

DELEGATE HENDERSON: I am opposed to this amendment and I sincerely hope it will be defeated. It provides that a case can be removed as a matter of right, and all that it allows the legislature or the court to do is to fix the time within which the trial can be held.

Now that opens all of the abuses, it seems to me, which presently exist in this field, namely, that people should only have a right to removal upon a showing of cause that they cannot have a fair and impartial trial. This makes the removal mandatory merely by filing of a piece of paper, and I think it is open to all the objections that have been pointed out in such detail at a previous debate. I hope that this will be defeated.

THE CHAIRMAN: Is there any further discussion?

Delegate Mason.

DELEGATE MASON: Mr. Chairman, I would like to ask Delegate Weidemeyer a question.

THE CHAIRMAN: Delegate Weidemeyer does not have the floor just now. Delegate Macdonald, do you desire to speak in favor of the amendment?

DELEGATE MACDONALD: I do, Mr. Chairman.

THE CHAIRMAN: You may proceed.

DELEGATE MACDONALD: I must take issue with our respected colleague, Delegate Henderson. The abuses have been that these suggestions for removal have been filed at the last minute, and that they have been used for purposes of delay. Amendment No. 25 corrects that situation completely.

Now this gives a right to removal, provided the party wanting the removal files his request in time. The Court of Appeals can provide how much time that must be before trial.

The question really is, are you going to leave the question of removal up to the litigant, up to the parties involved, or are you going to leave it up to the court, and I suggest that this right should be in the party. After all, it is his bowl of soup and he should have the right to determine whether he wants to be tried in this county or another county.

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: Mr. Chairman, I would like to oppose this amendment. This amendment includes equity cases. Now, let

us consider an injunction case in which it is frequently important to have an immediate hearing, possibly for the purpose of dissolving the injunction, possibly a question of whether the injunction should be continued. Speed of hearing is very important. Now if you are going to subject this type of proceeding to automatic right of removal, certainly it would impair the efficient and orderly administration of justice. Then too you might have an ejectment case in which it would be just as important to view the land, to look at the boundaries on the ground as in a condemnation case and there may be many others. This is a very, very unfortunate provision. It will impede the administration of justice and I earnestly solicit your opposition.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the amendment?

Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman, ladies and gentlemen, I urge you to adopt this amendment. You will note it is a very definite compromise of all positions heretofore taken.

I point out for your very earnest consideration the fact that our present Constitution contains a right of removal in civil cases.

I am confident that most lawyers will agree that if you delete something, something of this nature from the constitution, or, for that matter, when you delete anything from the constitution, it takes on a far greater meaning than if it had not been placed in the constitution in the first place. In other words, I submit to you that if we eliminate this right of removal in civil cases, it will be argued, and succinctly, I am afraid, that this Constitutional Convention has gone on record to delete the right of removal in civil cases. I am certain that each and every one of you does not want to create a situation of that nature.

I should also like to point out to the proponents of deleting this subject matter in the constitution the fact that by doing so they may very well be precluding the Court of Appeals by rule to operate in this manner. If there is nothing in the constitution giving the Court of Appeals by rule to act, they may very well not have authority to act.

I do not think that the proponents of deleting this section want that, but they may very well be stuck with that unfortunate situation. This is a fair and reasonable