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Judicial System of Michigan under Governor and Judges

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JUDICIAL SYSTEM OF MICHIGAN UNDER GOVERNOR AND JUDGES.

WHEN the Territory of Michigan came into existence July 1, 1805, it found a system of jurisprudence in operation which had been adopted by the Governor and Judges of the Northwest Territory from the laws of Pennsylvania, due no doubt, to the fact that Gov. Arthur St. Clair had lived some years in that State, had been a member of its Board of Censors, a magistrate, and was familiar with its judicial system which provided a Court of General Quarter Sessions of the Peace in each county composed of Justices of the Peace, a Court of Common Pleas in each County, a Circuit Court composed of one or more of the judges of the Supreme Court for the trial of issues joined in that Court, and finally the Supreme or General Court, having both original and appellate jurisdiction. One of the officials provided in this system was the Chief Clerk of the Court of Common Pleas or the Prothonotary; in that part of the Territory, which later became Michigan, there never was but one Prothonotary, Peter Audrain of Detroit.

When in 1802, Indiana Territory was extended to include what is now Michigan, the latter's inhabitants continued the exercise of the old system, provided for them as a part of the old Northwest Territory, ignorant and perhaps regardless of any changes which the legislators of Indiana Territory might enact.

It was assumed by the Governor and Judges of Michigan Territory when they took charge that the laws of the Northwest Territory and of Indiana Territory were in force, as the third act passed by them the 12th day of July, 1805, was one prescribing the oath of a justice of the peace, and at that time no new act had been passed providing for such an office.

One of the first acts of the new legislative body was to appoint, upon the motion of Judge Woodward, a Committee to take into consideration the organization of a judiciary system for the Territory, and this Committee consisted of himself and Judge Bates.

The sixth Act passed—July 24, 1805—was concerning the Supreme Court of the Territory of Michigan. It made radical changes from the existing system, dispensed with the name General Court, provided a court to consist of the three judges appointed by the President, with original and exclusive jurisdiction in all cases where the title of land was involved, original and concurrent jurisdiction in all cases where the amount in dispute exceeded $200.00 and appellate jurisdiction in all cases. Sole jurisdiction over capital crim-

inal cases and cases of divorce and alimony was given to this court. Without expressly conferring chancery jurisdiction, it provided that suits in equity should not be sustained where adequate remedy might be had at law, and authorized the taking of oral testimony, and the examination of witnesses in open court in such cases. The Court was required to hold one term yearly, beginning the third Monday in September, but special sessions might be held whenever deemed necessary by two of the judges.

The next day was adopted an Act concerning District Courts, which, making use of the division of the Territory into districts by the Governor as his first executive act, provided a court in each district, (three at that time) the Court to consist of one of the judges of the Territory.

The jurisdiction of these courts extended over persons, causes, matters, or things exceeding $20.00 in value, except in cases vested exclusively in other courts, and the proceedings were required to conform as near as might be to the law and practice of the Supreme Court.

August 1, 1805, An Act was passed conferring upon Justices of the Peace the right to try all actions wherein the amount involved did not exceed $20.00 and by a subsequent act passed August 20th, the right of appeal was given from the Justice Court to the District Court and for appeals from the District Courts to the Supreme Court.

These various acts provided a complete system of courts for the trial of all kinds of cases, with a method of appeals from the inferior courts to the Supreme Court.

The Marshal of the Territory was required to summon a grand jury for every sitting of the Supreme Court.

It will be noted that the names of the courts as well as their jurisdiction were changed, and although no express repeal of the existing system was attached to these acts, they were intended to and did actually at once replace the former system. The Governor and two judges, the third not arriving in Michigan until the following year, sitting as a legislature, passed these laws. Gov. Hull had practiced law some years in Massachusetts, Judge Woodward had practiced in Washington and was familiar with the laws of Virginia and Maryland. Judge Bates had never practiced law, but had spent some time as a youth in the office of a court clerk in Virginia, so that it is not surprising that these laws changing the system of judicature should purport to be based upon the laws of Virginia and Massachusetts, with some assistance from the laws of Ohio and New York.

April 2, 1807, the law relating to District Courts was so amended as to dispense with a judge of the Supreme Court sitting in a district, and in lieu thereof the Governor was authorized to appoint in each district three persons of integrity, experience and legal knowledge, one as chief judge and the others as associate judges. The jurisdiction of the District Courts was extended to enable them to assess on their respective districts the cost of district charges, and also to hear and determine matters and complaints between masters and servants.

In 1807, Judge Bates resigned as Judge of Michigan Territory and James Witherell of Vermont was appointed in his place, although he did not arrive in Detroit to assume his duties until October, 1808. Judge Witherell was then 49 years old, had served with credit in the Revolutionary War, studied and practiced medicine, served one term in Congress, and been a member of the Governor's Council, and also of the State Legislature. In addition to these qualifications he had been Chief Justice of Rutland County Court, so that he had had a wide experience, although his technical legal acquirements were small.

In the latter part of October, 1808, Judge Woodward left Detroit for New York and Washington, and just before leaving, dropped in the Legislative Board a bomb in the shape of certain resolutions, and the echoes from the explosion reverberated loudly for two full years. These resolutions were in part the expression of hostility which had been growing for some time between the Governor and Judge Woodward, and reflected quite severely upon some of the actions of the Governor. A few days after the Judge's departure, (Nov. 9, 1808) the Legislative Board passed an act changing entirely the method of authenticating the legislative acts. Hitherto the Governor and such of the Judges as were present and participating had all signed the bill when passed and engrossed; the new act provided that three members of the Legislature should constitute a quorum, and that two in such case would be a legal majority, although the Act of Congress creating the Territory gave the power of adopting laws to the "Governor and Judges, or a majority of them". The same act also provided that any acts so passed should be signed by the presiding officer and attested by the Secretary. This act purported to be adopted from the laws of Vermont.

February 16, 1809, an Act was passed defining the powers of justices of the peace in civil causes, and they were authorized to try civil actions, (with certain exceptions) where the amount involved did not exceed thirty dollars, (or in case of notes, settled

accounts and specialties $50.00) with right of appeal to the District Court.

February 18, 1809, an Act was passed concerning the Supreme Court, giving the Court concurrent jurisdiction in civil matters, where the amount involved exceeded $500.00, and extending its criminal jurisdiction to all cases not cognizable by a justice of the peace or District Court, and to all cases where the United States was a party. It also gave appellate jurisdiction from the District Courts in criminal prosecutions and civil actions.

February 21, 1809, An Act concerning District Courts was passed. It made all the judges of such courts Justices of the Peace within their respective districts, required two sessions (except in the District of Michilimackinac) to be held yearly, and gave the Court cognizance of all criminal matters (except those cognizable by the Supreme Court or a Justice of the Peace) and authorized the Attorney General to call a grand jury for any session. The Court was given original jurisdiction over all civil matters except such as were cognizable solely before the Supreme Court or Justices of the Peace. This Act regulated the method of appeal from the District to the Supreme Court, and in addition permitted either party to have his case reviewed, *once,* at the next stated session of the same District Court.

These three acts were complete in form and evidently intended to fully cover the subjects, and on Feb. 24th, an act was passed repealing the former acts relating to the Supreme and District Courts. The same repealing act declared void within the Territory from that date all laws adopted and published by the Governor and Judges or legislative authority of the Northwestern Territory, or of Indiana Territory. All of these acts were authenticated in the manner provided by the Act of Nov. 9, 1808.

During the summer of 1809 Judge Woodward returned to Detroit, and pursuant to the act of Nov. 9, 1808, the Legislative Board met Oct. 12, 1809, with every member present. A Secretary and Sergeant at Arms were duly elected and their compensation fixed, and an adjournment taken to the following day, on which day the Governor and Judges adjourned *sine die,* without having transacted any legislative business. This was no doubt due to the state of hostility among the members of the Board.

