

DELEGATE J. CLARK (presiding):
Delegate Grant.

DELEGATE GRANT: I have heard a great deal of discussion about the right of removal being abused where the case originates. One of the advantages of practicing in a remote place, is that you get a lot of transfer cases. Just listen to the local counsel tell the reasons they have for transferring cases will make your hair stand on end. Section 8 gives you the right of removal in equity cases. We have had the right of removal in criminal cases. If you needed to get a fair judge you had to have the judge say himself that he was unfair. I submit to you if you could expect him to make that decision fairly you would not have had to ask for the removal.

DELEGATE J. CLARK (presiding):
Delegate Carson.

DELEGATE CARSON: Mr. Chairman and ladies and gentlemen, I rise in support of the amendment. By taking out section 8 you do not destroy the right of removal. All you do is leave it up to the General Assembly and the Court of Appeals by rule as they shall operate to define this area.

This has been in the past a most misused procedure. It has not in the past constitutionally applied to equity cases. I think it very clear that our legislature and our Court of Appeals can certainly handle this area and do it well and wisely as time goes by. But to write into the Constitution an absolute where an absolute is most unwise seems to me very lamentable, especially in the larger counties. This right has been so much abused in the past that it should not be in the constitution but left to better sources to be flexible and to be well done.

I urge your support of this amendment.

DELEGATE J. CLARK (presiding):
Delegate Weidemeyer.

DELEGATE WEIDEMEYER: Mr. President and members of the Committee, I urge that the amendment be rejected. For a long time it has been historic that our people who had to go into court on a law case knew they had the constitutional right to remove it from a court in an area where they felt they could not have a fair and impartial trial. If it is any kind of right that we do not want to abandon, then we ought not to leave it up to the legislature or the rule of court.

The only objection I have heard to it is that some have abused it. Granting that some have abused it, a lot of others have

used it correctly in order to obtain justice and we ought to protect the rights of all of our litigants in civil cases.

I agree with Delegate Grant that I think it was an inequity before and we should make it applicable in equity cases.

What do you do hear complaints of is that they go in and request removal at the last minute after the witnesses are ready. I have had it happen to me, but I have also had to remove cases where I felt I could not have a fair or impartial trial either by a prejudiced jury or by the court himself. Sometimes the judge sitting high and mighty rapping the gavel can make a lot of prejudicial remarks. In equity he has the full sway of it.

We can leave this in the constitution and we can take care of it. One little simple amendment would cure all of their objections and if we took out the word "pending" in line 19 and added "filed within a reasonable time prior to the date set for trial and provided by law" with this the legislature can regulate how many days prior to the date set for trial that the request for removal can be filed. I think that will cure all the objections. Therefore I think that this vital constitutional right of all civil litigants should be protected in the constitution as it has been for so many years past.

DELEGATE J. CLARK (presiding):
Any further discussion?

Delegate Macdonald.

DELEGATE MACDONALD: Parliamentary inquiry, Mr. Chairman. If this amendment is passed, will other amendments to this section be in order?

DELEGATE J. CLARK (presiding):
The Chair understands that this is a proper procedure. There is a variation, not to this same section, but a substitute can be made. It could just be a new paragraph. It would not necessarily have to be a substitute. There would not be a substitute but a new paragraph on the same subject could be offered.

Delegate Bamberger.

DELEGATE BAMBERGER: Mr. Chairman, I rise to speak in favor of this amendment, and again I think I must point out that I think we are playing a lawyer's game.

First, the removal of section 8 from the Constitution will not, I repeat, will not take away from anybody the right to have