

I find no example where I would feel that that would be true. However, Delegate Case, I think that our mental telegraphic system here is not working too well. Do you have an amendment to suggest to the amendment?

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: No, sir. I have no amendment to suggest. I am trying to find out what is behind your amendment and I would like to ask you another question.

There are a number of matters of law which are traditional, where you have no right to elect a jury, such as the cases tried on ancient writ quo warranto, for example. Why have you not made exception for them?

THE CHAIRMAN: Delegate Clagett.

DELEGATE CLAGETT: To be perfectly frank, I do not believe in those cases it would be necessary as a practical matter.

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: Has the Court of Appeals not held in a number of cases that, in situations of which I am talking about, cases of the ancient writs, there is no right of removal, even though they are law cases?

THE CHAIRMAN: Delegate Clagett.

DELEGATE CLAGETT: That is true.

THE CHAIRMAN: Are there any further discussion on Amendment No. 25-A?

Delegate Grant.

DELEGATE GRANT: I would like to oppose on two grounds. The first is the one I stated yesterday, in advocating we put in equity cases and that is a simple thing. At one time equity was a removal right in the 1867 Constitution. It was not until 1922 that the Court of Appeals in a rather tortuous line of reasoning took the right of removal of equity cases out. We have since had the right of removal only in law cases. The basic objection, of course, is the fact that when you go before a judge and you do not think you are going to get a fair trial, the only person who can decide whether you are going to get a fair trial or whether he should disqualify himself is the judge. I suggest to you if you had to ask him whether he was going to be fair and disqualify himself, you would not have had to ask him to disqualify himself in the first place. The second objection, however, I think, would assume that we would have a judiciary which would in all cases be reasonable and fair.

This is a fact, that there is growing in this country a movement to combine law and equity. This is a current federal procedure, and there may come a time when we want to abolish the distinction between law and equity, and I would hate to see written into this constitution a provision that certain parts of law could be removed, whereas concomitant parts of equity could not be removed and I could see a great deal of trouble in cases which had an odd mixture of law and equity under some new procedures, some new state procedures such as the procedure now existing in New Jersey.

THE CHAIRMAN: Are you ready for the question?

*(Call for the question.)*

The Clerk will ring the quorum bell.

The question arises on the adoption of Amendment No. 25-A to Committee Recommendation R&P-2, not printed but before you. For that reason the Chair will repeat what the amendment is.

To delete from lines 8 and 9 of the amendment the phrase, "and all cases in equity," and to delete from line 16 the phrase added by the modification "and domestic relations". A vote Aye is a vote in favor of Amendment No. 25-A, that is, the deletion of these two phrases. In either event, Amendment No. 25, either in its original form or as amended will be submitted to you for another vote. Vote now on Amendment No. 25.

A vote Aye, is a vote in favor of Amendment No. 25-A. A vote No is a vote against. Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote?

*(There was no response.)*

The Clerk will record the vote.

There being 61 votes in the affirmative and 55 in the negative, the motion carries. The amendment to the amendment is adopted.

The question now arises on the adoption of Amendment No. 25, as amended to Committee Recommendation R&P-2.

A vote Aye is a vote in favor of Amendment No. 25 as amended. A vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote?