

dollars. The very day the witness arrived there the party had his cause removed to an adjoining county.

Mr. MILLER. The case was removed to Anne Arundel county; the witness followed, the man was tried and convicted, and is now serving out his time in the penitentiary.

Mr. KENNARD. The removal, however, was to avoid justice.

Mr. STIRLING. It seems to me this section would be sufficiently stringent if the alteration I propose be made in it. It will, then require that the party shall make it satisfactorily appear to the court that he cannot have a fair and impartial trial, and that is enough to require. I do not see how any one charged with being a criminal can swear that he has a defence. The State is bound to prove a case against him. He may have no defence at all, and yet be perfectly innocent. A defence means that you have something to show against what is on the other side. Now, a man may be perfectly innocent, and yet have nothing to show at all; yet the other side may break down for want of proof. A man in that case must either commit perjury, or else merely swear that he is innocent. It is making a man swear against himself. The section goes still further; even if it is made substantially to appear to the court that there is a good ground for defence, or action, or that a fair trial cannot be had, the judge is not compelled to remove the case. The section only says he "may order and direct the record of proceedings . . . to be transmitted to some other court." &c. I submit that even if this part is stricken out about showing the ground of defence, the section is strong enough to cure all the evils which I admit do exist.

Mr. BERT. It seems to me that the explanation which has been given by the gentleman from Baltimore city, the chairman of the committee on the judiciary (Mr. Stockbridge) cuts away all the foundation upon which this proposed change in the law rests. As I understand it, his explanation of the motives which guided the committee is that they proposed to give to the courts the utmost latitude upon this subject. That is, cases shall not be removed hereafter upon the suggestion and affidavit of the party as now; but the court must be satisfied that there is a proper defence, in the first place; and in the second place a proper cause for removal. And as an argument in favor of the proposed change in the constitution the gentleman says that nobody knows what view the court may take of the subject; what they may propose and insist upon. They may take any point in the wide range, from the simple statement in the ear of the judge if the party wishes to remove his cause, up to the most stringent regulations upon the subject that it is possible to conceive of. Now this which is advanced as the strength of the proposed change, is in

my judgment the very weakness of it. How can we determine upon what principles the court may act? The explanation shows that the proposed change is liable to abuses in both ways.

If the court adopt such regulations and rules in this matter as that a man charged with a criminal offence shall be obliged to disclose his whole defence, or that a man in a civil proceeding shall have to open before the court his whole case—and gentlemen will bear in mind that it is not to the judge that this is to be made, but to the court in its public capacity; the court is to be satisfied, and this exhibition to whatever extent it is to be made, is to be made openly before the court—if the regulation and rule is such that a man must expose his defence, nobody can doubt that it would be an almost inconceivable and intolerable hardship, and in this particular against the whole practice of courts of law in this State.

On the other hand, if you leave the court full of latitude upon this subject, the abuse will be equally intolerable. The court may not require sufficient ground for removal; it may not even require the personal guarantee of the affidavit of the party. It may take the statement of some parties and refuse that of others. They may adopt the most arbitrary or the most lax and most unsatisfactory rules for their government in this particular. And there may be a great many men on the bench who will avail themselves of this extreme official latitude given them, to divest themselves of the responsibility of trying cases between their neighbors. They not only may make it easy, but they may make suggestions to parties, may facilitate and urge and take an active part in having cases removed from before them.

Now I will propose an amendment to test this matter, to find out whether or not this convention will embark in this latitudinarian sea which the committee on the judiciary through its chairman proposes, or whether we shall stand by the old landmarks of the State. I propose to guard the affidavit in this particular, to have the party to swear not only that he cannot have a fair and impartial trial in the county where the venue rests, but that the cause is not removed by him for any purpose of delay, or to evade justice. I propose to insert before the words "and the general assembly shall make such modifications" &c. the following:

"And sufficient proof to entitle the applicant to such removal shall be the affidavit of the party to the effect that he cannot have a fair and impartial trial of the said issue, petition, presentment or indictment, and also that the said removal is not applied for with any view of delaying such trial, or of evading justice."

The PRESIDENT. The question will be first