in this State as separate tribunals, and to this there could be no real objection, if they were properly reformed, the natural differences between Surrogates' Courts holden for the populous and richer centres should be recognized, and the Courts themselves classified, after the manner adopted in Pennsylvania. In Pennsylvania the probate jurisdictions are committed to separate Orphans' Courts only in the more populous centres. The judges of the Orphans' Courts in Pennsylvania then take rank with the judges of the Courts of Common Pleas of that State, which I understand to correspond with our Supreme Court. A judge of the Orphans' Court in Pennsylvania can sit at will in any other court of original jurisdiction in the State. He can then hear criminal or civil cases. This equality of jurisdiction tends to attract to the Orphans' Courts of Pennsylvania the same high grade of professional men as those who are attracted to the Courts of Common Pleas of that State.

It is well understood that the Surrogates' Court in the City and County of New York, by reason of its situation in a centre of wealth and population, has greater responsibilities than any other probate jurisdiction in the world, except possibly the Probate Division of the High Court of Justice in England which sits for

all England. It was not the Surrogates' jurisdiction which needed reforming in 1914. The jurisdiction of the Surrogates' Court of New York was already, in 1914, more extensive than even that of the justices of the Probate Division in England. In fact, no other probate court ever was possessed of such an extended and powerful jurisdiction as that already vested in the Surrogates of the State of New York before the year 1914. But only in the County of New York, and possibly in one or two others of the more populous counties of the State, was that jurisdiction in its full extent ever, or habitually, invoked. As it was generally invoked in the County of New York and in that county alone, the practice and procedure in the Surrogates' Court for this county became a thing apart, technically and accurately applied, with due formality, whereas in many others of the counties of the State they were most often technically and in practice ignored.

The legislature itself recognized the distinction between the counties of the State when they made only the salaries of the Surrogates of the County of New York equal to that of the Chief Justice of the United States and larger than that of the State's governor. The County authorities have also recognized the fundamental distinction between the different Surrogates' Courts of the State when they presented the Surrogates' Court for this county with the largest and finest court rooms ever employed by any single judge in the entire world, no matter how high his station or rank. No Lord Chancellor of England, or no Chief Justice of the United States, on Circuit, was ever so nobly housed as the Surrogates of the County of New York.* While recognizing, as I do, the utter relative inappropriateness and even grotesqueness of this splendid accommodation for such courts as the Surrogates, I merely mention these things in order to illustrate the general recognition of the fundamental differences between the business of the Surrogates' Court in this great and populous county, and that entrusted to the Surrogates' Courts of some of the thinly inhabited, rural counties of the State where there is no business of magnitude. Yet the recent "Surrogates' Law" of 1914 takes no note whatever of the greater responsibilities of a Surrogate in this county and reduces all the

*These large court rooms, perhaps not in the best architectural forms, are notable for their spaciousness and the richness of their excellent material. Unfortunately, contrary to my expressed wish, they have been lately much deformed by unusually large and hideous jury boxes, quite unnecessary in my judgment. I have never known how, in the face of my express disapproval, these deformities came to be erected.

Surrogates of the State to the same dead level. Most of the Surrogates who revised the new law of 1914 were ignorant of the conditions of the County of New York. They legislated for this county without consulting its different requirements.

All this detail just noticed would be of trifling importance, or rather of no importance, were it not that the lack of a proper distinction between the various courts of the Surrogates in this State, deters, I think, many of the properly equipped lawyers from assuming the responsibilities annexed to the Surrogates' Bench of this County. With a probate jurisdiction larger and more extended than that of the distinguished judges of the Probate Division in England a Surrogate of the County of New York should be relatively as cultivated a lawyer as a justice of the Probate Division is required to be in England. In England judges of the Probate Courts are chosen from the most learned members of the legal profession, and are rewarded by all the honors which in England go with high judicial station. A Surrogateship in this County offers small inducements to the capable lawyers at our Bar. Few of them, I fear, could be induced to accept the office as now constituted. With this in mind I ventured to suggest to the Constitutional Convention, that in order to obtain the best material for the Surrogates' Bench, the Surrogates in the populous centres should be made as eligible for transfer to the Court of Appeals or the Appellate Division as the Supreme Court Justices now are. In Pennsylvania the judges of the Orphans' Courts, for the great cities, possess all the jurisdiction and may sit at will in any other of the great courts of original jurisdiction in the State. All the judges of the courts of original jurisdiction in Pennsylvania possess the same jurisdiction theoretically. In practice they sit apart. In other words, a judgeship in the Orphans' Courts in Pennsylvania is made equal, and not unequal, in dignity and power to any other judgeship in any of the original courts of the State. This attracts, to the Bench of the Orphans' Courts in Pennsylvania, the best order of professional talent. In principle the new Surrogates' Law of New York admits no primacy, even of responsibility, among the Surrogates' Courts of the State. To this extent in my judgment the new law is distinctly harmful to the people of the County of New York in as much as it will tend to deter many of our best lawyers from any desire to sit on the Surrogates' Bench of this County. There are other reasons, however, for their disinclination, which I will not here mention, except to suggest that the enormous administra-

tive office, now annexed to the Bench of the Surrogates' Court of this County, is naturally abhorrent to many men of purely judicial temper. It is in their minds an adjunct incompatible with high judicial station, and great judicial responsibilities.

In conclusion let me say, that I have written these lines with the earnest hope that the young university men, who may see fit to read them, will learn, in their professional life to come, to be partial to a jurisdiction of great antiquity and greater usefulness and refinement than is, I fear, very generally appreciated by either the politicians or the people at large.

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