In 1808 one James Wilson had brought suit in the District Court for the Districts of Detroit and Huron against James MacGarvin upon a promissory note, and obtained judgment. The defendant appealed to the Supreme Court, using the method and giving the security required by the act of Feb. 21, 1809. Oct. 5, 1809, the full

Court being present, the appellee moved to dismiss the appeal. The grounds of the motion do not appear on the record, but the Court entry reads that "for reasons appearing to the Court the appeal be dismissed, security not having been given in conformity to the Act of 1805". Judge Woodward rendered the opinion sustaining the motion. His ground for so doing was there was no evidence of any statute relating to appeals except the statute of 1805. The act of Feb. 21, 1809, bore no evidence of legal adoption, being signed by the Governor alone. In the course of the opinion he said:

> "A power in the executive magistrate to sign a bill in order to become a law in any case where less than a majority of the whole number of the Governor and Judges consent to his signing it for that purpose is an essential change of the Ordinance and can be conferred only by an Act of Congress of the United States; that no law of the State of Vermont or of any other State exists of similar import; that the power attempted to be given by the second section of said bill is therefore void and that the acts done under it are also void."

Judge Griffin agreed with Judge Woodward, while Judge Witherell, as might have been expected, dissented. Having in mind the language of the Ordinance "The Governor and Judges, or a majority of them, shall adopt and publish such laws of the original States, civil and criminal, as may be necessary and best suited to the circumstances of the District", it now seems clear that the opinion of Judge Woodward correctly stated the law. The Governor and three judges did not constitute a *body* like an ordinary legislature which must speak through its officers, but the power to adopt laws was conferred upon the four persons occupying the positions of Governor and Judges respectively, and a majority of them, or three must unite to adopt any laws.

Upon hearing of the decision, which in effect nullified all the legislation which he and Judge Witherell had so industriously manufactured, during Judge Woodward's absence, Governor Hull became very indignant, and following the legislative session at which nothing was done, probably because of the tension of feeling among the members of the Board, he took the extraordinary course of issuing Oct. 19, 1809, a proclamation which Judge Woodward properly characterized as "calumnious and inflammatory". It denied the power of the Court to declare any law void, and advised the citizens that the construction put by the Court on the Ordinance was

an absurdity, and that they should be firm and uniform in obeying the laws which had been passed, and called upon all officers, civil and military, to carry them into effect.

Charged with violation of some of these laws several persons were after this proclamation, arrested, but released by writs of *Habeas Corpus* issued by the Supreme Court. In one such case, that of Andre Colhoun, decided March 8, 1810, Judge Woodward said:

> "The Supreme Court of the Territory of Michigan, having decided on the fifth day of October, one thousand eight hundred nine, that a bill signed by the Governor of the Territory alone under a power to sign in cases when less than a majority of the Governor and Judges under the Congressional Ordinance of the thirteenth day of July, one thousand seven hundred eighty-seven either vote for or are willing to sign such bill, is not a law adopted by the Governor and Judges or a majority of them pursuant to the Ordinance; and the said Supreme Court having also decided in the cases of Isaac Burnet and Jacob Smith upon writ of *Habeas Corpus* that the bill extending the jurisdiction of magistrates being signed by the Governor alone under the power aforesaid is not a law obligatory upon the inhabitants of their Territory. I consider the Principle in the case of Andre Colhoun as already decided and settled as far as the Supreme Court of this Territory have authority to decide and settle it, and that he is therefore illegally confined and must be discharged."

Naturally under these circumstances citizens were uncertain about their rights and duties. Violent feelings were excited. Partisans attached themselves to one side or the other, and virtual anarchy existed, and this unsatisfactory state of things continued for several months. At length, on July 18, 1810, the Governor directed Joseph Watson, Secretary of the Governor and Judges in their legislative capacity, to notify the judges that it seemed necessary for them to meet July 23rd. On that day Judge Woodward sent a communication to the Governor, declining to act with him in a legislative character until the proclamation of October 19, 1809, was annulled or unequivocal evidence produced that it was not to be observed. No meeting was held July 23rd, but on August 9, 1810, a meeting was held at which the Governor and Judges Witherell and Woodward were present. Judge Woodward immediately offered a resolution that all laws thereafter adopted be signed by

three members of the Government, but action was postponed until the following day, and then further postponed until August 23rd. On that date all members of the Government were present, and upon Judge Woodward's resolution being brought up, it failed to pass, he and Judge Griffin voting for it, and Governor Hull and Judge Witherell against it.

