

then an absolute right of removal pertains. How could the law be more absurd?

The proposals here are almost a perpetuation of the present law. A later section proposes in felony cases that there be an absolute right of removal. In misdemeanor cases and there are very serious cases of misdemeanor involving very serious incarceration, this would still be a matter of discretion. How could anything be more absurd to say where a man's freedom is at stake it is in the discretion of the court, but where a man's property is at stake, there is an absolute right of removal?

I would like earnestly to request that the members of this Convention support the amendment.

DELEGATE J. CLARK (presiding): Anyone desire to speak against the amendment?

Delegate Raley.

DELEGATE RALEY: A point of inquiry. I got lost somewhere. We have a Scanlan amendment and we have a Wiloner amendment that I think has been discussed but not distributed. Which one are we talking about? What one are we going to talk about? Which one are we going to vote on?

DELEGATE J. CLARK (presiding): The Scanlan amendment, No. 12, will be voted on first.

Is there any further discussion?

Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman and fellow delegates: The right of removal in civil cases and for that matter the right of removal in criminal cases is one of the most fundamental and I submit one of the most important rights that an individual has when faced with the courts in this State. I have already been told that this right has been in our Constitution for over a hundred years. It appears in Section 7 of Article II.

I submit that the proponents of this measure to remove this particular section from our Constitution know full well the likelihood that in all probability they will in effect be doing away with the right of removal in either civil or criminal cases.

I ask you to consider with me the following prospects. We have been told that the citizens of this State shall not have any say in the selection of their judges. We have been told that the citizens of this

State shall not have any say in the election of qualified attorneys to the office of judge, and now the proponents of this measure want to tell you and the other citizens of this State that our fellow citizen shall have absolutely no say in who shall judge them and who shall judge their cases.

If we remove this right of removal, we will take out the precedent that has been established in our Constitution. If we will remove this right of removal, we will not have the right of removal as we have in Rule 542 of the Rules of Procedure.

There has been a move afoot for years to do away with the right of removal because of the charge that, although sometimes correct, this right of removal is used for delay. I submit that many, many times it enables a litigant to have a fair and impartial trial either in front of a fair and impartial judge or a fair and impartial jury. If you remove this right of removal, you are telling litigants everywhere that they have absolutely no choice. They must take that judge or this jury to which their case is assigned.

Consider that very carefully and please vote down this amendment.

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

Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, I rise to speak in support of the Scanlan amendment. This matter was debated to some extent, as the members of the Committee of the Whole may recall, at the time we considered the recommendation of the Committee on the Judicial Branch.

At that time the minority report suggested this amendment or addition to the judicial article, "There shall be the right of removal in each case before the Superior Court and District Court in a manner described by rule or by law." That amendment was proposed as I recollect and rejected. We feel that the identical question is now presented on the Scanlan amendment.

As indicated by Judge Henderson, the right in criminal cases is otherwise protected in the Constitution. The amendment proposed by Delegate Johnson to the judicial article did nothing more than to suggest that the right be nothing more than the right prescribed by law or by rule. That will be perpetuated by law or by rule so we feel there is no necessity to include it in the Constitution.