

theft have found it much cheaper for themselves to refund the loss to the parties who have lost by the theft, than to follow the causes to the places to which they have been removed, and consequently cases have been informally dropped and thus the ends of justice have been defeated.

This section is an exception to the general power of removal on the naked affidavit of the parties. It was thought wise also to provide that parties should in some way satisfy the court in making the application that it was not done to delay the cause and run away from the witnesses, or the person in whose hands the cause was placed; so that the court might see that there was some ground of action or defence, as the case might be. I do not see that it can operate any hardship to any one. It is true the objection may be to the court that is to try the case. I suppose an objection of that nature, stated in any court, would insure instantly the removal of the case. If any man who had a cause on trial felt that the personal relations between himself and the judge were such that he could not have a fair trial before him, and that was stated to the court, then I suppose that no judge within the State, or whom we are likely to have in the State, would retain jurisdiction of the cause and proceed to the trial. In a case of that sort an order for removal would follow of course, and in other cases I am satisfied that the ends of justice would be attained by this section.

Mr. STIRLING. This section undoubtedly involves a matter of very grave importance, and whatever is done in regard to this matter ought to be done very deliberately. There is no doubt that, as my colleague (Mr. Stockbridge) has said, there have been gross abuses growing out of this system. But at the same time it is a system which has been in force in this State for a very long period of time, and like most things that have some value they are the very things that are abused. I have seen men in court, just as their causes were being called for trial, move for an order of removal with no other object than to get rid of justice. It was not because they were allowed to do it on simple affidavit, so much as because the disposition to extend this right of removal has been carried so far as to lead to the abuses which have grown up under it. The laws of the State gives the party the right to move for a removal at the first term of the court; and the legislature has given the right still further to do so at any subsequent session of the court. The difficulty is that there is no time fixed, no limit. If the judges of the court were authorized to prescribe rules in regard to this matter, so that they could compel a man to decide within a certain time after his pleading, the great evil would be remedied.

The legislature of 1862 was imprompted principally through the instrumentality of the judge of the criminal court and myself to

pass a law to alter this thing, and they did intend to do it; but the law was so botched up before it got through the legislature that the matter really stood as it was before. The difficulty arises from allowing a party to remove his cause at a second term of the court. This section would abolish the right altogether hereafter. A criminal cannot show why it is that he cannot have a fair trial, for to do so he must make known his ground of defence; and in a civil case it cannot be done. It rests upon matters which a man cannot see, but very often cannot prove. Take a man who is to be tried in some county for a criminal offence. His counsel knows, and he himself knows that he cannot have a fair trial.—His offence has prejudiced every man in the county, and each one of those men, unless he is an extraordinary man will carry those prejudices into the jury-box. The judge sympathizes with his fellow citizens in the county. Innocent men have been acquitted in this State solely because they had the power to have their causes removed. Now I do not see how a man is to show that he has a good defence. This does not say that he is to swear to any affidavit, but that he must make it satisfactorily appear to the court.

Mr. THRUSTON. Suppose you insert the words "by the affidavit of the party," after the word "shall," so that it shall read "whenever any party, &c., shall by the affidavit of the party make it satisfactorily appear to the court," &c. In that way it would be necessary for the party to set out what his case was, and his ground of action upon oath; and the court could judge whether they were such grounds of defence as were reasonable and proper. Suppose the section were to read in this way, "shall make it satisfactorily appear by his affidavit to the court that such a party has a substantial ground of action or defence," &c. Then the affidavit of the party would be all that the court would require. In regard to the defence, it would be necessary for me to set out in the affidavit only so far as to show that he had a substantial defence. I think that would meet the objection of the gentleman, and would avoid some of the abuses to which the system is liable.

Mr. STIRLING. I think this amendment is absolutely indispensable, unless you are to change the whole right of removal. I would rather leave this section out entirely. If you put it in here the legislature cannot restrict it. But leave the law to stand as it is, you will leave it subject to such revision as the legislature may deem necessary. I think the legislature will be disposed to restrict this right. But if you put it in as it stands in this section you shut the door to fraud, and to everything else also.

Some time ago I had a civil case against a corporation. The president of the corporation made oath that he could not have a fair