Another meeting was held the next day, and a resolution upon the subject of the police of Detroit which had been previously offered by Judge Woodward, met the same fate of an evenly divided body. Judge Witherell then introduced a resolution which, after referring to the decisions of Judges Woodward and Griffin, in Oct., 1809, as "the most extraordinary and unwarrantable stretch of power ever attempted to be exercised by the judiciary over a legislative and free government", proposed that the Governor and Judges proceed to sign the laws passed in 1808 and 1809. This firebrand of a resolution failed to pass, even Governor Hull not voting for it, and he at once offered a resolution that a committee should be appointed to prepare a law declaring what laws of the Territory were in force, and Judge Woodward was selected as the Committee.

August 28th, the Legislative Board met again, and Judge Woodward reported a bill which was read and they then adjourned until August 30th. The bill by its first action provided that no act of the Parliament of England should have any force within the Territory of Michigan. Section 2 annulled the French and Canadian laws which had at any time been in force. Section 3 took the same action regarding laws of the Northwest Territory and Indiana Territory. Section 4 made extended and critical reference to the Act of Nov. 9, 1809, and the forty-four other acts passed and authenticated in pursuance thereof, to the decision of the Supreme Court in the case of *MacGarvin* v. *Wilson,* and the proclamation of the Governor declaring that decision void.

Section 5 fixed the second Thursday of October in each year as the regular session of the Legislature, with power to hold special meetings. Sections 6 and 7 repealed certain acts passed in 1805.

At the adjourned session on August 30th a motion to strike out sections 2 and 4 failed by even division, and an adjournment was taken until the following day. On that day the question of third reading of the bill came up and failed to pass. At this meeting, a petition unsigned, but upholding the action of the Governor and Judge Witherell was presented, and Judge Griffin moved "that it be thrown under the table".

Evidently, by this time however, all members began to feel that moderation and conciliation were necessary, and Sept. 1, a bill was

introduced and unanimously passed that all acts theretofore passed relating to the manner of authenticating legislative acts should be null as to any future operation.

This was the first Legislative Act taken since May 11th, 1809. Considerable activity in legislation then followed. September 12th, Judge Woodward was appointed a Committee to bring in a bill declaring what laws should be in force. The next day he reported a bill, containing substantially the same provisions as were contained in the first four sections of his former bill, except that Section 4 omitted all offensive references, and provided that all laws passed between June 2nd, 1807, and September 1st, 1810 be repealed. The bill passed second reading, but when it came to final action Sept. 14th, Governor Hull and Judge Witherell voted against it, and thus it failed of passage. Two days later, however, it was reconsidered by unanimous vote, and after some minor amendments, adopted.

Judge Woodward was then appointed a Committee on the subject of the British Acts, Judge Griffin a Committee on the laws of the Northwest and Indiana Territories, and Gov. Hull on the laws of Michigan, passed previous to September 1, 1810. Adjournment was then taken to the next day—Sunday—when the engrossed act was presented, signed by the Governor, Judges Woodward and Griffin, and became a law.

A petition had been presented to the Board Sept. 7, 1810, praying for the abolition of District Courts and the increase of the jurisdiction of Justices of the Peace to one hundred dollars. Following the other acts adopted September 16th, there was passed by the Governor and same two judges "An Act to abolish the Courts of districts and to define and regulate the powers, duties and jurisdiction of Justices of the Peace". This repealed all acts relating to courts of districts, gave to justices power to try without jury cases involving matters not over twenty dollars, and, with jury, matters up to One Hundred Dollars, and for appeal to the Supreme Court and retrial there. The same Act gave to the Supreme Court original jurisdiction in all matters above One Hundred Dollars, and also the power to probate wills.

