

their case taken before another court or another jury, if they cannot get a fair and impartial trial in that particular court.

Delegate Henderson said that. It is quite true under the due process clause of this Constitution and the United States Constitution, everyone has a right to a fair trial, but section 8 permits the perpetuation of a shell game by lawyers.

Let me tell you what happens. You are a litigant in your case. You, your lawyer, and your witnesses have come to court to try that case. You have left your place of work. You have requested your witnesses at inconvenience to them to leave their places of work to come to court. At least twenty people have come to court to sit on that jury and the lawyer on the other side walks in with an affidavit in his pocket and all it says is that he requests that this case be sent to come other court because he cannot have a fair or impartial trial there.

He does not have to say why. He merely states the conclusion and so you come to court at considerable expense to you, the witnesses, the jury, and everybody who is engaged in making that court operate and suddenly you find out that because the lawyer had this affidavit in his pocket everybody goes home.

I have had a personal experience with this, here in this county. In Anne Arundel County they passed a rule which said that if you put the county to all that expense of calling the judge and jurors in and getting everybody ready to try that case but within twenty-four hours before it is time to hear that case you say "I am not going to try it here, and I want to go somewhere else," you are going to bear the expense. You are going to pay the two hundred dollars. That is fair and that is what ought to happen. However, they cannot enforce that rule because we have a constitutional right to have a case pulled out of court one minute before it is ready to start when everybody there is ready to try it.

The perpetuation of section 8 perpetuates a shell game by lawyers at the expense of the counties, the courts, and jury. It does not take away any fundamental right to a fair trial.

I urge you not to reject the amendment.

DELEGATE J. CLARK (presiding): Does anyone desire to speak in favor of the amendment?

Delegate Mitchell.

DELEGATE MITCHELL: I wish to speak against the amendment. We have spent almost ten days setting up the physical structure for the administration of justice. This section is concerned with a substantive provision for the administration of justice where the courts themselves have been deficient in setting up the regulations of the use of this right.

Now, supposedly with this system that has been presented to us, we are getting a higher quality of the judiciary and a more efficient system, and we are concentrating the rule making power in the Court of Appeals, the highest level of the judiciary. It seems to me that the problems that Delegate Bamberger has enumerated are the problems that will be corrected by this new and more efficient judiciary.

Again, I use Mr. Scanlan's words. Let's not throw out the baby with the bath water. Let us clean up the problems, correct the problems, and retain the right.

*(Call for the question.)*

DELEGATE J. CLARK (presiding): Is there any further discussion?

Delegate Churchill Murray.

DELEGATE E. C. MURRAY: Before the question, did Delegate Willoner have an amendment? Has he proposed an amendment? Because I think it would affect the vote of a lot of us.

DELEGATE J. CLARK (presiding): Delegate Murray, the question before us is on Amendment No. 12, Delegate Scanlan's amendment, which would delete the whole section completely. If this prevails, then we can take up the subject again, not as an amendment, not as a substitute, but as a new paragraph, as I understand it.

Delegate Weidemeyer.

DELEGATE WEIDEMEYER: Mr. President, I suggest that I am having an amendment prepared to add in our recommendation on line 19, the words "filed within a reasonable time prior to the date set for trial—"

DELEGATE J. CLARK (presiding): Delegate Weidemeyer, we are on this amendment at this time.

DELEGATE WEIDEMEYER: I offered that with the hope that this amendment of Scanlan's would be rejected so that we can give careful consideration to it.