power to a third. We are recognizing the general worth of the principle, but we are not saying that it is one which has to be strictly observed.

That is the vice in this proposal which I see, and I urge you to vote against it. It will lead to nothing but trouble.

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

Delegate Singer.

DELEGATE SINGER: Mr. Chairman, and fellow delegates, the historical perspective is that the separation of powers has never been construed to be a separate and distinct separation of governmental power.

There has always been in the history of this country a blending and merging of powers so that there have been, ever since we have had this principle, examples existing in which one branch of government exercised the powers of one or both of the other branches of government.

We have had a provision similar to this in all of the state constitutions of Maryland from 1776. In the beginning it read that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other. In 1851 additional language was added reading identically with what we have in the present constitution.

There have been several Maryland cases over the years that have construed this particular prohibition, even though there were allocations of power to the three distinct branches of government.

I think a particularly apt example of what this does do, and the reason why it is still needed, is an old Maryland case that goes back to 72 Maryland, where the legislature passed a statute requiring the courts to change the effect of certain decrees which had been final. This was voided under the provisions of the Declaration of Rights, Article 8.

I do not feel that if we eliminate this such acts by the legislature of giving the courts non-jurisdiction powers or requiring the courts to act in a non-judicial way would be prohibited.

The Supreme Court of the United States as late as 1964 in an opinion by Justice Warren looked with favor on knocking down an act of Congress upon this principle, stating it was a necessary ingredient to a free government.

For these reasons I ask that you support the Committee's Recommendation.

THE CHAIRMAN: Delegate Sherbow.

DELEGATE SHERBOW: Mr. Chairman, ladies and gentlemen, I disagree with Delegate Gleason's results, but I certainly agree with him when he says you cannot argue this in the time that is allotted. I will ask you to bear with me because I do not want to take additional time.

The Court of Appeals just last week, on December 13, decided a case which dealt with this direct situation. I am going to read you now from the minority opinion, and bear in mind that if the minority should ever become the majority, what you will have in the event this stays in the constitution, the judge in the minority opinion, Judge Wilson Barnes, said, "Article 8 of the Declaration of Rights of the Maryland Constitution provides that the legislative, executive and judicial powers of government ought to be forever separate and distinct from each other", etc. Then he goes on to say that, "It will be observed that although the doctrine of separation of government powers between the three great divisions of government is stated in laudatory terms, the implementation of that great principle to insure the freedom and liberty of the individual citizen is in mandatory terms addressed to each official of the state government."

Now, it so happened that what was before the Court was a situation dealing with no provision for review of a decision by a state official acting as an administrative officer.

Now, the rest of the Court of Appeals, the majority, said this:

> "In the earlier days of the exercise of governmental powers by administrative bodies, there was widespread fear that the delegating of administrative, legislative and judicial powers or functions to a single agency not only violated the theory of separation of powers but spelled its death knell. Emotional resentment against the rise of administrative power by lawyers and judges rose and resulted in efforts to thwart or destroy this veritable fourth branch of government by invoking the separation of powers theory or using the non-delegation doctrine or requiring a full and complete de novo judicial determination . . . ."
>
> These efforts had no more success than had the plaintiff in the case of *King Kanute v. The District of Columbia.*