January 14th, 1811, An Act was passed repealing the jurisdiction section of the Act of July 24th, 1805, concerning the Supreme Court and giving to the Court original and exclusive jurisdiction in all cases where the title of land was in question and in all other causes where the matter in demand exceeded One Hundred Dollars. January 10th, 1812, the Supreme Court was given jurisdiction of all cases of divorce and alimony, and on February 19th, 1812, juris-

diction of all matters of equity. No further changes were made until after the War of 1812.

Although the British exercised jurisdiction over the Territory from August 16, 1812, to September 28, 1813, and the Supreme Court did not sit between the summer of 1812 and October, 1814, the Justice's Courts carried on business as usual in the interval.

From 1814 the Legislative Board consisted of Governor Cass and the same judges who had acted in the later years of Gov. Hull's office holding, but Governor Cass, while courteous and diplomatic in manner, was firm and consistent in conduct, and no trouble arose between him and the judicial part of the Government.

By Act of February 9th, 1815, the Register of Detroit was given for one year the same power as a judge of the Supreme Court in chambers.

October 24th, 1815, although there was then but one County in the Territory, (Wayne) An Act was passed establishing County Courts with one chief and two associate justices. This Court was given exclusive jurisdiction in all cases where the matter in dispute was beyond the jurisdiction of justices of the peace and less than $1,000.00 but ejectment was expressly excluded from its jurisdiction. In criminal matters it had power to try all offences not capital and had the same power to issue remedial and other process as the Supreme Court except Writs of Error and Mandamus. Provision was made for appeals to the County Court from justices of the Peace, and the limiting of the jurisdiction of justices to matters involving $20.00 or less. One week later an Act was passed relating to the Supreme Court giving it exclusive jurisdiction in actions of ejectment, and in cases where the matter in dispute exceeded $1,000.00. The same Act repealed the Act giving Justices of the Peace jurisdiction where the amount in controversy exceeded $20.00 and also repealed former provisions relating to the Supreme Court.

December 31st, 1817, the Board passed an act taking away from justices jurisdiction over certain subjects—chiefly land—and from County Courts jurisdiction over matters under $100.00.

June 13th, 1818, An Act was passed in addition to the Act establishing County Courts; this gave Chancery jurisdiction to County Courts, and to the Supreme Court, original and concurrent jurisdiction with the County Courts, and appellate jurisdiction from the County Court. It also repealed all inconsistent laws.

May 20, 1820, An Act was passed to regulate the duties and powers of Justices of the Peace. This Act made a considerable change, giving to Justices power to hear—with some exceptions—matters not exceeding $100.00 in amount, provided for appeal to

the County Court if the judgment exceeded $20.00 and for removing cases by certiorari to the Supreme Court. It repealed the Act of September 16th, 1810, and an additional act (not found) of December 31, 1817.

November 28, 1820, An Act of sixty-five sections was passed regulating the mode of proceedings in chancery in County Courts and the Supreme Court, limiting County Courts to matters not exceeding $1,000.00, and excluding cases involving the title to land.

December 21, 1820, An Act was passed defining the jurisdiction and powers of the Supreme and County Courts and directing the pleadings and practice therein. This gave to the Supreme Court original and exclusive jurisdiction in all civil actions at law where the amount involved exceeded $1,000.00, exclusive jurisdiction in divorce, alimony, ejectment, capital criminal cases, and in all cases not made specially cognizable before some other Court, concurrent jurisdiction with the County Courts of all other crimes, and appellate jurisdiction from the County Courts in all civil cases. It gave to County Courts jurisdiction in all civil cases where the amount involved was not within the jurisdiction of a Justice of the Peace, and did not exceed $1,000.00, also concurrent jurisdiction with the Supreme Court of all criminal actions, except capital offenses. This Act purported to be adopted from the laws of seven of the states. On the same day the Board passed a law regulating appeals from County Courts to the Supreme Court, and repealing all inconsistent acts.

