

Department of Justice

Washington. 22nd May 1873

Judge Tongue

Dear Sir

The enclosed notice, which
is sent me this morning, calls for an application
upon my part before the term of Chalmers is over.

It brings up a case of want of jurisdiction, before
your Honor. I say this, supposing every rule made
his motion, &c.

The facts are, that the plff. demanded the debt
(a year or so since) as admt. &c. The debt pleaded
no assets. Whereupon it seems that the J.P. returned
a judgment against the debt, & had it doctored!

I should think he had no jurisdiction to do so. The
question of assets had to be disposed of, & the statute,
provided that this shall be done in a different way.
I have not my Code here, but I believe this is so.

I do not know what proceeding they took,
but I think that no judgment could be
given of the suit be interested.

I suppose that his client's failing, after the plea
of his assets, was made, to take proper steps for
trying it was a sort of discontinuance. At all
events the docketing was unavailing.

The case is one also of substantial injustice. The
deceased died during the war; & this dependent
administered, as proved the will, then. The doctrine
of dignity of claims applies. The estate is utterly
indivisible, & no one believes that the executor is
to blame in any degree. The debt here is an account,
an open act. The estate pays but a small per-
centage upon its bonded debt. The attempt is to
get this debt by this policy out of the executor.

I hardly call that chicanery ^{as this book} _{at least} be
reversed & held in suspense.

I do not mean to say that there is a conscious

intention to get the money out of the executor; - only, that
such will be the result, if successful.

Very Respectfully,

John O'Brien Grant

J. F. Phillips

P.S. I am much obliged for your answer, received a
day or so since. Edward is a "light weight": 7 to 10 pounds
chaff. Had once some material gifts. But the lively consciousness
of genius has brought forth no finer but indolence. If he had
studied himself to death (all but) he could have gone near
to make such a man, as Kerr! As it is, ~~it is~~ might well
of three, putting K. as middle term, & some really eminent man
in front, will assign E. his part. It would not do to select
any body, untried as first term, for that would make K.
very superior to somebody, which I do not insinuate. I hope
you gather very general ideas; one cannot be accurate about
such quantities, without the help of a Differential Calculus.
Many College time it was $\frac{dx}{dx}$, that it is now I know not.

The wet measure (say wine &c) it might be different.
You would have to get all your golden measures for
silver: a punster would say "John", & Demi John.
Well I am clearing myself to be run away with
by a pitiful theme: & one never before discussed.
When one has been mauled for years, an occasion
may come when one will rise up even to boot heels.
Sub rosa - sed, rosinna! I do not like it however that
I ever think of such people enough to judge their dimensions.
And you are generous enough to me, to pardon it.

I read the notice: it is rather above the article cunningly
than produced. The idea was good: & the vote well accounted
also to the audience, which is the best to be said of any
effort whatever. Yours truly
S. P. Philips