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IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

CLARENCE W. COWPER

v.

WILLIAM H. SARGEANT,
Judge of the Corporation Court of the City of Norfolk.

UPON A PETITION FOR A WRIT OF
PROHIBITION.

JAMES E. HEATH,
Counsel for the Petitioner.

THE RELIANCE PRESS OF NORFOLK, VA., INC.

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This case presents a simple question:

Has the Corporation Court of the City of Norfolk jurisdiction to entertain a bill in equity under section 5259 of the Code?

It is respectfully submitted that the answer to this question should be in the negative.

The last sentence of section 5259 of the Code has given rise to this question. But for this sentence, the incapacity of the Corporation Court to exercise such jurisdiction would not be disputed. This sentence was first incorporated in the statute by the Revisors of 1919. See their note to this section. Prior to that time the jurisdiction of the Corporation Court had remained precisely as it was under the Act of February 12, 1894, establishing the Court of Law and Chancery. See Acts 1893-94, page 244. By this Act, it is needless to say,

all equity jurisdiction had been taken from the Corporation Court, and it remains today without any such jurisdiction, unless it has been given *by implication* by the last sentence of section 5259 of the Code. We say *by implication* advisedly, because this statute is not one dealing with jurisdiction at all, but dealing with the probate of wills.

The Act of February 12, 1894, establishing the Court of Law and Chancery and curtailing the jurisdiction of the Corporation Court, was made a part of the Code of 1919 without any change. This alone ought to make it plain that it was not the intention of the Revisors of 1919, or of the Legislature when it enacted the Code, to alter or affect in any way the jurisdiction of the two Courts. To retain as a part of the Code a statute which had previously taken away equity jurisdiction, and then to confer such jurisdiction by another section, is an inconsistency of which it is not to be supposed that the Revisors were guilty. As was said by the Supreme Court of Appeals in the case of *Legal Club v. Light*, 137 Va., 249, "revisors of statutes are presumed not to change the law if the language which they use fairly admits of a construction which makes it consistent with the former statutes." Moreover, where there has been a general codification, the presumption is that the old law was not intended to be changed unless a contrary intention should plainly appear in the new. See *Keister v. Keister*, 123 Va., 157.

Such being the rules of construction which apply in this case, it is submitted that it was never intended by the Revisors, or by the Legislature, that the last sentence of section 5259 should restore to the Corporation Court any of the jurisdiction which had been taken

from it. It is admitted that this sentence does present some difficulty; but it is further submitted that this difficulty is not so great as to make the general rule inapplicable. The sentence in question can be given its proper scope by construing it to mean that no bill under section 5259 shall be filed except in the court in which, or in the clerk's office of which, the will was admitted to probate—*provided, always, such court be a court having equity jurisdiction.* These italicised words, we submit, do no violence to the statute, but, on the contrary, are consistent with its language. If the words we have suggested, or similar words, are not supplied in construing this statute, then we must not only convict the Revisors and the Legislature of the inconsistency which we have mentioned, but we shall be giving to the Corporation Court a jurisdiction which the creators of that Court had deliberately taken from it, a jurisdiction, in fact, which was the very ground of the existence of the Court of Law and Chancery. Jurisdiction by inference, or by implication, is always to be avoided, and particularly in a case like this, where, as we have just stated, the draftsmen of the Act of February 12, 1894, had deliberately taken from the Corporation Court, and given to a new court, the jurisdiction which it is now asserted has been restored to it.

Chapter 244 of the Code deals with the jurisdiction of all the Corporation Courts of the State. By section 5910, it is provided that all the Corporation Courts of the State, with the exception only of the Hustings Court of the City of Richmond, shall have the same jurisdiction in the respective cities as the Circuit Courts have in the counties in which such cities are located. This statute confers both civil and criminal jurisdiction.

Yet it will hardly be contended that, because neither of the Corporation Courts of Norfolk were excepted from this statute, as was the Hustings Court of the City of Richmond, these two Norfolk courts have any other jurisdiction than that conferred by the statutes by which they were established. Hence, the plain intent of the Legislature, expressed by section 5910, is an intent analogous to that which we seek to sustain, namely: "The several Corporation Courts shall, within the cities for which they are established, have the same jurisdiction which the Circuit Courts have in the counties for which they are established, *unless otherwise limited by statute.*" The italicized words are our own. Now the general language of section 5910 of the Code is just as inconsistent with the provisions of the Act of February 12, 1894, as is the language of 5259 of the Code. Both are plainly and admittedly inconsistent. Yet we have to construe these statutes so as to give effect to both if possible. The only way by which this can be done is to hold that the statutes creating the two Corporation Courts of Norfolk were intended to remain as they were, and that neither section 5259 nor section 5210 was intended to apply to them, except insofar as these two statutes were not inconsistent with 5935. Where statutes are in apparent conflict, they should be so construed as to give effect to that statute which is the very constitution itself of the Court rather than to make controlling a statute affecting directly the law of wills and touching only incidentally upon the jurisdiction of the Court.

Respectfully submitted,

JAMES E. HEATH,
Counsel for the Petitioner.