By an Act of February 21, 1821, provision was made for the trial of title to land by means of a writ of right, and all other methods were abrogated.

April 19, 1821, A further Act regulating the practice of the Courts was passed, and finally on May 8th, 1821, an act was passed repealing practically the remainder of the original act of 1805 concerning the Supreme Court, which had not already been expressly repealed, and also repealing all other acts passed after July 25th, 1805, except certain enumerated acts, which excepted acts include that relating to Justices of the Peace adopted May 20th, 1820, that relating to proceedings in chancery of November 28th, 1820, that of December 31, 1820, relating to Supreme and County Courts, and the other adopted the same day concerning appeals, that of February 26th, 1821, concerning the action of right, that of April 19, 1821, regulating the practice of the Courts, and the repealing act of September 16th, 1810.

This system remained unchanged during the rest of the period in which the Governor and Judges formed the Legislature, and un-

til April 23, 1827, when the Legislative Council adopted the statute which had been proposed by a Commission appointed in 1825 to revise the statutes of the Territory, and which retained all the former courts and added a Circuit Court for each County.

CHANCERY.

By the Ordinance of 1787 a Court was provided for the Northwest Territory with common law jurisdiction. As first reported by the Committee, May 10th, 1786, this Ordinance provided a court consisting of five judges to have common law and chancery jurisdiction, and this provision was continued when the Ordinance was reported by a new Committee September 19th, 1786, but when it was again reported April 26th, 1787, the provision for a court was changed, reducing the number of judges to three, and striking out Chancery from the Court's jurisdiction.

Although no express provision was made by statute in Michigan, conferring chancery jurisdiction, or regulating its practice until 1818, the first act concerning the Supreme Court passed July 24th, 1805, recognized by implication the right to bring suits in equity before the Court, and in 1806, two such suits were brought, one to prevent the defendant from proceeding to enforce a judgment, the other to set aside a conveyance, and the same Court continued as long as it existed to entertain and decide cases involving the ordinary subjects of equitable jurisdiction.

Congress passed an Act, March 8, 1823, relating to Michigan, which among other things expressly gave to the judges chancery as well as common law jurisdiction.

PROBATE COURTS.

The Legislative Board of the Northwest Territory had provided for a probate court in each county, and when Wayne County, which included all of what later became Michigan, and also a part of Ohio and Indiana, was organized in 1796, it came under the system, and had its judge of probate.

One of the early acts of the Michigan Legislative Board, adopted August 31st, 1805, provided that the District Court, or the clerk of the Court, or any judge of the Territory, should have power to take probate of a will or to grant administration in the case of persons dying intestate. The substance of the act purported to be adopted from the laws of Virginia.

January 31st, 1809, as one of the forty-five laws passed in the absence of Judge Woodward and referred to above, there was

adopted "An Act for the probate of wills and the settlement of testate and intestate estates." This Act contained ninety-seven sections and, as might perhaps be expected, purported to be adopted from the laws of Vermont. All through the Act it is assumed that there is a Probate Judge in each District in the Territory, and he is authorized to appoint a clerk or register, but nowhere in the Act is there any language providing a Probate Court or a Probate Judge.

