

DELEGATE GILL: The Legislative Council bill, I think, is 2.73. We are already working on that. They have the power to do that. They continually tell us they are going to make all these reforms so I wonder about putting it in this transition and freezing it into the constitution like this. Is it necessary?

DELEGATE HARDWICKE: We do not consider it is frozen into the constitution when it is in the schedule of legislation. This is nothing more than statute law which the legislature is free to change. As I am sure you know, there is some uncertainty as to whether or not a bill will get through the legislature or not and in view of that, we feel it is best to plug that hole in case it does not get through.

DELEGATE JAMES (presiding): Delegate Koger.

DELEGATE KOGER: My question is along the same line as Delegate Gill's. It is my opinion that the reason for pension to spouses is because we usually think in terms of a dependent woman. In this particular case, do you think it is the intention that in the event a woman is made a judge and her husband perhaps is a highly paid executive, in the event she dies, is the purpose of this particular provision to continue the pension even to her spouse, even if he is a man?

It appears to me this is an unusual burden. If that is the intent, should we not in some way re-word this particular transitory language or whatever it is we are dealing with here?

DELEGATE HARDWICKE: Delegate Koger, I really do not know how you can do it. I think we have to have these provisions uniform. I recognize there may be some inequality in who gets what, but we regard this as one of the emoluments of the office.

DELEGATE KOGER: Is there any attempt made to do it? In other words, the fact that it is not done does not mean it should be done. Is there anything you can do to amend this particular language?

DELEGATE JAMES (presiding): Was the word "spouse" used in the constitution?

DELEGATE KOGER: The word "spouse", yes, is used in the constitution. I am not trying to put a new interpretation in. I am trying to make sure the interpretation would only mean perhaps if the spouse is a woman and not a man. It should be distinguished. It seems there is a burden placed upon the State to support a man

who is the survivor of a marriage, if he is an executive with a large income. I would like to have this covered. I would like to have Delegate Mudd give us an interpretation of just where it is in the constitution.

DELEGATE JAMES (presiding): Delegate Mudd.

DELEGATE MUDD: Delegate Koger, I am in favor of the women taking care of the men, but it is not in the law at present so far as I know. It is perhaps true in New York to some extent, but the word "spouse" has been used throughout this section in the constitution, and in the transitional provisions, and the schedule of legislation, and, of course, it means the surviving spouse, a male judge or a female judge.

DELEGATE JAMES (presiding): We are trying not to discriminate against anybody, I suppose.

DELEGATE KOGER: I am not concerned with that at this point. What I am trying to get at, is whether it is too late to do something about it?

In other words, if this should leak out to the public that we are doing all this, and there are many things we have not done, it appears to me this is not going to be a good thing.

DELEGATE JAMES (presiding): Delegate Cardin.

DELEGATE CARDIN: Mr. President, I have a silly, facetious question.

DELEGATE JAMES (presiding): State the question.

DELEGATE CARDIN: On page 25, under section 23, section D, shall we interpret it that the spouse who is entitled to pension under the provision of this section shall be paid for the period of his life unless he remarries? Do we have true equality?

DELEGATE JAMES (presiding): That is not consistent with the word "spouse". I suppose the definition of "spouse" can include both man and woman, can it not?

DELEGATE CARDIN: I believe the definition of spouse goes both ways.

DELEGATE JAMES (presiding): The only thing the Chair can say is there is some provision in the Code, in rules of interpretation, that "he" sometimes means "she" and "she" sometimes means "he", so you would have to leave it up to the court to make its determination.