On February 24th, 1809, the Act of August 31st, 1805, was expressly repealed as were also all laws adopted by the Legislative authority of the Northwestern Territory or of Indiana Territory, so that the Act of January 31st, 1809, with its uncertainty as to who were the judges of Probate, was the only law nominally in existence. With the law in this condition a case arose in which the validity of the forty-five laws passed in Judge Woodward's absence was again considered. George Hoffman, a young man who had come from Virginia to Detroit in 1805, and had been postmaster there, Register of U. S. Land Office, Collector of Customs at Mackinaw, and who had found time among his multifarious duties, to be admitted to the bar, and to marry Margaretta, a daughter of old Peter Audrain, the Universal Secretary, died March 2nd, 1810, leaving a widow, an infant son, and a will. His papers were all entrusted to Solomon Sibley, then an eminent lawyer, who later became judge. Mr. Sibley, conceiving that the decision of the Supreme Court in the case of *McGarvin* v. *Wilson*, followed by others of similar import, had disposed of the Probate Statute of 1809, and left as the only law upon the subject the statute of 1805, presented the Hoffman will to the District Court at Detroit. At that time this Court consisted of Jacob Visger, Chief Justice, John Whipple, and one other associate justice. Visger and Whipple acted upon the application: they were both warm adherents of Governor Hull in the controversy between him and the Supreme Court, and refused to accept the will for probate, taking the position that the law of 1809 was in force, which provided a Judge of Probate, and therefore the District Court had no jurisdiction. Sibley thereupon applied to the Supreme Court for Mandamus to compel the District Court to receive the will for probate. Judge Woodward, speaking for the majority of the Court, on May 24th, 1810, said "The Ordinance (of 1787) gives a plain and simple power of the Governor and Judges, *a majority of them may adopt laws.* They are not made a Legislature, not a Legislative Board. They have neither a speaker nor a president. A provision sanctioned by three of them, being adopted from the law of an original state, is a law binding

on the good people, inhabitants and government of this Territory, if it does not contravene the constitution of the United States or the Acts of Congress. Any other instrument is but a mere bill, project or writing, and cannot be received by a Court of Justice."

An order was entered that the District Court should receive the will for probate or show good cause why that should not be done. Accordingly, Judge Visger took up the cudgels in support of the action of the District Court and made his return August 21st, 1810. In it he maintained "that there does not exist anywhere a power of disannulling or abrogating or repealing laws adopted and promulgated (by Governor and Judges) save in the Congress of the United States or in the Governor and Ju ges sitting in their legislative capacity" thus begging the question in assuming that the law in question had been properly adopted. He ended his return by saying "Your respondent solemnly avers before God and the Honorable Court that he would prefer death to complyance and act a part so unworthy the character of an honest man and a judge." This defiant action on the part of the lower Court, undoubtedly approved by the Governor and Judge Witherell, occurred in the midst of the hostilities taking place in the Legislative body, but Judge Visger's attitude did him or his faction little good, as among the laws adopted September 16th, 1810, was one which legislated the District Courts —and with them Judge Visger—out of existence. The same Act by an amendment on the day of its final passage, gave to the Supreme Court jurisdiction over the probate of wills, and on September 21st the Hoffman will was presented to the Supreme Court and by it allowed.

January 19th, 1811, "An Act to adjust the estates and affairs of deceased persons, testate and intestate, and for other purposes" was passed which made a material change in the Probate System. It purported to be based largely on the laws of Virginia and Vermont, but the section making the vital changes was stated to be adopted from the laws of Maryland, Massachusetts, Ohio, Vermont, and Virginia. This section provided for a register in each District, who should not only probate wills, grant administration and do all other duties generally performed by Probate Courts, but should also record all instruments relating to the conveyance of land. An appeal might be taken from any decision of the Register to the Supreme Court, provided the matter in controversy was of the value of One Hundred Dollars. This Act was evidently intended to cover the whole subject, as it repealed all acts and parts of acts within its purview.

For several years this system continued practically unchanged, but as estates grew in number and importance, it was found that too many duties were imposed upon the Register, and the law itself was in many respects too general and indefinite, with powers and duties too vaguely defined.

July 27th, 1818, sixteen acts including a repealing act were passed, which constitute, with minor modifications, our Probate Law today. These acts were adopted from the laws of Massachusetts, and the first one established a court of Probate in each County, with a Judge to be appointed by the Governor, and a Register, appointed in the same manner, to have custody of the files and records. Appeals from the Probate Court to the Supreme Court were provided for. Subsequent acts took up the subjects of wills, their execution and probate, intestate estates and the administration of estates, not only of deceased persons, but of minors and incompetent persons, so that for the first time Michigan had a well rounded system covering the whole subject of Probate Jurisdiction and practice.

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